

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos.7219-20 OF 2016

(Arising out of SLP(C)Nos.24895-24896 of 2013)

BHIKULAL KEDARMAL GOENKA (D) BY L.RS.

.....APPELLANTS

VERSUS

STATE OF MAHARASHTRA AND ANR

.....RESPONDENTS

O R D E R

Leave granted.

Two pieces of the appellant's (since deceased. and is now represented by his legal representatives) land measuring 2250 and 5034 sq.meters were sought to be compulsorily acquired, vide Notifications dated 30.10.1986 and 13.11.1986 respectively, issued under Section 6 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). Admittedly, the purpose for which the land was acquired was to raise a structure for a primary school and to provide playgrounds therefor. Vide awards dated 31.08.1987 and 09.11.1987, the Special Land Acquisition Officer determined the market value of the land measuring 2250 sq.meters at Rs.110/- per

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sq.meter. For the land measuring 5034 sq.meters, the Special Land Acquisition Officer bifurcated the same. For the land adjoining the road, he awarded Rs.140/- per sq.meter, and for the remaining land situated away from the road, he awarded Rs.110/- per sq.meter. In the above determination, the acquired land was divided into 18 plots, out of which six were awarded compensation at the rate of Rs.140/- per sq.meter, and the remaining at the rate of Rs.110/- per sq.meter.

Dissatisfied with the determination rendered by the Special Land Acquisition Officer, the appellants preferred reference under Section 18 of the Act seeking enhancement of the market value of the land. The Reference Court, by a common order dated 25.01.1996, determined the market value of the acquired land at the rate of Rs.140/- per sq.meter. However, for adjusting the value representing large areas of the plot, the Reference Court considered it appropriate to make a deduction of 1/3rd from the total amount calculated.

Still not satisfied with the compensation awarded, the appellant approached the High Court of Judicature at Bombay (Nagpur Bench, Nagpur)(hereinafter referred to as 'the High Court') by preferring First Appeal Nos.638 and 639 of 1996. The same came to be disposed of by the impugned order dated 15.10.2012. The High Court, after examining the evidence recorded before the Reference Court, arrived at the conclusion, that the lands acquired were situated within the heart of the town, and were surrounded by residential houses, commercial complexes etc. and major part of the area adjoined the Akola-Akot Road. It is therefore, that the High

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Court determined the market value at Rs.200/- per sq.meter. However, the High Court directed deduction at the rate of 1/3rd towards development charges and thereupon, arrived at the conclusion, that the market value payable ought to have been at the rate of Rs.133/- per sq.meter. The High Court rounded the rate determined, by awarding the appellants Rs.135/- per sq.meter.

It was the vehement contention of the learned counsel for the appellants, that there was no justification whatsoever, for recording any deduction, specially when there was no question of any internal or external development, and as such, expenses of such developments should not have been taken into consideration so as to grant a deduction of 1/3rd of the amount. In order to substantiate his above contention, learned counsel for the appellants has referred to the decision in Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. and others vs. Special Land Acquisition Officer and others, (2012) 7 SCC 595, and placed reliance on the observations

recorded in para 19 thereof. Having given our thoughtful consideration to the position expressed in paragraph 19, it is apparent, that while fixing the market value of the acquired land, which may be undeveloped or underdeveloped, the courts have approved deduction of 1/3rd of the market value towards development cost, â- Sexcept whenâ- \235, no development is required to be made for implementation of the public purpose for which land is acquired. Admittedly, the public purpose in the instant case is to raise a school and to provide for play-grounds, for the students to be enrolled in the school.

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The factual position, we are satisfied is, that the land in question is located within the heart of the city, as is the case projected at the hands of the learned counsel for the appellants. The acquired land is to be used for raising a school building, and to provide play-grounds therewith. There would hardly be any requirement for development charges, in the peculiar facts of this case. We are therefore satisfied, that the deduction of 1/3rd amount, expressed by the High Court, was wholly unjustified.

However, we are unable to accept the determination of the High Court, that the compensation to be awarded to the appellants should be at the rate of Rs.200/- per sq.meter. The exemplar land, on the basis of which the appellants desired the determination of market price, itself was sold at the rate of Rs.161/- per sq.meter (total area 105.90 sq.meters sold at the rate of Rs.17,000/- vide sale deed dated 02.05.1986). The area of the exemplar land was rather small, in comparison to the acquired land. There is therefore no justification on facts, for the acquired land being given land value more than the exemplar land. For the reasons recorded hereinabove, we consider it just and appropriate to determine the market value of the acquired land at the rate of Rs.161/- per sq.meter i.e., the same as the exemplar land. Ordered accordingly.

The appeals are allowed in the above terms.

The appellants shall also be entitled to all consequential statutory benefits. Since the acquisition of the appellants' land relates to the year 1986-87, we consider it just and appropriate to direct the respondents to disburse the

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compensation payable to the land loser i.e. the appellants herein within three months from the date of receipt of a certified copy of this order.

.....J.

(JAGDISH SINGH KHEHAR)

.....J.

(KURIAN JOSEPH)

.....J.

(ARUN MISHRA)

NEW DELHI;

JULY 28, 2016.

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ITEM NO.6

COURT NO.3

SECTION IX

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).

24895-24896/2013

(Arising out of impugned final judgment and order dated 15/10/2012

in FA No.639/1996 and FA No.638/1996 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur)

BHIKULAL KEDARMAL GOENKA (D) BY L.RS. Petitioner(s)

VERSUS

STATE OF MAHARASHTRA AND ANR

Respondent(s)

(With office report)

Date : 28/07/2016 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE JAGDISH SINGH KHEHAR

HON'BLE MR. JUSTICE KURIAN JOSEPH

HON'BLE MR. JUSTICE ARUN MISHRA

For Petitioner(s) Mr.V.A.Mohta, Sr.Adv.

Mr.Kumar Parimal, Adv.

Mr.Devansh A.Mohta, Adv.

Mr.Nilakanta Nayak, Adv.

Mr. P. V. Yogeswaran, Adv.

For Respondent(s) Mr.Kunal A.Cheema, Adv.

Mr.Yogesh K.Ahirrao, Adv.

Mr. Nishant Ramakantrao Katneshwarkar, Adv.

Upon hearing the counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

(SATISH KUMAR YADAV)

(RENUKA SADANA)

AR-CUM-PS

COURT MASTER

(Signed order is placed on the file)