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Court : Karnataka Dharwad

Decided On : Aug-26-2015

Judge : Anand Byrareddy & the Honourable Mrs. Justice S. Sujatha

Appeal No. : Miscellaneous First Appeal No. 25383 of 2012 (LAC)

Appellant : Basanagouda

Respondent : The Assistant Commissioner and The Land Acquisition Officer, Koppal and Others

Judgement :

Anand Byrareddy, J. -

(1) The appellant is said to be the absolute owner of land bearing survey No. 266/3, measuring 24 guntas of Koppal. The same was notified for acquisition as per notification dated 29.3.2010, under Sec. 4(1) of the Land Acquisition Act, 1894, (hereinafter referred to as 'the LA Act', for brevity) for the purpose of construction of a 250 bed hospital. The Land Acquisition Officer (LAO) had passed an award on 4.2.2012 fixing the market value of the land at Rs. 2,88,000/- per acre, on the basis of sale statistics. The appellant had filed a petition under Sec. 18(1) of the LA Act seeking enhancement of the market value at Rs. 1.50 crore per acre. The reference court had, while holding that the subject land had the potential

of being developed as non -agricultural land, proceeded to assess the market value at Rs. 100/ - per sq.ft. and also deducted 60% of the same towards 'development charges' etc. It is that award which is under challenge in this appeal.

(2) It is contended on behalf of the appellant that the reference court has ignored Exhibit - P11, which was a sale deed in respect of similarly situated land, where the market value was shown at Rs. 120/ - per sq.ft., in respect of residential property. The court had also ignored Exhibits P -15 to P -20, which were sale deeds pertaining to similar properties in the vicinity of the subject land, where the market value was between Rs. 120/ - to Rs. 300/ - per sq.ft., including lands having commercial potential, which were valued at a minimum of Rs. 250/ -.

(3) Further , the deduction made towards 'development charges' was inexplicable, as it was not a case of the land being acquired for development of a residential layout, requiring elaborate infrastructure and civic amenities being provided. The land was being acquired for the construction of a single building complex to house a hospital, where the entire land would be utilized. Further, the land in question was said to be adjacent to a main road and was in no need of further development for construction to commence. The appellant had even sought for conversion of the land for non -agricultural purposes, before the competent authority - which was pending consideration at the relevant point of time.

The deduction of 60% of the market value towards 'development charges', it is thus contended, was without any basis.

(4) The learned Government Advocate, on the other hand seeks to justify the Award under challenge.

(5) On a consideration of the rival contentions and having regard to the fact that the legal principles applicable are well settled, it would only be necessary to refer to a recent judgment of the Apex Court wherein the case law on the point has been reviewed and restated, in the case of Chandrashekar v/s. Land Acquisition Officer, Gulbarga, : AIR 2012 SC 446.

The facts in the said case were that the Gulbarga Development Authority (GDA), consequent upon its desire to acquire land for raising a residential layout, issued a preliminary notification under Sec. 15(1) of the City Improvement Trust Board Act, 1976 on 13.05.1982. Through the aforesaid notification, it was proposed to acquire 144 acres of land falling in the revenue estate of villages Rajapur (71 acres) and Badepur (73 acres). The matter in respect of the acquisition of land crystallized, when the final notification was issued on 14.12.1989. The LAO by his award dated 7.7.1990 fixed the rate of Rs. 4,100/- per acre, in respect of the land of one of the appellants. The land owner having sought for enhancement, the Reference Court enhanced the compensation to Rs. 1.46 lakh per acre. The same having been challenged in appeal before the High Court, the matter was remanded only on the issue as to the percentage of deductions to be made. As the Reference Court was found to have based its assessment on a sale deed dated 30.12.1983, had applied a deduction of 33%. This was held to be inappropriate by the High Court.

The Reference Court had re-determined the market value at Rs. 1.45 lakh per acre. This was again challenged before the High Court by the GDA and the LAO. The High Court had allowed the appeals and reduced the compensation awarded to Rs. 65,000/- per acre. The said judgments were under challenge before the Apex Court.

The Apex Court proceeded to review the case law on the point keeping in view the following inferences:

Firstly, that the acquired land was a large chunk of land measuring 144 acres.

Secondly, the acquired land owned by the appellants was unirrigated agricultural land, surrounded on all sides by similar lands, and as such, unquestionably undeveloped land.

Thirdly, the exemplar sale deed dated 30.12.1983, was in respect of a small piece of land measuring 2400 square feet (40' x 60' = 2400 square feet).

Fourthly, the exemplar sale deed dated 30.12.1983, constituted sale of a developed site.

And fifthly, the exemplar sale deed dated 30.12.1983, was executed 1 year 7 months and 17 days, after the publication of the preliminary notification on 13.5.1982.

The court has then referred to the following cases:

(i) Brigadier Sahib Singh Kalha and Ors. v/s. Amritsar Improvement Trust and Ors., : AIR 1982 SC 940. It was held therein that where a large area of undeveloped land is acquired, provision has to be made for providing minimum amenities of town life. Accordingly, it was held, that a deduction of 20 per cent of the total acquired land should be made for land over which infrastructure had to be raised (space for roads etc.). Apart from the aforesaid, it was also held, that the cost of raising infrastructure itself (like roads, electricity, water, underground drainage, etc.) need also to be taken into consideration. To cover the cost component, for raising infrastructure, the Court held, that the deduction to be applied would range between 20 per cent to 33 per cent. Commutatively viewed, it was held, that deductions would range between 40 to 53 per cent.

(ii) Administrator General of West Bengal v/s. Collector, Varanasi, : AIR 1988 SC 943, upheld deduction of 40 per cent (from the acquired land) as had been applied by the High Court.

(iii) Chimanlal Hargovinddas v/s. Special Land Acquisition Officer, Poona and Anr., : (1988) 3 SCC 751, while referring to the factors which ought to be taken into consideration while determining the market value of acquired land, it was observed, that a smaller plot was within the reach of many, whereas for a larger block of land there were implicit disadvantages. As a matter of illustration it was mentioned, that a large block of land would first have to be developed by preparing its lay out plan. Thereafter, it would require carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers (during which the invested money would remain blocked). Likewise, it was pointed out, that there would be other unknown hazards of an entrepreneur.

Based on the aforesaid likely disadvantages it was held, that these factors could be discounted by making deductions by way of allowance at an appropriate rate,

ranging from 20 percent to 50 percent. These deductions, according to the Court, would account for land required to be set apart for developmental activities. It was also sought to be clarified, that the applied deduction would depend on, whether the acquired land was rural or urban, whether building activity was picking up or was stagnant, whether the waiting period during which the capital would remain locked would be short or long; and other like entrepreneurial hazards.

(iv) Land Acquisition Officer Revenue Divisional Officer, Chottor v/s. L. Kamalamma (Smt.) Dead by LRs. and Ors., : (1998) 2 SCC 385, the Court arrived at the conclusion, that a deduction of 40 percent as developmental cost from the market value determined by the Reference Court would be just and proper for ascertaining the compensation payable to the landowner.

(v) Kasturi and others v/s. State of Haryana, : AIR 2003 SC 202, the court opined, that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation should be deducted, depending upon the location, extent of expenditure involved for development, the area required for roads and other civic amenities etc. It was also opined, that appropriate deductions could be made for making plots for residential and commercial purposes. It was sought to be explained, that the acquired land may be plain or uneven, the soil of the acquired land may be soft and hard, the acquired land may have a hillock or may be low lying or may have deep ditches. Accordingly, it was pointed out, that expenses involved for development would vary keeping in mind the facts and circumstances of each case. In Kastun's case (supra) it was held, that normal deductions on account of development would be 1/3rd of the amount of compensation. It was however clarified that in some cases the deduction could be more than 1/3rd and in other cases even less than 1/3rd.

(vi) Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. v/s. Nookala Rajamallu and Ors., : AIR 2004 SC 1031, the Court applied a deduction of 53 per cent, to determine the compensation payable to the landowners.

(vii) V. Hanumantha Reddy (Dead) by LRs. v/s. Land Acquisition Officer and Mandal R. Officer, : AIR 2004 SC 1185, the Court examined the propriety of

compensation determined as payable to the land loser by the High Court. The Reference Court had determined the market value of developed land at Rs. 78 per sq. yard. The Reference Court then applied a deduction of 1/4th to arrive at Rs. 58 per sq. yard as the compensation payable. The High Court however concluded, that compensation at Rs. 30 per sq. yard would be appropriate (this would mean a deduction of approximately 37 per cent, as against market value of developed land at Rs. 78 per sq. yard). The Apex Court having made a reference to Kastun's case (supra) did not find any infirmity in the order passed by the High Court. In other words, deduction of 37 percent was approved by the Court.

(viii) *Viluben Jhalejar Contractor (Dead) by LRs. v/s. State of Gujarat*, : AIR 2005 SC 2214, it was held that for development, i.e., preparation of lay out plans, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers, and on account of other hazards of an entrepreneur, the deduction could range between 20 per cent and 50 per cent of the total market price of the exemplar land.

(ix) In *Atma Singh (Dead) through LRs and Ors. v/s. State of Haryana and Anr.*, : AIR 2008 SC 709, the Court after making a reference to a number of decisions on the point, and after taking into consideration the fact that the exemplar sale transaction was of a smaller piece of land concluded, that deductions of 20 per cent onwards, depending on the facts and circumstances of each case could be made.

(x) *Lal Chand v/s. Union of India and Anr.*, : AIR 2010 SC 170, it was held that to determine the market value of a large tract of undeveloped agricultural land (with potential for development), with reference to sale price of small developed plot(s), deductions varying between 20 per cent to 75 per cent of the price of such developed plot(s) could be made.

(xi) *Subh Ram and Ors. v/s. State of Haryana and Anr.*, : (2010) 1 SCC 444, the Court opined, that in cases where the valuation of a large area of agricultural or undeveloped land was to be determined on the basis of the sale price of a small developed plot, standard deductions ought to be 1/3rd towards infrastructure space (areas to be left out for roads etc.) and 1/3rd towards infrastructure

developmental costs (costs for raising infrastructure), i.e., in all 2/3rd (or 67 percent).

(xii) Andhra Pradesh Housing Board v/s. K. Manohar Reddy and Ors., : (2010) 12 SCC 707, having examined the existing case law on the point it was concluded, that deductions on account of development could vary between 20 per cent to 75 per cent. In the peculiar facts of the case a deduction of 1/3rd towards development charges was made from the awarded amount to determine the compensation payable.

(xiii) Special Land Acquisition Officer and Anr. v/s. M.K. Rafiq Sahib, : AIR 2011 SC 3178, this Court after having concluded, that the land which was subject matter of acquisition was not agricultural land for all practical purposes and no agricultural activities could be carried out on it, concluded that in order to determine fair compensation, based on a sale transaction of a small piece of developed land (though the acquired land was a large chunk), the deduction made by the High Court at 50 per cent, ought to be increased to 60 per cent.

(6) Based on the above precedents of the Apex Court, it was opined that the quantum of deductions to be made from the market value determined on the basis of the developed exemplar transaction on account of development, into two components:

Firstly, the area which would have to be left out for providing essential and indispensable amenities like roads, pavements, sewers, water drains, overhead tanks, electricity transformers, effluent treatment plants, etc. Besides land to be set apart for parking areas, gardens etc.; This first component was hence to be conveniently referred to as deductions for setting apart spaces or areas meant for infrastructure.

Secondly, deduction has to be made for the expenditure which would be incurred in providing the infrastructure, including the costs if any in levelling uneven land or filling up low lying lands. This second component was termed as developmental expenditure.

The Apex Court has concluded thus:

"17. It is essential to earmark appropriate deductions, out of the market value of an exemplar land, for each of the two components referred to above. This would be the first step towards balancing the differential factors. This would pave the way for determining the market value of the undeveloped acquired land on the basis of market value of the developed exemplar land. As far back as in 1982, this Court in Brigadier Sahib Singh Kalha 's case (supra) held, that the permissible deduction could be upto 53 percent. This deduction was divided by the Court into two components. For the "first component" referred to in the foregoing paragraph, it was held that a deduction of 20 percent should be made. For the "second component", it was held that the deduction could range between 20 to 33 percent. It is therefore apparent, that a deduction of upto 53 percent was the norm laid down by the Court as far back as in 1982. The aforesaid norm remained unchanged for a long duration of time, even though, keeping in mind the peculiar facts and circumstances emerging from case to case, different deductions were applied by this Court to balance the differential factors between the exemplar land and the acquired land. Recently however, this Court has approved a higher component of deduction. In 2009 in Lal Chand's case (supra) and in 2010 in Andhra Pradesh Housing Board's case (supra), it has been held, that while applying the sale consideration of a small piece of developed land, to determine the market value of a large tract of undeveloped acquired land, deductions between 20 to 75 percent could be made. But in 2009 in Subh Ram's case (supra), this Court restricted deductions on account of the "first component" of development, as also, on account of the "second component" of development to 33 -1/3 percent each. The aforesaid deductions would roughly amount to 67 percent of the component of the sale consideration of the exemplar sale transaction(s).

18. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33 -1/3 percent can be made. Likewise, for the "second component" under the head of

"development" a further deduction of 33 $\frac{1}{3}$ percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 percent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components exceeds 33 $\frac{1}{3}$ percent, the two components under the head of "development" put together, should not exceed the upper benchmark.

19. In Lal Chand's case (supra) and in Andhra Pradesh Housing Board's case (supra), this Court expressed the upper limit of permissible deductions as 75 percent. Deductions upto 67 percent can be made under the head of "development". Under what head then, would the remaining component of deductions fall? Further deductions would obviously pertain to considerations other than the head of "development". Illustratively a deduction could be made keeping in mind the waiting period required to raise infrastructure, as also, the waiting period for sale of developed plots and or built -up areas. This nature of deduction may be placed under the head "waiting period". Illustratively again, deductions could also be made in cases where the exemplar sale transaction, is of a date subsequent to the publication of the preliminary notification. This nature of deduction may be placed under the head "de -escalation ". Likewise, deductions may be made for a variety of other causes which may arise in different cases. It is however necessary for us to conclude, in the backdrop of the precedents on the issue, that all deductions should not cumulatively exceed the upper benchmark of 75 percent. A deduction beyond 75 percent would give the impression of being lopsided, or contextually unreal, since the land loser would seemingly get paid for only 25 percent of his land. This impression is unjustified, because deductions are made out of the market value of developed land, whereas, the acquired land is undeveloped (or not fully developed). Differences between the nature of the exemplar land and the acquired land, it should be remembered, is the reason/cause for applying deductions. Another aspect of this matter must also be kept in mind. Market value based on an exemplar sale, from which a deduction in excess of 75 percent has to be made, would not be a relevant sale transaction to be taken into consideration, for determining the compensation of the acquired

land. In such a situation the exemplar land and the acquired land would be uncomparable, and therefore, there would be no question of applying the market value of one (exemplar sale) to determine the compensation payable for the other (acquired land). It however needs to be clarified, that even though on account of developmental activities (under the head "development"), we have specified the upper benchmark of 67 percent, it would seem, that for the remaining deductions), the permissible range would be upto 8 percent. That however is not the correct position. The range of deductions, other than under the head "development", would depend on the facts and circumstances of each case. Such deductions, may even exceed 8 percent, but that would be so only, where deductions for developmental activities (under the head "development") is less than 67 percent, i.e., as long as the cumulative deductions do not cross the upper benchmark of 75 percent. We therefore hold, that the range for deductions, for issues other than developmental costs, would depend on the facts and circumstances of each case, they may be 8 percent, or even the double thereof, or even further more, as long as, cumulatively all deductions put together do not exceed the upper benchmark of 75 percent.

20. Before applying deductions for ascertaining the market value of the undeveloped acquired land, it would be necessary to classify the nature of the exemplar land, as also, the acquired land. This would constitute the second step in the process of determination of the correct quantum of deductions. The lands under reference may be totally undeveloped, partially developed, substantially developed or fully developed. In arriving at an appropriate classification of the nature of the lands which are to be compared, reference may be made to the developmental activities referred to by us in connection with the "first component", as also, the "second component" (in paragraph 17 above). The presence (or absence) of one or more of the components of development, would lead to an appropriate classification of the exemplar land, and the acquired land. Comparison of the classifications thus arrived, would depict the difference in terms of development, between the exemplar land and the acquired land. This exercise would lead to the final step. In the final step, the absence and presence of developmental components, based on such comparison, would constitute the basis for arriving at an appropriate percentage of deduction, necessary to balance

the differential factors between the exemplar land and the acquired land."

(7) Given the above exposition of the law on the point and given the facts of the present case on hand, namely, that the total extent of land acquired was 2 acres and 36 guntas, for the purpose of construction of a hospital building complex, of which the appellant's land was an extent of 24 guntas. The Reference Court has adopted the "Sale Statistics method", in considering the case of the appellant for enhancement of compensation. It was found that the land in question was close to a National Highway and that the permission for conversion of the land from agricultural to non-agricultural user was pending consideration.

However, in applying the deduction to be made out of the market value arrived at, the Reference Court has proceeded as if the land was to be developed into a residential layout and has overlooked that it was acquired for the purposes of a hospital. It has been held thus by the Reference Court:

"19. Admittedly, the land acquired in the present proceedings were not converted and plots have not been formed, as the formation made in Ex. P -15 to 20. Therefore, the development charges are required to be deducted while fixing the market value on the converted lands. It is to be seen that 01 acre of land equals to 43,560 sq.ft. For example, out of 01 acre only 18 plots measuring 30' x 40' could be formed. Therefore, only 21,600 sq.ft. of land would be available for sale and the remaining land would go for road and other amenities. Therefore, the owner of the land gets the price on 21,600 sq.ft., kinds, if the land is converted in the form of layout and sold in the form of plots. Therefore, the owner would get less than 50% of the land to be sold in the form of plots. Therefore, the deduction shall be more than 50% towards development charges. By considering the above said fact, I feel 60% is to be deducted towards development charges."

And further, in the face of material to indicate that the price of land for residential purposes at the relevant point of time was uniformly at a minimum of Rs. 120/- per sq. ft, the Reference Court has chosen to adopt Rs. 100/- per sq. ft. Secondly, the Reference Court has proceeded to deduct 60% towards development charges, when it was shown that it was being treated as non -agricultural land and was possibly substantially developed and was sought to be converted for such user by

the land owner.

(8) In our opinion therefore, the market value of the land ought to be taken at Rs. 120/ - per sq. ft. A deduction of 30% could be made from the same towards the land area to be set apart for the infrastructure facilities and a deduction of 20% could be made towards developmental expenditure. Thus the enhanced compensation shall be computed thus:

Market rate of land	Rs. 120/ -
Deductions at 50%	Rs. 60/ -
Rate per Acre (40 guntas) = 43,560 sq.ft. x Rs. 60/ -	Rs. 26,13,600/-
Rate for 24 guntas of land	Rs. 15,68,160/-

The appellant is held entitled to solatium, interest and other statutory benefits on the above, in accordance with law.

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