

ITEM NO.106

COURT NO.14

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(s). 6942 OF 2004

GURUSHANTHAPPA (D) BY LRS.

Appellant (s)

VERSUS

STATE OF KARNATAKA & ANR

Respondent(s)

(With office report)

Date: 23/09/2010 This Appeal was called on for hearing today.

CORAM :

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

For Appellant(s)

Ms. Kiran Suri,Adv.

For Respondent(s)

Mr.Ramesh Kr. Mishra,Adv,
 Mr.Krutin Joshi,Adv.
 Mr.Sanjay R.Hegde,Adv.

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

The appeal is disposed of in terms of the signed order.

(KUSUM SYAL)
 SR.P.A.

(RENU DIWAN)
 COURT MASTER

(Signed Order is placed on the file)

2

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6942 OF 2004

GURUSHANTHAPPA (D) BY LRS.

....Appellant (s)

VERSUS

STATE OF KARNATAKA & ANR.

....Respondent(s)

ORDER

1. The present appeal is directed against the judgment and order dated

05.06.2003 passed by the Karnataka High Court allowing the appeal of the respondent herein by reducing the market value of the acquired land to Rs. 62,000/- per acre from Rs. 1,02,000/- per acre, as held by the Reference Court.

2. Pursuant to a preliminary Notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'the Act') issued by the respondents on 15.02.1990 proposing to acquire land as notified followed by a Notification under Section 6 of the Act, the Land Acquisition Officer fixed the market value of the acquired land of the appellant herein at Rs. 21,500/- per acre.

3. Aggrieved by the aforesaid Award passed by the Land Acquisition Officer, the appellant herein preferred Reference Application before the Civil Judge. The Civil Judge received evidence adduced by the parties and thereafter proceeded to pass the judgment and order. The Reference Court while fixing the market value of the land in question, considered Ex. P-7 which

3

was produced by the appellant herein, as also the order dated 01.07.1987 passed by the Tehsildar wherein permission for conversion of land of Survey No. 42/2 was granted. The appellant also relied upon Ex. P-12 which indicates that KIADB allotted a plot to PW 4 for an area measuring one acre for which an amount of Rs. 1,98,000/- per acre was charged by KIADB. The Reference Court after scrutinizing the evidence including the aforesaid exhibits have passed the judgment and order on 29.09.1999 determining the market value of the land at Rs. 1,02,000/- per acre, after deducting 33% from the amount of Rs. 1,98,000/- per acre towards development charges. Learned Civil Judge relied on the aforesaid exhibit P.12 which, according to the Court, is the best evidence available for determining the market value of the acquired land as the said land of Ex. P. 12 is located adjacent to the village where acquired land is located. The said plot was allotted on 14.03.1992 and therefore an escalation price was also calculated @ 7.5% per year. The said amount was also deducted from the market value to arrive at Rs. 1,02,000/- per acre for the land in question.

4. Aggrieved by the aforesaid judgment and order of the Reference Court, an appeal was filed by the respondent herein before the Karnataka High Court

which was registered as MFA No. 158 of 2000. The High Court by its judgment and order dated 05.06.2003 allowed the appeal in part and reduced the market value to Rs. 62,000/- per acre enhancing the deduction from 33% to 60% holding that the normal rule of deduction for development charges is 60%.

4

5. Being aggrieved by the said deduction of the market value of the land, the appellant herein has filed this appeal on which we have heard learned counsel appearing for the parties. We have also been taken through the evidence on record.

6. Having heard the learned counsel appearing for the parties and having gone through the records, we find that the land of adjacent village was allotted by the KIADB at Rs. 1,98,000/- per acre on 14.03.1992. It has also come in evidence that the acquired land is situated in the adjacent village. The aforesaid price of the land was for allotment of only one acre of land whereas the acquired land in the present case is about 22 acres. The acquired land is situated near an Industrial area which is being acquired for construction of a rehabilitation center. Necessarily therefore, deduction has to be made from the valuation of the acquired land towards development charges. In so far as the range of development charges is concerned, there cannot be a uniform standard applicable and this Court in a number of decisions has considered the said fact and has held that such development charges could vary from 20% to 75% depending on the nature of the land, quality of the land and also the nature of the development that is required to take place in the acquired land. It has come in evidence in the present case that there is definitely potential value of the land being situated adjacent to Industrial Units. That being the position, and in terms of the decision of this Court in *Kasturi vs. State of Haryana*, reported in 2003 (1) SCC 354, we hold that the deduction of 33% towards development charges would be just,

5

proper and adequate. In paragraph 7 of *Kasturi's Judgment*, this Court has pronounced as follows:

It is not debated that the sale transaction covered by Ext. P-7 relates to a small plot and the land in question acquired is about 84 acres. This land comprising of a large area is not developed although it has potential value for residential and commercial purposes. In order to develop this land, roads were to be laid, provision for drainage was to be made and certain area was to

be earmarked for other civic amenities. Thus, after leaving the area in the land required for the purposes mentioned above, plots were to be made for residential and commercial purposes by incurring expenditure for other developmental works, such as providing electricity, water etc. The acquired land is not a small plot located in such a way that no other development was required at all and it could be utilized as it is as a developed building site. It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of

6

compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose.

7. Counsel appearing for the respondent has brought to our notice the decision of this Court in Lal Chand versus Union of India reported in (2009) 15 SCC 769. In the said decision, this Court has held that the percentage of deduction for development charges to be made so as to arrive at the market value of large tracts of undeveloped agricultural land with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, and that the percentage for such deduction would depend upon the nature of development of the lay out in which exemplar plots are situated.

8. Counsel for the respondent has also drew our attention to paragraph 18 of the said judgment wherein it was held that the position in development of the lay-out would be different. It was held that in such an industrial area there will be very limited civic amenities and no play grounds and the area to be set apart for development would be far less and therefore the cost of an industrial area would also be marginally less. In the facts of the said case, the deduction that was ordered to be made from the cost of an industrial plot was between 45% to 55% as contrasted from 65% to 75% for residential plots.

9. We have extracted a portion of the aforesaid decision in Kasturi's case
7
wherein this Court has also held that 33% could be deducted towards development charges particularly in view of the fact that the acquired land has potential value and also in view of the fact that it is also located adjacent to the industrial area. Evidence adduced disclose that there are already certain advantages by virtue of developed land and area around and therefore development charges would be comparatively less.

10. In that view of the matter, we set aside the order passed by the High Court and restore the order passed by the Reference Court. Needless to state that the appellant would also be entitled to Statutory benefits as available to him under Sections 23(1)(a), 28 and 34 and in terms of the judgment and order passed by this Court in Sunder versus Union of India reported in (2001) 7 SCC 211 and later on in the case of Gurpreet Singh versus Union of India reported in (2006) 8 SCC 457.

11. In terms of the aforesaid, the appeal is disposed of. We, however, leave the parties to bear their own costs.

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

J
(ANIL R.DAVE)