\214ªITEM NO. 101 COURT NO.8 SECTION IVA

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. 7320-7323 OF 1997@@
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AGRL PRODUCE MARKET COMMITTEE ...APPELLANT (S)

VERSUS

N S K KHAJA MOHIDEEN SAHEB (D) BY LRS & ORS. ...RESPONDENT (S)

(With appln. for stay and office report)

With C.A. NOS. 7324-7328/1997

Date: 16/11/2000 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.P. MISRA
HON'BLE MRS. JUSTICE RUMA PAL

For the appellant (s) Mr. G.V. Chandrashekhar, Adv. for
Mr. P.P. Singh, Adv.

For the respondent(s) Mr. Anil Kumar Gupta-II

Mr. N. Ganpathy, Adv.

Mrs. Lalitha Kaushik, Adv.
Mr. Naresh Kaushik, Adv.

Mr. Anil Kumar Gupta, Adv.

Upon hearing counsel, the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.....
.SP2
Appeals succeed to the limited extent in terms of the signed order. Costs on the parties.

.SP1

.SP1
(Ganga Thakur) (V.P. Tyagi)
P.S.to Registrar Court Master.

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7320-23 of 1997@@
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Agricultural Produce Market Committee Appellant

Versus

N.S.K. Khaja Mothideen Saheb (Dead) by Lrs. & Ors. Respondents

[With C.A. Nos. 7324-7328 of 1997]

O R D E R@@
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The present appeals are by Agricultural Produce Market Committee, a statutory body under Agricultural Produce (Regulation) Act, 1966. It has challenged the quantum of compensation awarded to the claimant on the facts and circumstances of the present case.

Section 4(1) of the Notification was issued on the 17th November, 1977 proposing to acquire about 50 acres of land for the benefit of the petitioner/committee. After enquiry, the Land Acquisition Officer fixed it at the rate of Rs.5,000/- per acre. The claimant aggrieved by this went in reference. The Reference Court relying on Ex. P.1 and Ex. P.4 enhanced the compensation to Rs.85,000/- per acre. Ex. P.1 is an award passed in the year 1944 whereby 2 acres and 11gontas of land was acquired in which compensation fixed was Rs.3,630/- per acre. The Reference Court basing this, added 10 per cent appreciation per year from 1944 to 1977 to arrive at a figure of Rs.85,000/- per acre. It is this enhancement which is challenged the present appeals. The second challenge is, from this amount there has been no deduction for the development charges. Hence this fixation cannot be accepted to be the true compensation awarded in accordance with law. The State, which is the acquiring body, filed an appeal challenging this fixation in which the present appellant was not a party, before the High Court. The appellant made an application for its impleadment, which was allowed on the 20th February, 1995. However, in spite of this opportunity learned counsel for the appellant did not appear when the case was taken up for hearing in the High Court. The Court under mistaken belief that appellant application for impleadment is still pending dismissed the same. Thereafter, counsel for the appellant filed applications being I.A. Nos. 3 and 4 for recalling the aforesaid order passed by the High Court which was also dismissed.

Thereafter came another series of litigation pertaining to the deposit of the amount awarded when despite of the order passed by the High Court, no deposit was made. The Assistant Commissioner and Land Acquisition Officer issued show cause notice to the appellant directing him to deposit the awarded amount of Rs.1,51,34,844.00 on its failure the said officer issued notice and attached the appellants property. This led the appellant to file a contempt petition challenging this notice. The High Court by interim order directed

the respondent to restore all the attached articles. Thereafter, another attachment order of the bank account was passed which led the appellant to file a second contempt petition. Ultimately on unconditional apology the contempt petition was dropped. The High Court thereafter dismissed both the appeals one filed by the appellant and the other by the State. The main reason was the dismissal of the earlier State appeal in MFA No.2373/94, as the present case also arose out of the same acquisition proceeding raising the same point. The appellant sought remand of the case based on his petition under Order 41, Rule 27 for leading additional evidence in the said appeal which was dismissed. It is this order of the High Court dismissing appellant appeal which is the subject matter of consideration by us in the aforesaid appeals. We may record here that State has not come before us in appeal as against the same impugned judgment.

Mr. Chandrashekar, learned counsel appearing for the appellant has submitted with vehemence that the High Court fell into error in arriving at a figure exclusively based on Ex. P.1 and Ex. P.4. The submission is, there is no justification for the High Court to have added to the awarded amount in the said Ex. P. 1 by 10 per cent per year from 1944 to 1977. The submission is, there is no evidence for this escalation hence it suffers from illegality liable to be set aside. It is submitted, there is no sale deed of the year in question of any land in the vicinity and Ex. P.4 is only for a small area which could not be the foundation for fixing the value of the land. Thus enhancement of compensation from Rs.5,000/- per acre to Rs.85,000/- per acre is not justifiable. The crux of submission is, the land in question is an agricultural land and in the absence of evidence of escalation of the price of land, both the fixation of compensation and the escalation of the price is not justified. He submits, in support, the statement of P.W.1 according to whom agriculture was still being done on the said land. On the other hand learned counsel appearing for the claimant Ms. Lalita Kaushik submits, the fixation is based on cogent consideration based on the evidence on record, hence it does not call for any interference. The land in question at the relevant time was fully developed as potential building site and thus it was no more an agricultural land. This is because evidence shows the area in question has developed fast, including the evidence of the development done by the appellant themself in the surrounding area in question. It was also denied that Ex. P.4,has not been proved by P.W. 4, hence the fixation of quantum of compensation based both on Exhibit P.1 and P.4 was justified. Referring to the second submission, it is submitted, the appellant at no stage raised this question of reduction of compensation amount by the development charges thus no evidence was led by either parties.

On this background we proceed to examine first, what the Land Acquisition Officer has to say on the potentiality of the land in question including its surrounding area. The Land Acquisition Officer records:

"It is situated close to Bellary Town Suburban area and is situated adjacent to the Manuru Swamy Mutt on the Western side and Bangaolore-Bellary road on the Southern side it is flanked by agricultural land."

He further records:

"These lands are located a little away from Bellary town and the agricultural lands alone should be taken into consideration and not the market value of the building sites. Although the lands under acquisition have potential to be converted into building sites."

On the other hand, we find the Referring Court records to the following effect:

"From the evidence of P.W.1, one of the claimants and P.W.6, the Court Commissioner, it is clear that the acquired lands are very near to Bellari City and there is all around development of the acquired lands. So, what we can by the above discussion hold is that, the acquired lands have got potential value on building sites and they are near very important places like Medical College Hospital, Brucepat Police Station and the A.M.C. Building."

This shows Land Acquisition Officer has held, land had potentiality to be converted into building site, and Referring Court holds, this land has got potential value as a building site. Thus this land rightly was not held or treated as an agricultural land.

This takes us to the next question, whether the Referring Court was justified in considering the examplers Ex. P.1 and Ex. P.4 for fixing the value of the acquired land. Ex. P.1 is an award of compensation for the Survey No. 465-B measuring 2 acres and 11 gotas which was acquired on the 29th February, 1944 for the purpose of Agricultural Marketing Committee Godown for the appellant and its market value fixed was at the rate of 0.75 paise per sq. feet even according to the counsel for the appellant. The Referring Court by applying the principle of appreciation of the land value to be at the rate of 10 per cent per annum from 1944 to 1977 arrived at the figure of Rs.84,258/- per acre for the land in question. As aforesaid amount fixed in Ex. P.1 and the rate which comes to 0.75 paisa per sq. feet are not disputed. Only submission is, the escalation of price at the aforesaid rate of 10% per annum was not justified as there is no such evidence. We may point out here that this is a case in which the appellant did not take trouble of participating in the acquisition proceedings. It cannot be doubted that the appellant was aware, both of Section 4 and Section 6 of the Notification that this acquisition is only for the benefit of appellant. Consequently proceedings for fixation of compensation was to follow. If the appellant was interested to get fixed just compensation which they have to pay, at that stage either should have participated or should have helped the State by giving such evidence as it deemed fit to get a proper rate fixed, which it has not done.

We are finding in large number of cases, about which we can take judicial notice that at whose instance acquisition is taken by the State, does not participate in the proceedings, leaving it on the State to contest but when adverse orders are passed, such institution comes in with objections that no opportunity was given to it, hence be impleaded. Of course this Court has said an opportunity should be given, but a way should be found by bringing a rule through amendment that notice should go to such institutions if they wish to participate they may do so, then this second exercise by the courts to

reexamine after the impleadment could be eliminated.

Normally such institutions apply for impleadment after adverse orders are passed by the Referring Court or the High Court. Then the whole issue is sought to be reexamined after their impleadment. This not only delays the conclusion of the proceedings, delays payment of compensation to the claimants but in fact constitutes a second attempt to get it readjudicated of what was concluded after the State contest.

In the present case we find except Ex. P.1 and Ex. P.4, there is no other document on record which could help to fix the compensation. So, the court was left with no other option but to consider it and fix the value of the land in question by adding to it the appreciation of the value of the land. These exemplors are either prior to or subsequent to the Notification in question. When court is faced with such a situation, then the value of the land has to be fixed with some element of guess work. Neither the appellant nor the State Government brought any exemplar on record for arriving at some other figure. In fact, they led no evidence. In the present case according to the evidence of P.W. 4 who was working as Superintendent for the appellant committee, in the previous acquisition, plots were laid in the said acquired lands and then sold. Three types of plots were laid as A, B, C in the year 1957 which were sold for Rs.500/-, for plot A measuring 54 feet, for Rs.750/-, for plot B measuring 40 feet, and Rs.750/- for plot C measuring 30 feet.

The rate of the aforesaid sold plots comes to about 3.75 per sq. feet even according to learned counsel for the appellant. It is also not in dispute, as aforesaid, that the rate at which the award was made in Ex. P.1 in the year 1944 comes to about 0.75 paise per sq. feet. However, learned counsel for the appellant submits, what is sold in 1957 was developed plot. It is true, we are not taking these figures for fixing any amount of compensation. We have referred this to find which shows that from the year 1944 to the year 1957 there exists a clear trend of escalation of prices of the land in the vicinity. The land of these plots in the year 1957 was also acquired and developed for the same purpose as the present case and is also adjacent to the land that is subject matter of acquisition in the present case. After this, came the present acquisition in the year 1977. P.W. 4 has referred to the allotment and price of these developed plots in the area which is marked as Exhibit P-17. A counter affidavit has been filed on behalf of one of the respondents. The relevant portion is reproduced below:

"2) That after the acquisition, the petitioner was given the possession of the lands, who carved out the plots and sold the same as far back as during the year 1982 itself at a huge profit i.e. at the rate of Rs.18,720/- (plot of 30X60), which comes to Rs.4,53,024/- per acre during the year 1982 while the petitioner is challenging the award of the reference court which granted Rs.85,000/- per acre. The lands acquired has been already sold by the APMC during the year 1982 itself and enjoying the sale proceeds without any investment till date at the cost of the poor claimants."

Significantly, these averments have not been controverted by the appellant. Apart from non denial

there is no evidence on record on which the appellant could rely. This figure of selling the developed plot in 1982 if computed then the approximate rate comes to Rs.20/- per square feet. This reveals clearly that in the year 1944 Exhibit P1 indicates approximate rate of the land to be 20 paisa per square feet, in the year 1957 for the development plots comes to Rs.3.20 per sq. feet and in the year 1982 the rate of the development plot comes approximately to Rs.20/- per square feet. This shows clearly the trend of escalation of price in the area in question for the similar land, in the same area concerned. In fact, 1982 developed plots' price as aforesaid is of the very notification which is under challenge. We again want to make it clear, we are not recording the prices of these developed plots for fixing or computing any value of the land for the payment of compensation to the land owners but only testing whether this would form an evidence of showing escalation of price of the lands in the area in question. Significantly 1957 sale deeds and 1982 sale deeds are both by the appellant market committee itself in the same area. Thus the submission on behalf of the appellant that there is no evidence on record showing escalation price in the area in question cannot be accepted.

In the present case, as we have stated, there is absolutely no evidence led either on behalf of the State Government at the relevant time nor there is anything on record on which appellant could rely for setting aside the fixation of prices as fixed by the referring court. The only opportunity they had was before the High Court when appellant counsel did not appear. How on these fact it could challenge for the first time before this Court the rate of compensation fixed. In view of this the price fixed at Rs.85,000/- per acre cannot be said to be such which calls for any interference by this Court in the present appeal.

The last submission made on behalf of the appellant is regarding the price reduction from the said amount towards the development charges. In the present case, we find firstly the appellant has not taken any such plea in any court. Even in the High Court, we do not find any such ground having been raised. But we may refer to what the referring court has to say:

"On the other hand, the learned Government Pleader contended that if a deduction of 1/3 to the amount mentioned in Exhibits P.1 and P.4 is given, the amount comes some where at Rs.75,000/- per acre would be reasonable in the circumstances."

In fact in the counter affidavit it is stated that no investments towards development have been done by the appellant upto the date of sale of these plots in the area in question and hence no reduction for the development charge could be made as no development in fact was done. As we have said, we find no reply controverting this fact by the appellant was filed. In fact we feel it appropriate that it would be proper to reduce the rate to Rs.80,000/- per acre for the acquired land in question in view of the facts of this case. Except with this modification, we do not find any other error in the impugned judgment of the High Court which calls for our interference.

Accordingly, for the reasons recorded above, the appeals succeed to that limited extent and other part of

the impugned judgment is upheld. Cost on the parties.

We have decided this case on the peculiar facts and circumstances of the case and it shall not be taken as precedent.

.....J.
(A.P. Misra)

New Delhi.
November 16, 2000

.....J
(Ruma Pal)