

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3368 OF 2005

Special Tahsildar (Land Acquisition), A.P. ... APPELLANT

VS.

B. Sreehari Reddy & Ors.

... RESPONDENTS

WITH

Civil Appeal No. 3369 of 2005

And

Civil Appeal No. 3370 of 2005

O R D E R

V. Gopala Gowda, J.

These appeals are filed by the Special Tahsildar (Land Acquisition Officer) questioning the correctness of the Judgment and Order passed by the High Court of Judicature Andhra Pradesh at Hyderabad dated 28.2.2003 allowing the appeal filed by the respondent land owners for enhancing the market value of the acquired land from Rs.56/- per sq. yard to Rs.116/- per sq. yard with other usual statutory benefits including the interest on solatium. The said judgment was reviewed by the High Court in Review C.M.P. No.11056 of 2004 vide order dated 29.04.2004 by revising the earlier market value from the rate of Rs. 116/- per sq. yard to 140 per sq. yard on various legal grounds.

Since the parties are same in the impugned judgment and order in relation to the same property heard together and common order is passed.

2. The ground of appeal urged by learned Senior Counsel for the appellant Mr. Anoop Choudhari is that the impugned Judgment passed by the High Court in A.S. No.2431/2000 and CMP No. 12587 of 2001 has erred in enhancing the compensation by re-determining the market value of the land and therefore the same is unsustainable in law and further contended that enhancing the market value of the acquired land of the respondents from Rs.54/- per sq. yard to Rs. 116/- per sq. yard and further enhanced to Rs.140/- per sq. yard in exercise of review power by placing reliance upon a registered sale deed which was proved by the respondents by examining PW-3 the purchaser of the document, under which 54 ankanams of land was sold for an amount of Rs. 86,500/- (Ex. A-14). Therefore, the High Court ought to have seen that Ex.A-14 is covering very smaller extent of 629 sq. yards of land and the same is not at all comparable to the acquired land to re-determine the market value of the larger extent of acquired land. Hence the re-determination of the market value of the acquired land by the High Court is bad in law. The learned Senior Counsel has urged that the High Court has committed an error in law in re-determining the market value at Rs. 116/- per sq. yard initially and thereafter at Rs.140/- per sq. yard after deducting 20% of the sale consideration covered in Ex. A-14 in the sale deed, which is contrary to the well established principles of law laid down by this Court in re-determining the market value of the acquired land.

3. Further, it is contended by learned Senior Counsel that even assuming for the sake of argument without admitting that the Ex.A-14 sale deed in relation to small bit of land relied upon by the High Court should have deducted at least 65% to 70% from the value of the land covered in Ex. A-14 to re-determine the market value of the land involved in these appeals, that has not been done by the High Court. Therefore, impugned judgment and order are liable to be set aside by allowing these appeals.

4. The re-determination of the market value by the High Court in exercise of its appellate jurisdiction and review power is contrary to the fact, legal evidence and probabilities of the case and therefore, the

impugned judgment and order are liable to be set aside.

5. The grounds urged in the connected appeal which is filed in challenging the order in the review petition Civil Misc. Petition are stated as hereunder:

It is contended by the learned Senior Counsel for the appellant that the High Court has erred in exercising its review power thereby committed material irregularity in enhancing and awarding compensation in favour of the owners by allowing their review petition. Further, it is urged that the High Court has acted illegally in reviewing its own judgment during pendency of the Special Leave Petition against the same and the High Court should not have exercised its review jurisdiction and re-determined the market value of the acquired land from Rs.56/- per sq. yard to Rs.140/- per sq. yard in respect of the acquired land when the judgment was under challenge in the Special Leave Petition and it has not attained its finality. The High Court revising the market value from Rs.116/- per sq. yard to Rs.140/- per sq. yard in exercise of its review power on the basis of sale deed Ex. A-14 the land covered in this document is 0.09 cents which is equivalent to 54 ankanams is bad in law but not 0.13 cents of land was taken by the High Court to re-determine the market value of the acquired land at Rs. 116/- per sq. yard.

6. Further, deducting 20% of the value of the land covered in the document Ex. A-14 and arriving at the market value at Rs.140/- per sq. yard of the acquired land is factually incorrect. It should have been arrived at the rate of Rs.138/- per sq. yard. The High Court ought to have seen that Ex.A-14 sale deed is covering very small bit of 629 sq. yards land and the same is not at all comparable land to the acquired land for determining its market value of the acquired land of respondent.

7. In the case of Kasturi vs. State of Haryana[1] this court has held that deduction can be made from 20% to 53% towards the location of the land, the nature of the development undertaken and various other factors as the extent of land covered by Ex.A-14 is found to be much lesser than what was considered earlier. i.e. Ac.0.09 cents of land sold for Rs. 86,500/- at the rate of Rs. 200/- per sq. yard. On the basis of the same the High Court has revised the market value at Rs. 140/- per sq. yard in exercise of its review power which is not correct as it has deducted 20% of the value of the consideration amount of land covered in sale deed Ex. A-14 to arrive at the above market value of Rs.140/- per sq. yard in respect of the acquired land.

8. The High Court in exercise of its review power has fixed the market value at Rs.140/- per sq. yard on the basis of correct extent of land of 0.09 cents covered in the sale deed Ex. A-14, which works out at Rs.200/- per sq. yard. Therefore, the High Court has committed error in law in allowing review petition of the land owners by passing the impugned order challenged in the connected appeal.

Therefore, the learned Senior Counsel Mr. Anoop Choudhari has prayed for setting aside the impugned judgment, order and award passed by the High Court by allowing the appeals.

9. The learned counsel for the respondents Mr. S. Thanantayan, on the other hand has sought to justify the impugned judgment, order and award contending that the High Court in exercise of its jurisdiction after re-appreciation of legal evidence on record particularly the sale deed Ex. A-14, the land covered 0.09 cents in this document was sold at sale consideration of Rs. 86,500/- which land is within the proximity of the acquired land and taking that land sale consideration and re-determining the market value of the acquired land is legally correct. Therefore, the exercise of the appellate jurisdiction by the High Court and re-determining the market value of the acquired land in the first appeal filed by the owners and passing the impugned judgment and Award further reviewing the said judgment by it and fixing the correct market value of the acquired land at Rs. 140/- per square yard on the basis of the value of the land covered in the sale deed Ex A-14 per sq. yard at Rs. 200/- cannot be termed as either erroneous or error in law and further he has contended that there was some factual error in so far as the extent of land covered in Ex. A-14 instead of 0.09 cents of land, which is the actual extent of land, the High Court in the impugned judgment has taken 0.13 cents and arrived at the

figure of Rs.140/- per sq. Yard and after deducting 20% it has re-determined the market value of the acquired land at Rs.116/- per sq. yard. Therefore, he submits that there is no need for this court to exercise its jurisdiction and interfere with the impugned judgment, order and award.

10. The High Court has rightly exercised its review power and corrected the factual error regarding the extent of land covered in Ex.A-14 which was crept in the judgment and it has reviewed its judgment and re-determined the market value of acquired land at Rs. 140/- per sq. yard after deducting 20 % of the market value of Rs.200/- of the land covered in the sale deed Ex. A-14 on the basis of judgment of this Court in Kasturi's case referred to supra wherein the guidelines are laid down with regard to the location of the land and nature of the development undertaken and other relevant factors for deducting 20% of the land acquired for re-determining the correct market value of the acquired land.

11. With reference to the aforesaid rival contentions urged on behalf of the parties we have carefully examined the correctness of the impugned judgment, order and award passed by the High Court to find out as to whether the same warrant interference of this Court in exercise of its jurisdiction? Our answer to the point is in the negative for the following reasons:

12. It is an undisputed fact that land measuring Ac. 5.48 was acquired by the Government for the public purpose in favour of Nellore Municipality to form 100 feet Mini Bye pass road from P.W.D. office and reliance placed by the owners upon Ex.A-14 the sale deed, the land covered in the said document is situated within the proximity of the acquired land and therefore the reliance placed by the land owners for re-determination of the acquired land has been rightly accepted by the High Court.

13. In fact, judgment passed in the First Appeal was challenged in the review petition filed by the land owners before the High Court is under challenge in the Civil Appeal No. 3368 of 2005 along with other appeal in this court. The High Court has noted that the submission made on behalf of the learned government pleader on behalf of the appellants that compensation fixed by the High Court in respect of the acquired land is just and reasonable.

14. On the basis of extent of land earlier taken in the impugned judgment covered in Appeal No. 2431 of 2000 of the High Court arrived at a figure at Rs. 116/- per sq. yard after deducting 20% out of the sale consideration of the land covered in the sale deed Ex.A-14. The High Court has proceeded on the basis of extent of the land covered in the sale deed Ex.A-14 as Ac.0.13 cent, but actually its extent is Ac.0.09 cents 54 ankanams, therefore the factual error regarding the extent of land and the sale consideration amount arrived at Rs.140/- was crept in the impugned judgment. If the actual extent 0.09 cents is taken then its market value would be Rs.200/- per sq. yard. Out of Rs.200/- per sq. yard applying the guidelines laid down by this Court in Kasturi's case referred to supra deducting 20% in relation to the location of the land, nature of the land, development undertaken and other factors in respect of the land covered in the sale deed Ex.A-14 therefore the High Court has rightly re-determined the market value of Rs.140/- per sq. yard in exercise of its review power after noticing the factual mistake regarding extent of land and its value fixed for re-determining the market value of the acquired land. Therefore the High Court has rightly exercised its review power and fixed the correct market value of the acquired land at Rs. 140/- per sq. yard, the same cannot be termed as either erroneous or error in law.

15. It is well settled principle of law as held by the Privy Council in Narayana Gajapathi Raju Vs. Revenue Divisional Officer, Vizagapatnam[2] wherein the Privy Council has categorically ruled that to re-determine the market value of the acquired land, it is the duty of the Land Acquisition Officer to consider the acquired land put to use is the relevant consideration for him. The Land Acquisition Officer has not placed reliance upon Ex.A-14 though it was placed before him which is comparable land to the acquired land as the same is situated within the proximity of the acquired land. The actual extent of land covered by A-14 is covered

Ac.0.09 but by mistake it was taken by the High Court in the First Appeal has taken Ac.0.13 cents which was sold for Rs. 86,500/- which would work out to Rs.200/- per sq. yard. The said factual error and arithmetical calculation made by the High Court is considered by it and rightly exercised its review power to re-determine the correct market value of the acquired land, therefore, the same cannot be termed as erroneous in law.

16. The legal position laid down by this Court in Kasturi's case supra that sale deed in respect of a small bit of land can also be a comparable land to the acquired land for re-determining the correct market value of it, after deducting 20% to 53% towards location of the land, nature of the land development and other various factors, that has been done in the instant case by the High Court as it has deducted 20% of the sale consideration at Rs.200/- per square yard in respect of the land covered in the sale deed Ex.A-14 and it has rightly fixed it at Rs. 140/- per sq. yard in respect of the acquired land. The High Court has corrected the error apparent on the face of the record in the impugned judgment in exercise of its review power and passed the impugned order challenged in the connected appeals.

17. For the aforesaid reasons the same cannot be termed as either erroneous in law or error in law and further awarding statutory benefits and interest on the solatium amount and on the additional market value determined by the High Court by following the decision of this Court in the case of Nagpur Improvement Trust Vs. Vasant Rao[3].

18. For the foregoing reasons, we are of the view that the impugned judgment, order and award are not vitiated in law and therefore the same do not call for the interference. Hence, these appeals must fail. Accordingly the same are dismissed, but without costs.

.....J.
[Dr. B. S. CHAUHAN]

.....J.

[V. GOPALA GOWDA]

New Delhi,
March 14, 2013.
ITEM NO.105

COURT NO.7

SECTION XIIA

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). 3368 OF 2005

SPECIAL TAHSILDAR(LAND ACQ.), A.P.

Appellant (s)

VERSUS

B. SREEHARI REDDY AND ORS.

Respondent(s)

(With appln(s) for impleadment and office report)

WITH Civil Appeal NO. 3369 of 2005
Civil Appeal NO. 3370 of 2005
(With office report)

Date: 14/03/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN
HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Appellant(s) Mr. Anoop Choudhari, Sr. Adv.
Ms. C.K. Sucharita, Adv.
Ms. Ruhi Chanda, Adv.

CA No. 3370/2005 Ms. Promila, Adv.

For Respondent(s) Mr. S. Thanantayan, Adv.
Ms. Promila, Adv.

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

Application for impleadment is allowed in Civil Appeal
Nos. 3368/2005 and 3369/2005.

The appeals are dismissed in terms of the signed order.

(O.P. Sharma) (M.S. Negi)
Court Master Court Master
(Signed order is placed on the file)

[1] (2003) 1 SCC 354
[2] (AIR 1939 PC 98)
[3] (2002) 7 SCC 657
