

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1096 OF 2012
(Arising from SLP(C) No.20403 of 2008)

Satish Chand Shukla & Another ..Appellants

versus

State of Madhya Pradesh & Another ..Respondents

WITH

CIVIL APPEAL NO. 1097 OF 2012
(Arising from SLP(C) No.26053 of 2008)

CIVIL APPEAL NO. 1098 OF 2012
(Arising from SLP(C) No.12430 of 2009)

CIVIL APPEAL NO. 1099 OF 2012
(Arising from SLP(C) No.13038 of 2009)

CIVIL APPEAL NO.1100 OF 2012
(Arising from SLP(C) No.16168 of 2009)

CIVIL APPEAL NO. 1101 OF 2012
(Arising from SLP(C) No.6328 of 2009)

CIVIL APPEAL NO. 1102 OF 2012
(Arising from SLP(C) No.20650 of 2009)

CIVIL APPEAL NO. 1103 OF 2012
(Arising from SLP(C) No.35144 of 2009)

O R D E R

Leave granted.

Page 1 of 7

These appeals (except the appeal arising out of SLP(c) No. 35144 of 2009) are directed against judgment dated 15.5.2008 of the Division Bench of the Madhya Pradesh High Court, whereby the compensation determined by Second Additional District Judge, Guna (for short, 'the Reference Court') was enhanced from Rs. 2 per sq. yard to Rs. 20 per

sq. ft. In the appeal arising out of SLP(c) No. 35144 of 2009, the appellant has questioned judgment dated 27.7.2009 which is substantially based on judgment dated 15.5.2008.

While, the State has questioned the determination made by the High Court resulting in enhancement of the compensation payable to the land owners, the latter have questioned the deduction of forty per cent towards the development charges.

At the outset, we deem it necessary to mention that in the special leave petitions filed by the land owners, the Court had issued notice limited to the question whether the High Court was justified in making 40 per cent deduction from the amount of compensation determined at the rate of Rs. 35 per sq. ft.

By notification dated 31.3.1999 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), the State Government proposed the acquisition of various parcels

Page 2 of 7

of land (total measuring 1,02,565 sq. ft.). At the conclusion of the acquisition proceedings, the Land Acquisition Officer passed award dated 22.4.2000 and determined market value of the acquired land at the rate of Rs. 72,057/- per hectare for irrigated land and Rs. 48,038/- per hectare for unirrigated land.

On a reference made by the Collector under Section 18 of the Act, the Reference Court evaluated the evidence produced by the parties and determined market value of the acquired land at Rs. 2 per sq. yard.

The land owners challenged the determination made by the Reference Court by filing appeals under Section 54 of the Act. The Division Bench of the High Court noted that the land is

situated in Village Piproda Khurd, which is just outside the municipal limits of Guna and is separated from the municipal area only by a 30 ft. wide road and held that market value of the acquired land should be determined keeping in view its location. The Division Bench then referred to the judgments of this Court in State of Maharashtra v. Gurappa Hirojirao, (1994) 2 SCC 331 and Land Acquisition Officer & Sub-Collector, Gadwal v. Sreelatha Bhoopal, (1997) 9 SCC 628, referred to the sale deeds produced by the land owners, which

Page 3 of 7

were brought on record by filing an application under Order 41 Rule 27(b) CPC and observed:

"17. Considering the material on record, we assess the value of the land acquired which is a big chunk at Rs.20/- (Rs.Twenty) per sq. ft. as the documents filed by the claimants show that the trend of the market is that the valuation of the land is going on higher side.

18. Land owner Satish Chand shukla has filed copy of layout (Ex.P/38) showing that he wanted to develop a residential colony namely Bhairav Colony on the land in question. Similarly, Ex. P/39 copy of the layout plan shows that he wanted to develop a residential colony namely Trilok Puri on the other piece of land which is acquired by the State Government for construction of the road. Both these layouts show that the claimant has left 40% of the land for development of the colony i.e. for construction of road and other amenities.

19. The Apex Court in number of cases has held that substantial portion of the land is required to be left for development of the land. In those judgments, the Apex Court has held that the land to be left for roads and other amenities in a colony should be from 25% to 50%.

20. In the present case, the claimant himself has filed layouts showing that he has left 40% of the land for common amenities and roads. Thus, the area of the land will have to be reduced by 40%. Total area of the land which is acquired is 102565 sq. ft. and after deducting 40% out of the land acquired, the land remains to be 61539 sq. ft. of the land is to be assessed at the rate

of Rs.20/- per sq. ft. and the claimants will be entitled to compensation at the rate of Rs.20/- per sq. ft. in proportion to the land owned by them. Apart from this compensation, the claimants shall also be entitled to solatium at the rate of thirty per cent on the enhanced compensation. The

Page 4 of 7

claimants are also entitled to interest at the rate of nine percent per annum for one year from the date of taking possession, i.e., from 15.02.1999 to 16.03.1999 and, thereafter at the rate of fifteen percent per annum on the enhanced compensation till realization as per the provisions of Section 28 of the Act."

Shri Vikas Upadhyay, learned counsel argued that the impugned judgment is liable to be set aside because the enhancement granted by the High Court is highly excessive and the reasons assigned for such enhancement are legally unsustainable. Learned counsel emphasised that the Reference Court had determined the amount of compensation after threadbare analysis of the pleadings and evaluation of the evidence produced by the parties and there was no occasion for the High Court to make fresh determination by relying upon the additional evidence produced by the land owners. Shri B.K. Satija, learned counsel for the appellants argued that the High Court committed an error by applying the rule of 40 per cent deduction ignoring that the land is situated in a developed area and the mere fact that one of the land owners wanted to develop a residential colony could not be made a ground for making 40% deduction from the amount determined by the High Court.

Page 5 of 7

We have considered the respective submissions and carefully perused the record.

In our opinion, there is no merit in the argument of the learned counsel representing the State that the compensation determined by the High Court is excessive and the reasons assigned for this purpose are legally unsustainable. It is not in dispute that while deciding the appeals filed by the land owners, the High Court had taken into consideration the sale deeds produced by way of additional evidence. Learned counsel for the State could not point out any patent error in the High Court's acceptance of the additional evidence. Therefore, it is not possible to agree with him that the determination of the compensation made by the High Court at the rate of Rs. 35 per sq. ft. is excessive.

However, we find merit in the argument of the learned counsel for the land owners that the High Court was not justified in making 40% deduction from the amount of compensation on the premise that one of the land owners had applied for developing a residential colony and substantial amount will be required to be spent for laying the roads and providing other amenities. The precedents of this Court show that appropriate deduction is made from the amount of

Page 6 of 7

compensation determined on the basis of assessment of the evidence produced by the parties because if the beneficiary of the acquisition proposes to utilise the land for laying residential layout, construction of building and other similar purposes, the deduction is usually made towards development charges but that rule has no application where the land owner himself was intending to use the acquired land for developing a residential colony.

In the result, the appeals of the land owners are allowed

For Petitioner(s) Mr. B.K.Satija,Adv.

 Mr. M.P. Jha, Adv.
 Mr.Ram Ekbal Roy, Adv.

 Mr. Vikas Upadhyay, Adv.
 MS. Vibha Datta Makhija, Adv.(Not present)

For Respondent(s) Mr. Vikas Upadhyay, Adv.
 Mr. B.S. Banthia,Adv.(Not present)

 Mr. B.K.Satija, Adv.

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

Delay condoned.

Leave granted.

The appeals filed by the land owners are allowed and
the appeals filed by the State are dismissed in terms of the
signed order.

(Parveen Kr.Chawla)
Court Master

(Phoolan Wati Arora)
Court Master

[signed order is placed on the file]