**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NOs. 6986-6987 OF 2018**
**(Arising out of S.L.P.(C) No.10358-10359 of 2015)**

Union of India ....Appellant(s)

VERSUS

Dyagala Devamma & Ors. ....Respondent(s)

**J U D G M E N T**

**Abhay Manohar Sapre, J.**

1) Leave granted.

2) These appeals are filed against the final judgment and order dated 08.08.2014 passed by the High Court of Judicature at Hyderabad for the

State of Telangana and the State of Andhra Pradesh in LAAS No.762 of 2010 and CO(SR) No.373 of 2011 whereby the High Court dismissed the appeal filed by the appellant herein and partly allowed the cross objections filed by the respondents herein and enhanced the compensation as mentioned in detail *infra*.

3) We herein set out the facts, in brief, to appreciate the issues involved in these appeals.

4) 0n 12.11.2003, the State of Andhra Pradesh issued a notification under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and acquired the land measuring about 101-00 acres (SY No.398/3 and other connected survey numbers) situated at Jagitial Municipality, District Karimnagar (AP). The acquisition of land was for a public purpose, namely, "*laying new broad gauge*

*single railway line from Karimnagar to Jagitial Phase –II by the appellant-Railways*". This was followed by issuance of notification under Section 6 of the Act and then possession on 02.12.2003.

5) The Land Acquisition Officer (LAO) started proceedings under Section 11 of the Act for determination of the compensation payable to the landowners for their lands. By award No.26/2006 dated 14.07.2006, the LAO determined the market value of the acquired land at the rate of "*Rs.1,30,000/- per acre for wet lands*" and "*Rs.1,24,000/- per acre for dry lands*". The LAO also awarded compensation for structures, wells etc. to some landowners.

6) The claimants (landowners) felt aggrieved and sought reference under Section 18 of the Act to the Civil Court in OP No.27/2007. By award dated 23.07.2010, the Civil Court (Sr. Civil Judge,

Jagitial) re-determined the market value of the land in question. The Reference Court determined the market value of the acquired land at Rs.21,29,600/- per acre uniformly. However, having regard to the totality of facts of the case, the Reference Court considered it just and proper to deduct 50% towards developmental charges and accordingly worked out the market value of the land at "*Rs.10,64,800/- per acre*" for being paid to the landowners.

7) The appellant-Railways felt aggrieved and filed appeal before the High Court of Andhra Pradesh whereas the landowners also felt aggrieved and filed cross objections claiming enhancement of the market value determined by the Reference Court.

8) By impugned judgment, the High Court dismissed the appeal filed by the appellant-Railways and partly allowed the cross objections filed by the

landowners and enhanced the compensation to Rs.15,97,200/- per acre. The High Court, upheld the market value determined by the Reference Court i.e. Rs.21,29,600/- per acre but reduced the deduction towards developmental charges from 50% to 25% and accordingly worked out the compensation "*at the rate of Rs.15,97,200/- per acre*". It is against this judgment, the appellant-Railways felt aggrieved and filed the present appeals by way of special leave before this Court.

9) Heard Mr. Vikramjit Banerjee, learned Additional Solicitor General for the appellant-UOI and Mr. B. Adinarayana Rao, learned senior counsel for the respondents.

10) Mr. Vikramjit Banerjee, learned Additional Solicitor General appearing for the appellant while assailing the legality and correctness of the

impugned judgment essentially made two submissions.

11) In the first place, learned ASG contended that the High Court erred in further enhancing the compensation at Rs.15,97,200/- per acre.

12) According to him the compensation determined by the Reference Court payable at the rate of Rs.10,64,800/- per acre was just, legal and proper and, therefore, it did not call for any further enhancement.

13) In the second place, learned ASG urged that having placed reliance on exemplar Sale Deed (Ex-P-18) for determining the market value, the Reference Court rightly deducted 50% towards development charges, whereas the High Court erred in deducting 25% towards developmental charges.

14) According to learned ASG, the High Court ought to have appreciated that there were three

distinguishing factors appearing from the exemplar sale deed (Ex.P-18). Due to these three factors, deduction of 50% towards developmental charges from the market value was called for. These factors are, First, Sale Deed (Ex.P-18) was for a very small piece of land (19 Guntas=1/2 acre); Second, the land which was the subject matter of Ex-P-18 had a peculiar site because it was situated facing two roads - one on the east side and other on the north side; and Third, it was a developed land.

15) It was, therefore, urged that so far as the land in question is concerned, the same did not have these factors and, therefore, the Reference Court rightly considered it proper to deduct 50% towards developmental charges from the market value which was worked out on the basis of Sale Deed (Ex.P-18). It was urged that the High Court without assigning any reasons much less cogent reasons erred in

reducing developmental charges from 50% to 25% from the market value. Learned ASG, therefore, prayed for restoration of the award of the Reference Court in place of impugned judgment of the High Court.

16) Per contra, learned senior counsel for the respondents (landowners) supported the impugned judgment and contended that it does not call for any interference and hence the appeals deserve to be dismissed.

17) The question arises for consideration in these appeals is whether the High Court was justified in deducting 25% towards developmental charges from the market value of the land in question against 50% deduction made by the Reference Court. In other words, having regard to the facts and circumstances of the case, whether the Reference Court was justified in deducting 50% from the

market value of the land or whether the High Court was justified in deducting 25%.

18) Before we examine the facts of this case, it is necessary to take note of general principles of law on the subject in question which are laid down by this Court in several cases and some of which were also cited at the Bar by the learned counsel for the parties. Indeed, if we may say so, law on the several issues urged herein by the learned counsel for the parties is already settled by this Court and what has varied in its application depends on the facts of each case.

19) In **Chimanlal Hargovinddas vs Special Land Acquisition Officer, Poona & Anr.** (1988) 3 SCC 751, this Court dealt with the question as to how the Court should determine the valuation of the lands under acquisition and what broad principle of law relating to acquisition of land under the Act should be kept in

consideration to determine the proper market value of the acquired land.

20) In Para 4 of the judgment, this Court laid down as many as 17 principles, which are reproduced below for perusal:

> "**(1) to (4).....**
>
> **(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of notifications under Sections 6 and 9 are irrelevant).**
>
> **(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.**
>
> **(7) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance which provides the index of market value.**
>
> **(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land.)**
>
> **(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a**

**higher price on account of the resultant improvement in development prospects.**

**(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:**

**(i) proximity from time angle,**

**(ii) proximity from situation angle.**

**(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.**

**(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.**

**(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.**

**(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:**

| Plus factors | Minus factors |
|---|---|
| 1. smallness of size | 1. largeness of area |
| 2. proximity to a road | 2. situation in the interior at a distance from the road |
| 3. frontage on a road | 3. narrow strip of land with very small frontage compared to depth |

| | |
|---|---|
| **4. nearness to developed area** | **4. lower level requiring the depressed portion to be filled up** |
| **5. regular shape** | **5. remoteness from developed locality** |
| **6. level vis-à-vis land under acquisition** | **6. some special disadvantageous factor which would deter a purchaser** |
| **7. special value for an owner of an adjoining property to whom it may have some very special advantage** | |

**(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10,000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approximately between 20 per cent to 50 per cent to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up,**

**and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.**

**(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the judge must place himself.**

**(17) These are general guidelines to be applied with understanding informed with common sense."**

21) These principles are invariably kept in mind by the Courts while determining the market value of the acquired lands (also see **Union of India vs. Raj Kumar Baghal Singh (Dead) Through Legal Representatives & Ors.,** (2014) 10 SCC 422).

22) In addition to these principles, this Court in several cases have laid down that while determining the true market value of the acquired land especially when the acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for

development of acquired land. It has also been consistently held that at what percentage the deduction should be made varies from 10% to 86% and, therefore, the deduction should be made keeping in mind the nature of the land, area under acquisition, whether the land is developed or not and, if so, to what extent, the purpose of acquisition, etc. It has also been held that while determining the market value of the large chunk of land, the value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands especially when sale deeds of larger parcel of land are not available. This Court has also laid down that the Court should also take into consideration the potentiality of the acquired land apart from other relevant considerations. This Court has also recognized that the Courts can always apply reasonable amount of guesswork to balance the

equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Act. (See **Trishala Jain & Anr. Vs. State of Uttaranchal & Anr.**, (2011) 6 SCC 47 and **Vithal Rao & Anr. Vs. Special Land Acquisition Officer,** (2017) 8 SCC 558)

23) Keeping in mind the aforementioned principles, when we take note of the facts of the case at hand, we find that firstly, the land acquired in question is a large chunk of land (101 acres approx.); Secondly, it is not fully developed; Thirdly, the respondents (landowners) have not filed any exemplar sale deed relating to large pieces of land sold in acres to prove the market value of the acquired land; Fourthly, exemplar relied on by the respondents, especially Ex.P-18 pertains to very small pieces of land (19 guntas); Fifthly, the three distinguishing features

noticed in the land in sale deed (Ex.P-18) are not present in the acquired land.

24) It was for the aforementioned reasons, in our opinion, the Reference Court was justified in making deduction of 50% towards developmental charges from the market value. The High Court, in our opinion, did not assign any good reason as to why and on what basis, it considered proper to make deduction towards developmental charges at the rate of 25% in place of 50%.

25) This Court has held in **Trishala Jain's case** (supra) that it depends upon the facts of each case to decide for determination of the market value of the land as to what percentage should be adopted for deduction. In our opinion, the reasons mentioned above were rightly made basis by the Reference Court to support the deduction of 50%.

26) So far as the determination of market value made by the Reference Court is concerned, i.e., Rs.21,29,600/- per acre, the same having been upheld by the High Court, we do not find any justification to examine this issue again. Even the learned ASG did not challenge this finding and confined his submissions only relating to the issue of percentage of the deduction only.

27) Learned counsel for the respondents was not able to point out any fact/evidence which could persuade us to uphold the reasoning and conclusion arrived at by the High Court in the impugned judgment.

28) In view of the foregoing discussion, we are inclined to uphold the reasoning and the conclusion arrived at by the Reference Court instead of the High Court.

29) As a consequence of the foregoing discussion, the appeals succeed and are accordingly allowed. Impugned judgment is set aside and that of the Reference Court (Civil Court) dated 23.07.2010 in OP No.27/2007 is restored.

.....J.
[ABHAY MANOHAR SAPRE]

.....J
[UDAY UMESH LALIT]

New Delhi;
July 25, 2018