

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).10681/2006
(From the judgment and order dated 08/03/2006 in MFA No. 3940/1998 of
The HIGH COURT OF KARNATAKA AT BANGALORE)

EXEC.ENGINEER,KARNATAKA HOUSING BOARD Petitioner(s)

VERSUS

SHIVARUDRAPPA FAKIRAPPA UPPIN(D)BY LRS. Respondent(s)

(With prayer for interim relief)
WITH S.L.P.(C)...CC NO. 10116 of 2006
(With office report)
SLP(C) NO. 11392 of 2006
(With application for modification of Court's order and with
prayer for interim relief)
SLP(C) NO. 11533 of 2006
(With application for modification of Court's order and
substitution of L.Rs of the deceased respondent and with prayer
for interim relief and office report)
SLP(C) NO. 5684 of 2007
(With prayer for interim relief and office report)

Date: 13/08/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE MUKUNDKAM SHARMA
HON'BLE MR. JUSTICE ANIL R. DAVE

For Petitioner(s) Mr. S.K. Kulkarni, Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Vijay Kumar, Adv.

For Respondent(s) Mr. P. Vishwanatha Shetty, Sr. Adv.
Mr. Anand A. Magadum, Adv.
Mr. E.C. Vidya Sagar, Adv.
Mr. Bramjeet Mishra, Adv.

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

S.L.P(C) Nos.10681/2006, S.L.P(C)No..CC No.10116/2006
S.L.P(C)11392/2006, S.L.P.(C)No.11533/2006

Delay condoned in S.L.P.(C) No..CC No.10116/2006.
Leave granted.

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The appeals are disposed of in terms of the signed order.

SLP(C) NO. 5684 of 2007

Issue notice in the above-mentioned petition.

(JASVIR SINGH)
SR.PA

(RENU DIWAN)
COURT MASTER

(Signed order is placed on the file)
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6770 OF 2010
[Arising out of SLP (C) No. 10681 of 2006]

EXEC. ENGINEER,
KARNATAKA HOUSING BOARD

...Appellant

Versus

SHIVARUDRAPPA
FAKIRAPPA UPPIN [D] BY LRS.

...Respondents

WITH

Civil Appeal No. 6771 of 2010
[Arising out of SLP [C] No. 11392 of 2006]

Civil Appeal No. 6772 of 2010
[Arising out of SLP [C] No. 11533 of 2006]

Civil Appeal No. 6773 of 2010
[Arising out of SLP [C] No. CC No. 10116 of 2006]

O R D E R

Delay in filing SLP [C] No. CC No. 10116 of 2006 is condoned.

Leave granted in all the petitions.

These petitions are being taken up together as they involve similar facts and common questions, both on law and facts. In the two petitions, i.e., SLP [C] No. 11392 of 2006 and SLP [C] No. 11533 of 2006, notice was issued by this Court. An order was passed in SLP [C] No. 11392 of 2006 to tag these Petitions with SLP [C] No. 10681 of 2006. The other petition, namely, SLP [C] No. CC No. 10116 of 2006 is a adjourned fresh petition. But, since both the parties are represented by their counsel, we have, with the consent of the counsel for the parties, decided to dispose of the four

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petitions indicated in the cause title finally. Consequently, we have heard learned counsel appearing for the appellant and respondent in these matters. The learned counsel for the respondent has also stated that he would also file the vakalatnama in the fourth case within a period of two weeks from today. The prayer is granted.

We have heard the learned counsel appearing for the appellant and also the learned counsel for the respondents who have taken us through the documents on record as also the judgments and orders passed by the High Court as also by the Reference Court.

Learned counsel appearing for the appellant in the course of his arguments has made two principal submissions for challenging the judgment and order passed by the High Court. The first submission of the learned counsel appearing for the appellant is that the direction by the High Court to allow deduction only to the extent of 33.3 per cent and not 50 per cent despite the fact that a large tract of land was acquired under the Land Acquisition Act whereas the exemplar land is a very small piece of land and, therefore, development charges to the extent of 50 per cent should have been deducted.

In support of the aforesaid contention he has placed reliance upon the decision of this Court in the case of K.D. Shivademma v. Assistant Commissioner and Land Acquisition Officer reported in (1996) 2 SCC 662. The High Court did take into consideration the aspect that the acquisition in the present case is in respect of a large tract of land whereas the exemplar land is a small piece of land. But, in the absence of any other evidence and that evidence being the most proximate in point of time, the

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same was accepted by the High Court after deducting 33.3 per cent towards development charges for road, sewage and such other facilities on the value of the land. The decision relied upon by the counsel appearing for the appellant is not applicable to the facts and circumstances of the present case, as in the present case there is no evidence to indicate that the land acquired is covered by any building regulation similar to the one which was found to be in place in the case of K.D. Shivademma [supra]. In the absence of such evidence it cannot be said that the compulsory deduction to the extent of 50 per cent is required to be made in terms of the building regulation of the cited case. We, therefore, find no valid reason to hold that the deduction of 33.3 per cent from the value

of land of a small tract of land like the exemplar land while acquiring large tract of land is not justified.

So far as the second submission of the learned counsel for the appellant regarding the escalation of prices at 8 per cent is concerned, such escalation for the land between the period from 1985-1989 is justified, as land price is on the rise every year and, therefore, there would definitely be an increase of the land price between 1985 and the land price of 1989. Besides, the acquired land is situated abutting a national highway and it is also situated within the municipal area. Therefore, the acquired land has all the potential value for development and being used for the public purpose for which it is acquired. We, therefore, do not find any merit in the aforesaid submission of the counsel appearing for the appellant.

Considering the fact and circumstances of the present case, we find no reason

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to interfere with the orders passed by the High Court including the order of the Reference Court. The appeals have no merit and are hereby dismissed. All the pending applications also stand disposed of in terms of this order.

....., J
(DR. MUKUNDAKAM SHARMA)

....., J
(ANIL R. DAVE)

NEW DELHI;
DATED AUGUST 13, 2010.