

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7541 OF 2004

Murildhar Dattatraya Tillu (D) By LRs. .. Appellant(s)

Versus

State of Maharashtra .. Respondent

O R D E R

This appeal arises out of the final judgment and order dated 17.10.2003 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, in First Appeal No. 230 of 1994, by which the High Court allowed the appeal and set aside the order passed by the Reference Court in Land Acquisition Reference No. 15 of 1990. The High Court also rejected the cross-objections filed by the claimant.

The respondent State vide its notification dated 07.05.1981 sought to acquire an agricultural land G-No.1370 admeasuring OH.22R and Pot Kharab land O.H. 01R and the land bearing Gat No. 1599 admeasuring 1H.72R and Pot Kharab land O.H.19R for the purpose of Upper Top Hatnoor Irrigation Project. After completing the formalities, the Collector made his award on 17.06.1985 for a total a total compensation of Rs.1,75,181.45 at the rate of Rs.37,900/- per hectore (Rs.3.79 per sq. mtr.).

Notice of award under Section 12(2) of the Land Acquisition Act was received by the claimant on 11.08.1985.

Dissatisfied with the award of the Land Acquisition Officer, the claimant filed an appeal before the Reference Court claiming a total compensation of Rs.5,25,000/- and also all statutory benefits. The claimant got himself

examined as AW1. The Administrative Officer of Chopda was

examined as AW2. AW3, the vendor of sale instance in Ex.45

was also examined. The claimant placed reliance on Ex.45

which was the sale deed dated 01.09.1978 of an open plot

of 79.04 Sq. mtr. sold for the consideration of Rs.5,000/-

i.e. Rs.63/- per sq. mtr.

The land under Ex.45 is two

furlong away from the acquired land.

Ex.45 was accepted

by the Reference Court as per Section 51-A of the Act.

Considering the fact that Ex.45 was made three

years prior to the date of notification,

after giving due increase i.e. by 50% rise the

Reference Court fixed the value at Rs.34,43,920/- @

Rs.38/- per sq. mtr. together with future interest and

other benefits.

Aggrieved by the above mentioned order of the

Reference Court, the State came up in appeal before the

High Court. The cross objection was also preferred by the

3

claimant. The High Court noticed that the sale instance

Ex.45 was in respect of a small piece of residential plot

which is situated in the heart of the city, which was a

open plot hardly at a distance of 200 ft. from the office

of the Municipal Council and, hence, the same was not a

comparable sale instance for granting compensation on

square foot basis to the acquired land, which is an

agricultural land. Further, it was also noticed that the

acquired land was far off from the city and situated in

green zone and that on the date of the notification under

Section 4 of the Act, there was no development in the area

around the acquired land.

The High Court felt that the

Reference Court was in error in granting compensation

on per square foot basis to an agricultural piece

of land. On that reasoning, the appeal preferred

by the State was allowed and the cross objection

filed by the claimant was rejected.

Hence the present

appeal.

Mr. Shekhar Naphade, learned senior counsel appearing for the appellant, submitted that the High Court has committed a serious error in upsetting the order of the Reference Court. Learned counsel submitted that the acquired lands are situated within the municipal limits of Chopda city and situated at about a distance of one furlong from Burhanpur-Ankaleshwar Highway. Further, it

4

was also pointed out that as per the development plan of 1973-74 and the revised development plan of 1984-86, the Chopda-Shirpur road is only at a distance of about two fields from the said acquired lands. Further it was submitted that as per the development plans, the ginning and pressing factory, MSEB office, old Civil Court Building and the High Schools are in close vicinity of the acquired lands. Learned counsel submitted that the High Court has failed to appreciate the potentialities of the acquired lands and the possibilities of use of the acquired land for building purposes in the immediate future. Learned counsel also relied upon the judgments of this Court in Administrative General of West Bangal v. The Collector, Varanasi AIR 1988 SC 943 and Mahabir Prasad Santuka & Others v. the Collector, Cuttack & Others AIR 1987 SC 720. Learned counsel also submitted that the Reference Court has rightly placed reliance on Ex.45, which was the only sale instance made available to the Reference Court, and that was the only land lying in close vicinity to the acquired land and taking into consideration that Ex.45 was of the year 1978 only, an appropriate enhancement was granted by the Reference Court taking note of the fact that Section 4 notification is of the year 1981.

Mrs. Asha Gopalan Nair, learned counsel appearing for

5

the respondent State, contended that the High Court has

rightly interfered with the order passed by the Reference Court for the reasons stated by the High Court in its order. Learned counsel submitted that there is no reason to place any reliance on Ex.45 which was of the year 1978 and small in extent, not in proximity and that the method adopted by the Reference Court in granting compensation was also faulty.

We heard either sides at length and have gone through the order passed by the Reference Court, judgment of the High Court as also the oral evidence adduced by both the parties and Ex.45. We find that the only sale instance produced before the Reference Court was Ex.45. The Claimant also got examined himself as AW1 and the vendor was examined as AW3. Ex.45, therefore stands proved. No oral evidence has been adduced by the respondent State, the Administrative Officer in the Office of Chopda Nagar Palika was examined as AW3. AW3, produced two development plans and maps of Chopda.

The claimant has clearly deposed that the acquired land is situated in the municipal limits of Chopda city. AW2 has also stated in part 4 of his deposition that the acquired land is situated within the municipal limits of Chopda city. The fact that the acquired land is within the municipal limits of Chopda city cannot be disputed.

6

Further, the revised development plan of 1984-86 would clearly indicate the future prospects of the acquired land and the development ought to have taken place in and around the acquired land. The evidence of AW2 would clearly establish that as per the revised plan, a lot of development would be taking place in the vicinity of the acquired land. The situation and location of the acquired land indicate that it has all the potentialities to be considered as a non-agricultural land, taking into consideration the development taking place in and around

the acquired land. The future potential of the land can be gauged by the developments that is taking place in and around the acquired land, even though it is notified as an agricultural land.

Having taken into consideration the location of the acquired land and the evidence adduced with regard to the development taking place in the municipal limits of Chopda city, we are of the view that the amount of compensation awarded by the Reference Court is just and proper. The Reference Court has placed reliance on Ex.45 since no other comparable sale deed was produced by either side. Further, Ex.45 is situated about two furlongs away from the acquired land. Ex.45 is dated 1.9.1978 and it was in respect of an open plot of 79.02 sq. mtr. which was sold at the rate of Rs.63/- per sq. mtr. The acquired land as

7

well as the land covered under Ex.45 are situated and located within the municipal limits of Chopda city.

This Court in Suresh Kumar v. Town Improvement Trust, Bhopal AIR 1989 SC 1222 opined that where there is no sufficient or direct evidence on market price, the Court would be required to ascertain the same from the best possible material made available to it. Except Ex.45, no other evidence has been adduced in this case to determine the market price of the acquired land on the relevant date. The time gap between Ex.45 and the Section 4 notification is about three years. Therefore, the land value as stated in Ex.45 cannot be accepted as such, since it is a common knowledge that the land value would increase day-by-day. As rightly pointed out by the Reference Court on an average there may be a rise of 50% during the said period of three years, it is after taking into consideration all those facts, the Reference Court opined that the acquired land could fetch a value of Rs.80/- per sq. mtr. on the relevant day. We are not

prepared to say that the above finding is illegal or
perverse. Further, necessary deduction to the extent as
required for formation of road and other civil amenities,
expenses of the development of sites by laying out roads,
drains, sewers, water and electricity lines etc. has also
been given. After making due deduction, the Reference

8

Court fixed the valuation of the acquired land at Rs.38/-
per sq. mtr. We find no error in the reasoning of the
Reference Court.

We are informed by the learned counsel that 50
%
amount has already been paid and the balance is yet to be
paid with statutory benefits. We, therefore direct the
State Govt. to disburse the balance amount within a period
of three months from the date of this order. Appeal is
allowed with costs.

.....J.

.....
(G.S. Singhvi)

.....J.
(K.S. Radhakrishnan)

New Delhi
April 19, 2011

ITEM NO.106

COURT NO.9

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 7541 OF 2004

MURILDHAR DATTATRAYA TILLU (D)BY LRS.

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

Date: 19/04/2011 This Appeal was called on for hearing today.

9

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE K.S. RADHAKRISHNAN

For Appellant(s) Mr.Shekhar Naphade, Sr.Adv.
 Mr.Arun R.Pednekar, Adv.

For Respondent(s) Ms. Asha Gopalan Nair,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order with
costs.

(Satish K.Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed order is placed on the file)