HIGH COURT OF GUJARAT *(D.B.)*

FABRICS PRIVATE LIMITED
V/S
SPL LAND ACQUISITION OFFICER, KAIRA

Date of Decision: 15 October 1970

Citation: 1970 LawSuit(Guj) 99

Hon'ble Judges: J M Sheth, P D Desai

Eq. Citations: 1971 GLR 319

Case Type: First Appeal; First Appeal

Case No: 352 of 1963; 491 of 1963

Subject: Civil, Property

Head Note:

Land Acquisition Act (I of 1894) S.23 - compensation valuation of land - After making suitable deductions instances of sale of small areas can be taken into consideration - Regarding quantum of deduction no hard and fast rule can be laid down.

It is a well recognised principle of valuation of lands not to value large areas of land on the basis of sales of small areas without making suitable deductions from sale price of small plots of land on account of the largeness of the size of the land sought to be evaluated with reference to the said small plots. But neither the valuer nor the Court would be justified in rejecting the sale instance of a small plot as one that is not a comparable sale instance only on the ground of difference in size and a large plot of land may in a given case justly be valued on the basis of the sale instance of a small plot of land after making suitable deductions and allowances from the sale price of the small plot of land on

account of the largeness of the size of the 1and sought to be evaluated. (Paras 23 and 24). It is permissible in the facts and circumstances of a given case to evaluate large tracts of land by reference to sale instance of small plot of land. (Para 30). No hard and fast rule can be laid down with regard to quantum of deduction. It would not be proper to adopt a dogmatic or doctrinaire approach in the matter and while evaluating a large plot of land by reference to the sale instance of a small plot of land several factors must enter into account and no definite rule can be laid down as to the exact extent of deduction to be made. (Paras 25 and 26). Bombay Improvement Trust v. Mervanji A Manekji Mistry Pate Shanabhai Lallubhai v. Sp.L.A. Officer Radhakisan Laxminarayan Toshnival v. The Collector of Akola K. Anantharam Singh and anr. v. The Spl. Dy. Collector for Land Acquisition Kurnool L. Ramswami Naidu and ors. v. The Dist. Welfare Officer Coimbatore and anr. Shankerlal Munshi v. Dist. Dy. Collector referred to.

Acts Referred:
Land Acquisition Act, 1894 Sec 23

Final Decision: Appeal dismissed

Advocates: I M Nanavati,K S Nanavati, J M Thakore, G N Desai

Reference Cases:
Cases Cited in (+): **5**
Cases Referred in (+): **2**

Judgement Text:-

P D Desai, J

[1] We shall now turn to the next objection raised by the learned Government Pleader against the sale instance evidenced by Ex. 34. As stated above, whereas the land under acquisition consist of a large block of land admeasuring 44 acres 37 gunthas owned by a single owner, the sale transaction of S. No. 619 evidenced by Ex. 34 is in respect of a comparatively much smaller piece or parcel of land admeasuring 1 acre 25 gunthas. It is well known, contended the learned Government Pleader, that small plots generally fetch a higher value than large plots and, therefore, transactions of sale of small plots can afford no real assistance when a large plot has to be valued. There could, therefore, be

no comparison between the valuation of S. No. 619 and that of the acquired lands and the said transaction cannot, in the submission of the learned Government Pleader, be regarded as a comparable sale instance. It was, therefore, urged that it could not be said that the claimant had discharged the burden of proving that the compensation offered to him was inadequate and that the Court was not justified in awarding enhanced compensation to the claimant for the acquired lands.

[2] It is true that the size of a plot of land will have very important bearing on its value. It would be impossible to say that a sale transaction of a large block of land stands on the same footing as that of a small piece or parcel of land. Ordinarily, therefore, a large tract of land cannot be valued on the same basis as a small plot of land. The reasons therefor are obvious. The number of intending purchasers competing for the purchase of a small plot would be far greater than that for a large plot, with the result that the seller of a small plot is likely to obtain a relatively higher price than the seller of a big plot of land. Furthermore, when a small plot is purchased, the actual rate at which it is purchased may not be very carefully or properly scrutinised, the whole cost of purchase being small. An increase of a rupee or even more per square yard in such a case may not materially add to the costs of purchase and the intending purchaser may not, therefore, grudge paying a little higher price for a small plot. The investment which would be required to be made in the purchase of a large plot land would be relatively very much higher and the risk which the purchaser of such a plot undertakes would in its magnitude be also great. It is well known that a person who has to sell a large tract of land may not be able to sell it all at once unless there is a brisk market and keen demand for the lands in the locality and as such also the market value of such land would be less. If the intending purchaser of a very large plot of land enters into the transaction with the idea of parcelling it out into small plots and selling it to different purchasers, he takes into account the cost of development which may have to be incurred in demarcating the plots, deducing the area for accommodation, laying the roads, providing for water and electricity supply and other amenities and in otherwise making the smaller plots marketable. He has also to provide for the costs which may have to be incurred on advertising the project, paying commission to land agents and brokers and conveying such a large number of small plots to different buyers. He has also to make allowance for the loss of interest on the investment made in the purchase of large plot because some period of time is bound to elapse before all the small plots may be sold and he must also contemplate the possibility of some of the smaller or inferior plots remaining unsold altogether, thus lessening the average price which the owner of the plot would get on the plots already sold. And lastly, the person floating

such a development scheme, with all the labour, loss of time and risks involved in it, is bound to provide for his own profit at a reasonable rate after making due provision for the costs that may have to be incurred as aforesaid. Such a purchaser will not, therefore, pay a high price for the large plot of land and the price at which he may ultimately sell the small plots is bound to be relatively higher than the price that he had paid for the whole block of land. Having regard to all these diverse factors and considerations, it is a well recognised principle of valuation of lands not to value large areas of land on the basis of sales of small areas without making suitable deduction from sale price of small plots of land on account of the largeness of the size of the land sought to be evaluated with reference to the said small plots.

[3] But that is a far cry from saying, as the learned Government Pleader would like us to say, that there can in no event be a comparison between the valuation of a small plot of land and that of a large block of land. If such view were taken, it might well lead to an impossible situation in certain cases. For example, if a large tract of land is required to be valued and the only comparable transaction which is available for the purpose of determining the market value of the said land is that of a small plot of land, and no other method of valuation is available in the facts and circumstances of the case, the valuer or the Court may, if the learned Government Pleader's submission were accepted, have to altogether decline to evaluate such a large plot of land. In our opinion, therefore, the submission made by the learned Government Pleader is not well-founded and neither the valuer nor the Court would be justified in rejecting the sale instance of a small plot as one that is not a relevant sale instance only on the ground of difference in size, and a large plot of land may in a given case justly be valued on the basis of the sale instance of a small plot of land after making suitable deductions and allowances from the sale price of the small plot of land on account of the largeness of the size of the land sought to be evaluated.

[4] It may in this context be observed that no hard and fast rule can be laid down with regard to the quantum of such deduction. Experts on land valuation and some judicial decisions have, however, thrown some light on this question. J. A. Parks in his treatise "Principles and Practice of Valuations" 3rd Edition. 1965, has observed at page 101 as under :-

> "If the size of a normal plot is 6 kottahs then a plot of 12 kottahs having the same depth would be about 5 to 7 1/2% less. If the area was three times that of the normal plot prevailing in the locality but having the same depth, the

value would be 12 to 15% less. All this is on the understanding that the depth in all cases was the same.

The value of land has an important bearing on the deduction for size. Land having a high value will need a greater deduction for size than similar sized plots in other areas where land values are very low."

The Supreme Court, in a case which came up for its decision and to which we shall presently refer, evaluated a large plot of land with reference to the sale instance of a small plot of land by making a deduction to the extent of two third from the sale price of the small plot of land. In Bombay Improvement Trust v. Mervanji Manekji Mistry, A.I.R. 1923 Bombay 420, a Division Bench of the Bombay High Court consisting of Macleod C. J. and Koyajee J. made the following pertinent observations on the question under consideration :

"A very simple method of valuing land wholesale from retail prices is to take anything between one half and one third, according to circumstances, of the expected gross valuation, as the wholesale price. I do not say that that should be relied upon by itself, but it affords a useful test of valuations arrived at by more detailed calculations, with regard to the cost of development, the area to be deduced for accomo-dation, the period to be allowed for disposal and the purchaser's profit."

In a case which arose for decision before this Court, a Division Bench of this Court made a deduction of 331/2 % while evaluating a plot of land 70 times large in area than the plot the sale instance of which was relied upon before it (vide Patel Shanabhai Lallubhai v. Add. Sp. Land Acq. Officer, Ahmedabad First Appeal No. 423 of 1960 decided by Miyabhoy and Mehta JJ. on November 13, 1961). It must, however, be stated at once that the quantum of deduction is a matter to be decided on the facts and circumstances of each case and that it is not an algebric problem which could be solved by an abstract formula.

[5] The aforesaid observations in a standard book on valuation of land as well as in judicial decisions afford a mere guideline and do not lay down an inflexible rule of law. All that can be said is that ordinarily the greater the disparity between the size of the plot under acquisition and that of the plot of which sale instance is available, the large will be the deduction that will have to be made. Similarly, the higher the prices of land in the locality in which the lands are situate, the deduction that will have to be made from the sals pries of small plot of will necessarily have to be greater because much larger investment would have to be made in such a case for the purchase of a big plot of land. Likewise, in a case where there is not a brisk market and keen demand for land in the locality, substantial deduction will have to be made from the purchase price of a small plot of land while evaluating a large plot of land by reference to such a sale instance. These are but a few illustrations and are not intended to be an exhaustive enumeration of circumstances in which sizable deductions may have to be made from the purchase price of small plots of land. Furthermore, the application of this principle would itself also depend upon the facts and circumstances of each case. If the larger plot is situated in the vicinity of a town and has a long frontage making it easily divisible into small building plots, then, necessarily the deduction for difference in size would be less than that which may have to be made in the case of a large plot of land situated away from the town. Again, if the large plot of land is situated in a locality where there is brisk industrial devolopment, and there is a demand for large tracts of land for setting up big industrial units, the deduction required to be made on account of the largeness of the size would be necessarily less. Then again if a large plot of agricultural land is situated in an area where mechanical method of farming is in vogue and facilities of mechanical implements and equipment for ploughing, sowing and harvesting are readily available on hire or otherwise, a large farm may bring nearly the same price as a small farm, fertility and other factors being equal, because less time is taken in tillage operations and mechanical traction can be better employed and in such a case the deduction that may have to be made may well be negligible. Examples can be profitably multiplied to illustrate the point under consideration but it is not necessary to burden the judgment with the same. Suffice it to say that it would not be proper to adopt a dogmatic or doctrinaire approach in the matter and that while evaluating a large plot of land by reference to the sale instance of a small plot of land, several factors must enter into account and no definite rule can be laid down as to the exact extent of deduction to be made.

[6] But, contends the learned Government Pleader, that the Supreme Court has in two decisions held that there can be no comparision between the valuation or a small plot of

land and that of a big plot of land and that the sale transactions of a small plot of land can never afford guidance in the matter of valuation of a large plot of land. In this connection, he relied upon two decisions of the Supreme Court, the one in Radhakisan Laxminarayan Toshnival v. The Collector of Akola, Civil Appeal No. 362 of 1965 decided on December 7, 1967 and the other in K. Anantharam Singh and another v. The Special Deputy Collector for Land Acquisition, Kurnool, Civil Appeal No. 748 of 1965 decided on March 22, 1968. We shall, therefore, examine these two decisions to find out whether the Supreme Court has laid down any principle which fortifies the submission of the learned Government Pleader.

[7] In Radhakisan Laxminarayan 's case (supra), by a notification dated February 2, 1965 issued under sec. 4 of the Act, S. No. 24 admeasuring 19 acres 13 gunthas was notified for acquisition for the purpose of Khandwa Hangoli Railway. The said survey No. lay along side S.No. 65 to its east. The Collector valued the entire land S.No. 24 under acquisition at Rs. 19,325/-. In the proceedings arising out of the reference made to the District Court, the Collector's award was confirmed. In the appeal before the High Court of Bombay, the market value of the lands under acquisition was determined to be Rs. 1750/- per acre. Before the Supreme Court, reliance was placed on behalf of the claimant on a case decided by the High Court on September 27, 1957, wherein the High Court had valued 31 gunthas of land out of S.No. 65 at Rs. 7000/-per acre, the relevant date for the purpose of valuation being August 17, 1948. It was urged before the Supreme Court that a piece or parcel of land acquired out of S.No. 65 in 1948 was valued by the High Court at Rs. 7000/- per acre and that though there was evidence to show that the land value had increased since then by at least 25%, the land under acquisition which lay along side S.No. 65 was valued only at Rs. 1750/- per acre in 1955 and that the valuation was, therefore, not reasonable and proper. The Supreme Court, negativing this contention, made the following observations which are relevant for the purpose of appreciating the submissions made by the learned Government Pleader :

> "At the same time it is clear that the consideration which prevailed with the learned Judges in that appeal cannot apply to the present case, firstly, because between the date of that notification and the present notification i.e. between 1948 and 1955 no significant development appears to have taken place in the direction of or near about these lands. The consideration which the High Court at that time had in mind that the said land had building potentiality in the foreseeable future has factually proved to be incorrect. The evidence on the contrary was that development had stopped in the south

some distance away from the railway station and except for the hutments of the railway labourers in Akot File and a solitary building nearby, there has not been any identifiable trend of development in the area to the north of the railway lines. Secondly the acquisition in that case was of a very small piece of land, only 31 gunthas, whereas the present acquisition involves large tracts of land. It is well-known that small plots generally fetch a higher value than large plots for the simple reasons that there are more ready purchasers of small plots involving as they do lesser amount of investment. There can, therefore, be no comparision between the valuation made in that case and the one in this case."

We are unable to read this decision as laying down a principle of law to the effect that sale instance of small plots of land can, in no event, be relied upon for the purpose of determining the market value of large tracts of land. In our judgment, the aforesaid observations were based on the evidence in the case and do not lay down any principle as such. The Supreme Court was concerned with a case where other evidence was available for the purpose of determining the market value of the acquired lands and it rejected the sale instance of a smaller plot of land on two grounds one of them being that it was in respect of a small plot of land. The Supreme Court has, however, not laid down a principle contrary to the one which is well known to the science of valuation to which we have adverted above and we are unable to read this decision as laying down an inviolable principle that in no case can an instance of sale in respect of a small plot of land be relied upon for valuing a large plot of land.

[8] In K. Ananihram Singh's case (supra), by a notification published on August 12, 1954 issued under sec. 4 of the Act, S.No. 207 admeasuring approximately 10 acres 4 cents was notified for acquisition. The Land Acquisition officer valued the land S.N. 207 under acquisition by subdividing it into three parts and offered compensation at different rates varying between Rs. 8000/-per acre to Rs. 8500/-per acre. In the proceeding arising out of the reference made to the District Court, the Court increased the compensation to Rs. 25,000/- per acre. The Court relied upon two sale instances (Exs. Bl and B2) both dated October 10, 1951 in respect of two plots of land situated at a distance of about 100 yards from the acquired lands. Under the said conveyances, two plots of land each admeasuring 60 x 40 were sold for Rs. 1500/- each. The sale price

worked out to Rs. 26,225/-per acre. The reasoning adopted by the Court was that if S.No. 207 had not been acquired compulsorily, the claimant would have divided it into small plots and realised the value obtained under the said two sale instances. In appeal, the High Court of Andhra Pradesh held that sale instances, being instances of small plots of land situated in the built up area of the town, could be of no assistance in determining the market value of the acquired land. The Supreme Court, while dealing with the said sale instances, observed as follows :

> "The High Court rightly pointed out that Exs. B-l and B-2. could afford no guide in determining the market value of an area of Ac. 10-00 of land. Moreover, these documents related to transactions of sales within the built-up are of the town. The comment with regard to the transaction recorded in Ex. B-3 was the same. In our opinion, the High Court was right in its conclusion. Apart from the fact that these plots were in the built-up area of the town, it is well known that transactions of small plots can afford no real assistance when a large plot has to be valued. The transactions to be of any use to the Court must be comparable to that covered by the acquisition. Small plots of land always fetch prices which work out to several times the figures for those which can be had for large plots. In our view, these transactions could not be regarded as giving the basis of the valuation."

We are unable to hold, as the learned Government Pleader contends, that this decision again lays down an absolute principle to the effect that sale instances of small plots of land can, in no event, be relied upon for the purpose of determining the market value of large tracts of acquired lands. In our opinion, the observations made in K. Ananihram Singh 's case rested on the evidence in the case and do not lay down any principle as such. In that case, there were several transactions of sale relied upon by the claimant and two of them related to small plots of land situated within the built-up area of the town. The Supreme Court upheld the High Court's decision that the said two sale instances were not comparable in view of the fact that they were in respect of small plots of land situated within the built-up area of the town. The decision was thus based on the facts and circumstances of the case. The Supreme Court pointed out that the said transactions of sale could not be regarded as giving the basis of the valuation of the acquired land because of the small size of the land involved in the said transaction. In our

opinion, all that the Supreme Court has laid down in this decision is that large plots of land cannot be valued on the same basis as small plots of land. The Supreme Court has thus not laid down a principle contrary to the one which is well-known to the science of valuation and to which we have made a reference above and we are unable to read this decision as laying down an immutable principle that, in no case, can an instance of sale in respect of a small plot of land be relied upon for valuing a large plot of land.

[9] We may in this context point out that there is a later judgment of the Supreme Court which in fact clearly negatives the submission made by the learned Government Pleader. In L. Ramswami Naidu and others v. The District Welfare Officer, Coimbatore and another, Civil Appeal No. 617 of 1966 decided on April 21, 1969, the Supreme Court was concerned with a case where a land admeasuring 6 acres 45 cents was notified for acquisition on April 17, 1957. A number of sale instances reflecting the prices of lands in neighbourhood of the acquired lands were tendered in evidence. The Land Acquisition Officer made an offer for compensation for the acquired lands on the basis of the sale instance of the lands under acquisition itself. In the proceedings arising out of the reference made to the Court, reliance was placed inter alia upon five sale instances one of which (Ex. A-l) was in respect of 10 cents of land sold for Rs. 5500/-on August 30, 1946. The Court, however, valued the acquired land at the rate of Rs. 100/- per cent. In appeal, the Madras High Court confirmed the award made by the Court. Before the Supreme Court, relying upon the sale instance evidenced by Ex, A-l, it appears to have been urged that having regard to that sale instance, the High Court was in error in not modifying the award made by the subordinate Judge and in not granting additional compensation. The Supreme Court, while accepting this submission, made the following pertinent observations :-

"Ex. A-l was in respect of a plot of land situated similarly to the plots proposed to be acquired and but for the fact that it was for a small area of 10 cents only, it would afford a guide for fixing the value of the lands acquired. No doubt, the claimants could not claim at the rate of Rs. 550/- per cent and proper allowance would have to be made for the smallness of the area;

Taking into consideration the fact that Ex. A-l had been executed in 1946 and the potential value of the land, we hold that Rs. 200/- per cent would be a proper measure for fixing the value of the land."

It is thus clear that the Supreme Court in that case relied upon the sale instance of a very small plot of land in determining the market value of a large plot of land, although some other sale instances, including the sale instance of the very plot under acquisition, were available on the record of the case after making proper allowance for the smallness of the area reflected by the said sale instance. The decision, in our opinion, reiterates the well-known principle that it is permissible in the facts and circumstances of a given case to evaluate large tracts of land by reference to sale instance of small plot of land.

[10] In the view that we are taking, we are fortified by a decision of a Division Bench of this Court rendered in First Appeal No. 582 of 1962 decided on October 22, 1969, (ShankerlalMunshi v. Dist. Deputy Collector Petlad) to which one of us, viz. my learned Brother Sheth J., was a party. The Division Bench, in that case, after referring to the decision of the Supreme Court in L. Ramswami Naidu 's case (supra), made the following pertinent observations :-

"We have referred to certain instances of sale of very small pieces of land. In Civil Appeal No. 617 of 1966, decided on 31st April, 1969, the Supreme Court considered the question of fixation of value of certain acquired land and had to consider therein evidence of instances of sales of very small pieces of lands. The principle which the Supreme Court laid down in that case is that after making allowance for the smallness of the area, the price which a small piece of land fetched could furnish guidance to the Courts for determining the value of the land and the claim for compensation. Bearing in mind the safeguards which it has laid down, it is permissible for the Court to take into account the sales of very small pieces of land for the purpose of determining the compensation of a bigger piece of land which might have been acquired."

[11] We are, therefore, unable to accede to the submissions made by the learned Government Pleader that the sale instance evidenced by Ex. 34 is not a comparable sale instance and does not evidence a prudent purchase. We are also unable to hold that the claimant has failed to discharge the initial burden that lay upon it to show that the compensation offered by the Land Acquisition Officer was prima facie inadequate

and we, therefore, hold that the lower Court was justified in entering upon an inquiry whether or not the compensation offered by the referer was adequate. We shall now proceed to consider whether the lower Court was justified in awarding enhanced compensation and further whether on the strength of the sale instance Ex. 34, the claimant is entitled to still higher compensation for the acquired lands.

[12] As pointed out above, the most important factor which will have to be taken into account while evaluating the acquired land by reference to S. No. 619 is the size of the said survey number as compared to the size of the acquired land. It is obvious, as held above, that the two plots of land cannot be evaluated on the same basis and due allowance and deduction will have to be made from the sale price of S. No. 619 if the said sale instance is to be treated as a comparable sale instance for the purpose of evaluating the acquired land. The acquired land is nearly 27 to 28 times larger in size than S. No. 619. The fact that there is not much development in or around the area where the acquired land is situated and further the fact that the claimant has not been able to prove that there was any demand for the acquired land itself also cannot be lost sight of. At the same time having regard to the factors which add to the potentiality of the acquired land as a building or a suitable site for a large industrial unit and such other factors as its situation, surroundings etc., which we have discussed above in detail, a very large deduction from the sale price of S. No. 619 is not warranted in the facts and circumstances of the case in evaluating the acquired land. In our opinion, a deduction of approximately 35 to 40 per cent from the said sale price would adequately meet the requirements of the case and, therefore, the lower Court was right in evaluating the acquired land, except the Kharaba land, at the rate of Re. II- per square yard which is a little less that 40 per cent. As regards the Kharaba land admeasuring approximately 5 gunthas comprised in acquired land S. No. 163, the Land Acquisition Officer has offered compensation at the rate Re. II- per guntha and the lower Court has, for the reasons stated in paragraph 16 of the judgment under appeal, confirmed the said award. We see no reason to differ from the award made by the lower Court in respect of the Kharaba land and nothing has been shown on behalf of the claimant from the evidence on the record of the case to justify enhanced compensation for the Kharaba land. The evidence on the record of the case justifies neither an increase nor a decrease in the compensation awarded to the claimant on the aforesaid basis by the lower Court and in our judgment, therefore, the acquired lands have been correctly evaluated by the lower Court. In the result, both the appeals on the question of valuation of the acquired lands must fail.

[The rest of the judgment is not material for the reports.]

Appeals dismissed.