HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

LA AS No.57 of 2012

Judgment **(per Hon'ble Sri Justice D.V.S.S. Somayajulu):**

This appeal is filed by the Land Acquisition Officer and Special Deputy Collector (L.A. Unit), South Central Railway, Karimnagar questioning the order dated 20.09.2011 of the Senior Civil Judge, Jagtial in O.P.No.63 of 2009. In grounds of appeal, the appellant more particularly stressed upon the enhancement of compensation from Rs.1,12,000/- to Rs.8,80,000/- per acre.

2. The land in question is an extent of Ac.18.24 guntas comprising small bits belonging to 22 claimants in the said O.P. This land is situated within the limits of Thombaraopet Village and was acquired for the purpose of formation of new broad gauge single railway lane. The 4 (1) notification pertaining to this land was published on 20.12.2006. Thereafter, the LAO after conducting the enquiry passed Award No.8 of 2007, dated 03.08.2007 fixing the market value over the acquired land as Rs.1,12,000/- per acre. The claimants were not satisfied with the market value fixed by the LAO. They have received the compensation under protest and sought for reference of the matter to the Civil Court. Accordingly, the matter was referred to the Civil Court under Sec.18 of the Land Acquisition Act. The lower Court, after receiving the pleadings, considering the oral and documentary evidence that was produced came to a

conclusion that the market value of the acquired land is Rs.8,80,000/- per acre, vide its order dated 20.09.2011. In addition, the claimants were awarded solatium, interest etc. Being aggrieved, the appellant has preferred the instant appeal.

3. Heard the counsels for the appellant and the respondents.

4. Sri P. Ganga Rami Reddy, learned counsel for the appellant/LAO contends that the lower Court erred in enhancing the compensation from Rs.1,12,000/- to Rs.8,80,000/- per acre and that the lower Court should not have considered the value as per Ex.A.2 sale deed, since the land in said exhibit pertains to a very small bit of land and the same cannot be applied to a large extent of land i.e., the subject matter of the present dispute. The learned counsel also argued that the land acquired is not in one compact bit and that Ex.A.2 sale deed pertains to a house site and as such the value therein cannot be applied for 18 acres of land i.e., the subject matter of the present appeal.

5. The learned counsel also submitted that the lower Court did not consider the developmental cost etc. that would be incurred by the railways in getting the land ready for the formation of railway track and that the lower Court erred in failing to deduct the developmental cost.

6. Per contra, Sri A. Krupadhar Reddy, learned counsel for the respondents/claimants argued that the order of lower

Court does not suffer from any infirmities and that the claimants had filed Exs.A.1 & A.2, which are sale deeds from the same village and that the oral evidence was also considered by the lower Court. He also pointed out that Ex.B.2 sale deed was rightly rejected by the lower Court, since neither the parties to this document nor the scribe of the document was examined and that mere filing of a document is not proof in the eye of law.

7. The learned counsel for the respondents also argued that the developmental cost is negligible in this case and that there cannot be a straightjacket formula while determining the developmental cost.

8. On behalf of the claimants, four witnesses were examined and Exs.A.1 to A.4 were marked. On behalf of the respondents, one witness was examined and Exs.B.1 & B.2 were marked. As can be seen from the pleadings, evidence and the arguments made before the lower court, the crux of the matter centers round the adoption of the market value and the evidence available for the same. The lower court did not rely upon Ex.A.1, which is the sale deed pertaining to 936 square yards and preferred to rely upon Ex.A.2 which was sale deed of April, 2006 as the 4 (1) notification is of December 2006. Hence, the lower Court relied upon Ex.A.2 which is a sale deed over 10 guntas of land and the price therein was Rs.2,20,000/-. Accordingly, the lower Court

enhanced the market value of the acquired land to Rs.8,80,000/-.

9. While assailing this finding, the learned counsel for the appellant relied upon ***Revenue divisional Officer-cum-LAO v. Sk. Azam Saheb***[1] and ***Himmat Singh and others v. State of Madhya Pradesh and another***[2]. Both the judgments are of the Hon'ble Supreme Court of India and are on the issue covered by the present dispute. The Hon'ble Supreme Court relied upon a registered sale deed, whereunder four cents of land was sold for a sum of Rs.10,000/- (para-7 of the reported judgment in ***Sk. Azam Saheb***'s case). After applying the formula that are evolved over a period of time, the Hon'ble Supreme Court determined the value in that case as Rs.1,25,000/- per acre for relying upon Ex.B.3 in that case. Thereafter, the Hon'ble Supreme Court proceeded to deduct 1/3rd of the amount as developmental cost over the land. Similarly, in ***Himmat Singh***'s case also (2 stated supra), the Hon'ble Supreme Court noted that smaller plots were sold and therefore, they approved the deduction of 50% for the purpose of determining the compensation payable to the land owners.

10. Per contra, the learned counsel for the respondents/claimants in the present appeal cited ***Lucknow Development Authority v. Krishna Gopal Lahori and Others***[3]

[1] (2009) 4 SCC 395
[2] (2013) 16 SCC 392
[3] AIR 2008 SC 399

and ***Indraj Singh v. State of Haryana***[4]. The Hon'ble Supreme Court in ***Krishna Gopal Lahori***'s case at para-22 sounded a note of occasion in the manner of determining the value of the property and has noted that there are various types of lands and as such developmental charges and the cost of development cannot be fixed as per a fixed formula. The Hon'ble Supreme Court also observed in the very same judgment in para-22, which is as follows:

> "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."

11. Similarly, in ***Indraj Singh***'s case (4 stated supra), the Hon'ble Supreme Court found that the land had already been developed and that deduction of 1/3rd of the value of land is not justified. The Hon'ble Supreme Court also found that the lands were in fact developed and situated in a developed area. In the present case, however, there is no evidence to show that the lands are fully developed and that there is no need for any further developmental activity.

12. In reply to this submission, Sri P. Ganga Rami Reddy, learned counsel for the appellant drew attention of this Court to an order dated 07.04.2006 passed by a Division Bench of this Court in LA AS No.545 of 2012 wherein the LAO, South Central Railway, Karimnagar is also a party. The Division Bench noted in the said order that the railways have to

[4] (2013) 14 SCC 491

undertake lot of developmental works for forming the broad gauge line, that the land has to be acquired, it has to be consolidated, compacted and a track bed of certain strength and capacity has to be developed. A normal practice of development, like formation of roads, water lines etc., may not be there, but the fact remains that the railways would have to undertake further works to ensure that the land becomes capable of being used for the purpose for which it was acquired. In addition, he also argued that in A.S.No.545 of 2012, the Division Bench relied upon the sale deed for an extent of 937.75 square yards in coming to a conclusion about the value of the land.

13. The learned counsel for the respondents in reply to this specific issue produced a copy of judgment passed by a Division Bench of this Court in LA AS No.762 of 2010 wherein the LAO, South Central Railway is also a party. Relying on these judgments, the learned counsel for the respondents argued that a deduction of 25% instead of 50% of the market value would meet the ends of justice and that therefore, he urged that this Court should adopt the reasoning of this Division Bench in this case also and not the orders passed in LA AS No.545 of 2012.

14. Considering the above, this Court is of the view that there is no clear evidence to show that the land was fully developed in this case and the available record does not disclose that the land is ready for use. The Division Bench of

this Court while rendering judgment in LA No.762 of 2010, found that the land was within the municipal limits of Jagtial and it had all the civic amenities and it is also found that the evidence of PW.1 is unrebutted in the said case.

15. In the case on hand, further developmental activities have to be carried out in this area and the South Central Railway would be incurring further expenditure also on the small bits of land which belong to all the claimants. They will have to consolidate the land; compact the same; lay a track bed; a track etc. Therefore, this Court is of the opinion that a deduction of 40% towards developmental cost would meet the interest of justice. Accordingly, the 40% is deducted from Rs.8,80,000/- as per which the market value of the land comes to Rs.5,28,000/- per acre. This is rounded off to Rs.5,30,000/- per are.

16. Therefore, we allow the appeal by fixing the market value as Rs.5,30,000/- per acre while retaining all other statutory benefits, which the reference Court has awarded.

17. Consequently, all other miscellaneous petitions, if any pending in this appeal shall stand closed. No order as to costs.

SURESH KUMAR KAIT, J

D.V.S.S. SOMAYAJULU, J

Date: .10.2017
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