

SHAJI KURIAKOSE AND ANR.
v.
INDIAN OIL CORPN. LTD. AND ORS.

AUGUST 14, 2001

[V.N. KHARE AND B.N. AGRAWAL, JJ.]

Land Acquisition :

Land Acquisition Act, 1894—Section 23—Compensation—Grant of—Reference Court enhanced compensation—High Court reduced compensation—Held, justified—Dissimilarity between land covered by sales and land acquired with regard to locality, shape, site or nature of land—In such cases court can fix compensation less than market value of land.

Land acquisition Authority passed an award offering compensation for the land sought to be acquired. On reference, Additional Sub Judge enhanced the compensation. On appeal by respondent, High Court reduced the compensation. Appellants filed cross-objections which were rejected. Hence the present appeal.

In appeal to this Court, appellants contended that the High Court could not fix the rate of compensation less than the market value of the land, when it had proceeded to give compensation on the basis of Comparable Sales Method of valuation of land; and that the court could not fix the rate of compensation of the acquired land on the basis of the valuation of the land on the capitalisation assessment of the land.

Dismissing the appeals, the Court

HELD : 1.1. If there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the land. [576-D, E]

1.2. In the instant case, there is dissimilarity in the land acquired and the land covered by Ex.A-4. The land covered by Ex. A-4 is not in the vicinity of the acquired land; land covered by Ex. A-4 is situated at place 'K' whereas

A the acquired land is situated at a considerable distance. There is no access to the acquired land. The land covered by Ex. A-4 is dry and acquired land is wet land. Further the land covered by Ex. A-4 relates to a small piece of land whereas the acquired land is much bigger which do not reflect the true market value of the acquired land. Therefore the High Court was justified in lowering the rate of compensation for acquired land than the market value of the land covered by Ex A-4. [576-E, F, G, H]

2.1. Courts adopt Comparable Sales Method of valuation of land while fixing the market value of the acquired land. This is preferred over the Capitalisation of Net Income Method or Expert Opinion Method. It furnishes the evidence for determination of the market value of the acquired land and at which a willing purchaser would pay for the acquired land if it has been sold in open market at the time of issue of notification under Section 4 of the Land Acquisition Act, 1894. However, this method is not always conclusive. Certain factors are required to be fulfilled and on fulfilment, compensation can be awarded according to the value of the land reflected in the sales.

D [575-G, 576-A, B]

2.2. The High Court has granted compensation on the basis of Comparable Sales Method of valuation of land and the reference regarding Capitalisation Method of Valuation of the land was only by way of illustration. Therefore it cannot be said that once the appellants have accepted compensation for their acquired land on the basis of Comparable Sales Method of valuation of land, it was not open to the High Court to fix the rate of compensation of the acquired land on the basis of the valuation of the land on the capitalisation assessment of the land. [577-A, 575-E, F]

F *Printers House Pvt. Ltd. v. Mst. Saivadan (deceased) by L.Rs. & Ors.*, [1994] 2 SCC 133, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3190-3192/2000.

G From the Judgment and Order dated 25.11.1998 of the Kerala High Court in L.A.A. No. 726/95 & Cross Objection, L.A.A.No. 991/95 & Cross Objection and L.A.A.No. 7/96 & Cross Objection.

Mathai M. Paikeday, T.G.N. Nair, Roy Abraham and P.I. Jose for the Appellants.

H Dushyant Dave, Ms. Asha Jain Madan, Mukesh Jain, Sushil Kr. Pathak,

Ramesh Babu M.R. and Mahabir Singh for the Respondents.

The Judgment of the Court was delivered by

V.N. KHARE, J. A large track of land in the village Manakunnam in the district of Cochin was sought to be acquired for setting up a bottling plant by the respondent - Indian Oil Corporation Ltd. A notification under Section 4 of the Land Acquisition Act (hereinafter referred to as the 'Act') was issued on 23.8.1990 which was followed by issue of notification under Section 6 of the Act on 22.2.1991. The appellants' land measuring 7.13 acres is covered by the aforesaid notifications. The Collector on 5.5.1992 gave an award and offered compensation to the claimants @ Rs. 1225 per acre Rs. 500 per cent. The claimants sought reference for enhancement of the compensation. The Additional Sub-Judge, Ernakulam enhanced the compensation to @ Rs. 7000 per cent. Aggrieved, the respondents filed appeals before the High Court. The High Court was of the view that the compensation awarded by the reference court was on higher side and, therefore, reduced the compensation to @ Rs. 4000 per cent for the wet land and Rs. 6500 for dry land. In that view of the matter, the appeals filed by the respondents were allowed. The cross-objections filed by the claimants were rejected by the High Court. Aggrieved, the claimants have preferred these appeals against the judgment of the High Court.

Mr. Mathai M. Paikeday, learned senior counsel appearing for the appellants urged that the High Court having proceeded to give compensation for the acquired land on the basis of Comparable Sales Method of valuation of land, it was not open to the High Court to fix the rate of compensation less than the market value of the land covered by Ex. A-4. Learned counsel relied upon a decision of this Court in *Printers House Pvt. Ltd. v. Mst. Saiyadan (deceased) by L.Rs. and Ors.*, [1994] 2 SCC 133. The second submission of the learned counsel is that once the appellants herein opted and agreed for accepting compensation for their acquired land on the basis of Comparable Sales Method of valuation of land, it was not open to the High Court to fix the rate of compensation of the acquired land on the basis of the valuation of the land on the capitalisation assessment of the land. Shri D.A. Dave, learned senior counsel, however, argued that the principle adopted by the High Court in lowering the compensation for acquired land than what was the value of land contained in Ex. A-4, is based on relevant considerations and these appeals do not require any interference and deserve to be dismissed.

It is no doubt true that courts adopt Comparable Sales Method of valuation of land while fixing the market value of the acquired land. While

- A fixing the market value of the acquired land, Comparable Sales Method of valuation is preferred than other methods of valuation of land such as Capitalisation of Net Income Method or Expert Opinion Method. Comparable Sales Method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it has been sold in open market
- B at the time of issue of notification under Section 4 of the Act. However, Comparable Sales Method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value the land reflected in the sales. The
- C factors laid down inter alia are : (1) the sale must be a genuine transaction, that (2) the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, that (3) the land covered by the sales must be in the vicinity of the acquired land, that (4) the land covered by the sale must be similar to the acquired land and that (5) the
- D size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality shape, site or nature of land between land covered by sales and land acquired, it is open to Court to proportionately reduce the compensation for acquired land than what is
- E reflected in the sales depending upon the disadvantages attached with the acquired land. In the present case, what we find is that the first two factors are satisfied. The sale transaction covered by the sale Ex. A-4 is genuine, inasmuch as sale was executed in proximity to the date of notification under Section 4 of the Act. However, there is a difference in the similarity in the land acquired and the land covered by Ex. A-4. The land covered by Ex. A-4 is
- F situated at Kottayam and Ernakulam, PWD Road, whereas the acquired land is situated at a distance of 3 furlong from the main road. There is no access to the acquired land and there exists only an internal mud road which belonged to one of the claimants, whose land has also been acquired. Further, the land covered by Ex. A-4 is a dry land and whereas the acquired land is a wet land.
- G After acquisition, the acquired land has to be re-claimed and a lot of amount would be spent for filling the land. Moreover, the land covered by Ex. A-4 relates to a small piece of land which do not reflect the true market value of the acquired land. It is often seen that a sale for a smaller plot of land fetches more consideration than larger or bigger piece of land. For all these reasons, the High Court was fully justified in lowering the rate of compensation that
- H what was the market value of the land covered by Ex. A-4. We therefore, do

not find any infirmity in the judgment of the High Court.

A

So far as the second argument is concerned, the High Court has granted compensation on the basis of Comparable Sales Method of valuation of land and the reference regarding Capitalisation Method of valuation of the land was only by way of illustration. We, therefore, do not find any merit in this submission.

B

For the aforesaid reasons, the appeals fail and are accordingly dismissed. There shall be no order as to costs.

N.J.

Appeals dismissed.