

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5821 OF 2008
(Arising out of S.L.P.(C) No.19737/2004)

Naganath (Dead) by LRs.

...Appellant(s)

Versus

Asst. Commnr. & Land Acqn. Officer & Anr.

...Respondent(s)

ORDER

Leave granted.

This is a claimant's Appeal for enhancement of compensation under the Land Acquisition Act. In this Civil Appeal, we are concerned with an area admeasuring 3 Acres 15 Gunthas in Village Shahabad. It may be stated that the rate awarded to the appellant by the impugned judgment of the High Court is Rs.2.50 per sq.ft.

The first objection raised by the appellant in this Civil Appeal is regarding deduction of 53% towards development charges. The second objection raised by the appellant is that the High Court had erred in rejecting the comparable sale instance in Exhibit P-16. The third objection raised is with regard to the interest which the appellant claims for the period between the date when possession was taken and issuance of Notification under Section 4 of the Land Acquisition Act. In this case, possession was taken even before Notification under Section 4 came to be issued.

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We find merit in the Civil Appeal on the above three grounds. Firstly, we are of the view that deduction of 53% towards development charges is on the higher side. No reason has been given for applying the rate of 53% towards development charges. Generally, the trend of the various judgments of this Court indicates deduction in the range of 1/6th to 33%. In this case, the High Court has deducted the charges at 53% which, in our view, appears to be excessive.

Secondly, as regards the comparable sale instance, we are of the view that Exhibit P-16 is a plot almost adjoining the subject land. It is a relevant piece of evidence which the High Court ought to have taken into consideration particularly when Exhibit P-15 refers to a plot of land which is away from subject land by about 3 KM.

Lastly, we are of the view that the claimant has suffered damages which needs to be assessed. As stated above, the possession of the land was taken even prior to issuance of Section 4 notification. To that extent, the appellant has lost income by way of rent. Damages were required to be assessed by the High Court which has not been done in the present case. In the present case, the appellant had claimed interest for the aforestated period. The appellant may not be entitled to interest under the provisions of the Land Acquisition Act but, that would not mean that he has not suffered loss on account of his loosing possession even prior to the issuance of Section 4 Notification.

For the aforestated reasons, we set aside the impugned judgment of the High Court and we remit the matter to the High Court for fresh consideration in

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accordance with law. We make it clear that if the appellant is so advised, he may file a proper valuation report on the question of deduction and assessment of damages or any other comparable sale instance in support of his claims for enhanced compensation.

Before concluding, we may mention that, in the present case, the High Court has awarded the rate of Rs.2.50 per sq.ft. Even though we are setting aside the impugned judgment of the High Court, the appellant would be entitled to the minimum of Rs.2.50 per sq. ft. particularly when there is no appeal filed by the State against the impugned judgment.

We request the High Court to hear and dispose of the Appeal as expeditiously as possible, preferably, within six months from today.

Subject to above, Civil Appeal is disposed of.

No order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(B. SUDERSHAN REDDY)

New Delhi,
September 23, 2008.

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).19737/2004

(From the judgement and order dated 19/03/2004 in MFA No.2693/1997
of the HIGH COURT OF KARNATAKA AT BANGALORE)

NAGANATH (DEAD) BY LRS.

Petitioner(s)

VERSUS

ASST.COMMNR. & LAND ACQ. OFFICER & ANR.

Respondent(s)

(With office report)(FOR FINAL DISPOSAL)

Date: 23/09/2008 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE B. SUDERSHAN REDDY

For Petitioner(s)

Mrs. Kiran Suri, Adv.

Mr. S.J. Amith, Adv.

For Respondent(s) Mr. Sanjay R. Hegde, Adv.

Mr. A. Rohan Singh, Adv.

Mr. Vikrant Yadav, Adv.

Mr. Amit Kr. Chawla, Adv.

UPON hearing counsel the Court made the following
ORDER

Leave granted.

The Appeal is disposed of in terms of the signed order. No order as to
costs.

(N. ANNAPURNA)

(MADHU SAXENA)

COURT MASTER

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COURT MASTER

(Signed order is placed on the file)