

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 2nd DAY OF JUNE, 2003

PRESENT

THE HON'BLE MR JUSTICE TIRATH S THAKUR

AND

THE HON'BLE MR. JUSTICE MOHAN SHANTHANAGOUDAR

MISCELLANEOUS FIRST APPEALS Nos.1081, 1078 &

1080/1997 (LAC)

BETWEEN: (IN ALL THE APPEALS)

The Land Acquisition Officer and
Assistant Commissioner,
Sedam

Appellant

(By Sri H M Manjunath, HCGP)

AND: (In M F A No 1081/1997)

- 1 Veeranna,
S/o Shivalingappa,
Major, Occ:Agriculture,
R/o Shahabad
- 2 The Chief Officer,
T M C , Shahabad,
Tq Chittapur, Dist:Gulbarga

**(By Sri Jayakumar S Patil, Adv for R2,
Sri V N Madhava Reddy, Adv for R1)**

(In M F A No 1078/1997)

- 1 Allauddin,
S/o Mashaksab,
- 2 Sabir,
S/o Mashaksab,
- 3 Anwar,

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S/o Mashaksab,

4 The Chief Officer,
T M C Shahabad, Tq:Chittapur,

All are majors,
R/o Shahabad, Tq:Chittapur,
Dist:Gulbarga

**(By Sri V N.Madhava Reddy, Adv for R1 to 3,
Sri Praveen Kumar Raikote, Adv for R4)**

(In M F A No 1080/1997)

- 1 Gajanan Rao,
S/o Raghavendra Rao,
Dead by his LRs
 - a) Parimalabai, W/o Gajanan Rao,
 - b) Vasant, S/o Gajanan Rao,
 - c) Udayakumar, S/o Gajanan Rao,
 - d) Shamsunder, S/o Gajanan Rao,
- 2 Murulidhar Rao,
S/o Raghavendra Rao,
All are Majors, R/o Shahabad,
Tq:Chittapur, Dist:Gulbarga,
- 3 The Chief Officer,
T M C , Shahabad,
Tq:Chittapur

Respondents

**(By Sri Jayakumar S Patil, Adv for R3,
- v k not filed,
Sri V A Madhava Reddy, Adv for R1(a-d) and R2,
Sri.Praveen Kumar Raikote, Adv for R3)**

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These MFAs are filed u/s 54(1) of the LA Act against the Judgment and Award dt 16 4 1996 passed in LAC No 53/87 (in M F A No 1081/97), LAC No 54/87 (in M F A No 1078/97) and LAC No 55/87 (in M F A No 1080/97) on the file of the Addl Civil Judge, Gulbarga, partly allowing the reference petition for compensation

These Appeals coming on for further hearing, this day, Tirath S Thakur, J., delivered the following:

JUDGMENT

These appeals arise out of an order passed by the Addl Civil Judge at Gulbarga, whereby LACs Nos 53, 54 & 55/1997 have been partly allowed and the amount of compensation payable to the respondent-land owners enhanced from Rs 5,500/- per acre awarded by the Land Acquisition Officer to Rs 50,000/- per acre with consequential statutory benefits. The brief facts giving rise to the appeals may be set out as under:

Land measuring 35 acres situate in different survey numbers located within the Shahabad Municipality was notified u/s 4 of the Land Acquisition Act in terms of a notification dt 4 8 1983. The acquisition in question was for purposes of formation of house sites to be

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distributed among the weaker sections of the society. The Land Acquisition Officer in due course made and published an award determining a sum of Rs 5,500- per acre as compensation payable to the land owners. Dissatisfied with the said amount, the land owners sought a reference to the Civil Court for determination of just and fair compensation payable to them. These references were registered as LACs Nos 53, 54 & 55/87. Since the lands in question were notified under the same notification and for the very same purpose, the reference court has by the impugned order disposed the same of together enhancing the compensation awarded to the land owners from Rs 5,500/- to Rs 50,000/- per acre. The Special Land Acquisition Officer has aggrieved by the said enhancement, preferred the present appeals as already noticed earlier.

Appearing for the appellant, learned Government Advocate submitted that the reference court was in error in relying upon the sale transaction evidenced by sale deed dt 6 8 1980 marked Ex P 18 for purposes

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of determination of the compensation payable to the respondent-land owners. He submitted that the said sale transaction related to a small piece of land measuring 35 ft X 40 ft which could not provide a safe basis for the court to determine compensation for a much larger area measuring 35 acres acquired from the respondents. He contended that the reference court was also in error in relying upon its own judgment in LAC No 12/1991 that related to the acquisition of an area measuring 33 guntas situate in Sy No 151/1/1. He urged that even if the sale transaction and the order passed by the reference court in LAC No 12/1991 was held relevant for purposes of determining the amount of compensation payable to the owners, the extent of deduction required to be made for purposes of such determination should have been to the extent of 65% having regard to the fact that the extent of land acquired from the respondents was much larger all of which was undeveloped and the transaction in question with reference to which the amount was being determined comparatively small.



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The reference court had before it a number of sale transactions by reference to which the land owners staked their claim for payment of a higher amount of compensation. Out of these sale transactions those marked as Exs P 9, 10 and 19 dt 6 12 1982, 14 3 1994 and 15 12 1981 respectively were rejected by the said court on the ground that the documents produced by the claimants were not supported by any oral evidence and proof thereof. The only other transaction which then remained for consideration before the reference court was the one that took place on 6.8 1980 evidenced by a document marked Ex P 18 in respect of a small plot of land measuring 35 ft X 40 ft sold in favour of one Smt Susheela Bai for an amount of Rs 3,500/- The vendor of the said parcel of land has been examined as PW-5. According to his deposition, the transaction in question had actually taken place in the year 1999 though the sale deed in respect of the land was executed a year later i.e., in 1980. That a sum of Rs.3,500/- was paid as consideration for the



transfer of the plot in question is amply proved from the testimony of the said witness. The reference court has as noticed earlier placed reliance upon the transaction evidenced by Ex P 18 and its earlier judgment in LAC No 12/1991 relating to another parcel of land measuring 33 guntas which was acquired for the construction of an electric sub-station by the KEB. In the said case, the reference court had relying upon the sale transaction evidenced by Ex P 18 determined the compensation payable to the land owners at Rs 65,000/- per acre which works out to Rs 1 50 per square ft. The reference court has in the instant case reduced the rate per square foot from Rs 1 50 to Rs 1 20 on the ground that the extent of land acquired in this case was much larger than the extent that was sold in terms of the sale deed under reference. In addition the court has declined to grant any escalation over the amount that was held payable to the owners in LAC No 12/1991. The court felt that a sum of Rs 50,000/- per acre would represent the just and fair compensation.



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payable to the land owners although the compensation at the rate of Rs. 120 per sq ft itself worked out to Rs 52,272/- per acre

Before us, the view taken by the reference court that sale transactions evidenced by EX P 9,10 and 19 are not properly proved has not been assailed by the claimants-land owners who had produced the said documents That being so, the only transaction by reference to which the question whether the amount awarded is just and fair can be answered is the one evidenced by the sale deed marked Ex P 18 That transaction as rightly pointed out by counsel appearing for the appellant relates to a small piece of land located in a developed housing colony It is fairly well settled that transactions involving transfer of smaller pieces of land cannot by themselves be a true or sound basis for determination of compensation payable for acquisition of larger extents It is also well settled that in the absence of better evidence a transaction involving smaller parcel of land may be made a basis for determination



of compensation for a relatively larger extent after making suitable deductions towards the development of such larger extent. The decisions of the Supreme Court in **SMT TRIVENI DEVI AND OTHERS VS THE COLLECTOR, RANCHI (AIR 1972 SC 1417)**, **ADMINISTRATOR GENERAL OF WEST BENGAL VS COLLECTOR, VARANASI (AIR 1988 SC 943/1986(2) SCC 150**, **K VASUNDHARA DEVI VS REVENUE DIVISIONAL OFFICER (Land Acquisition Officer) (AIR 1995 SC 2481)**, **HASAN ALI KHAN BHAI AND SONS AND OTHERS VS STATE OF GUJARAT (1995(5) SCC 422)**, **RATANLAL GUPTA AND OTHERS VS UNION OF INDIA (AIR 1995(6) SCALE 698)**, **K S SHIVADEVAMMA AND OTHERS VS ASSISTANT COMMISSIONER, AND LAND ACQUISITION OFFICER AND ANOTHER (1996(2) SCC 62)** and **U P AVAS EVAM VIKAS PARISHAD VS JAINUL ISLAM AND ANOTHER (AIR 1998 SC 1028)** and that of this Court in **M F As 847/1996** and **connected matters DD 27 6 2001** have held that the deduction towards cost of development of roads and drainage can vary between 53% to 65% depending upon the location of the land acquired and the extent of development that has already taken place around it. In **BRIG SAHIB SINGH KALHA AND OTHERS VS AMRITSAR**

IMPROVEMENT TRUST AND OTHERS (1982 (1) SCC 419) the Supreme Court had broadly indicated that 33% of the compensation that may be payable on the basis of a sale transaction for a smaller piece of land in a developed colony towards the cost of amount that has to be set apart for construction of roads and drainage whereas further 20% is to be deducted for development of such roads and drainage system. The minimum deduction that would therefore be required to be made in the case of larger extents of undeveloped land with non-agricultural potential has to be around 53%.

The land acquired in the instant cases is situate within the municipal limits of Shahabad. There is evidence to the effect that similar lands in the vicinity had already been converted for non-agricultural use. The owners of the land in question had also according to the evidence on record made an application for conversion to non-agricultural use much before the issue of the preliminary notification. The land in question was admittedly

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situate by the side of a broad gauge railway line connecting Bombay and Madras. In the circumstances, the finding recorded by the reference court that the land in question possessed non-agricultural potential is acceptable and is accordingly affirmed. That being so, the only question is whether the determining of Rs 50,000/- per acre by the reference court on the basis of sale transaction evidenced by Ex P 18 is excessive so as to call for any interference in appeal. The consideration per square foot paid for the sale of land evidenced by Ex P 18 works out to Rs 2 50. If a deduction of 53% towards roads and drainage system and their development is made out of the said amount, the amount payable to the land owners would work out to Rs 1 20 per sq ft or Rs 52,272/- per acre. The reference court has however restricted the enhancement to Rs 50,000/- per acre only, ostensibly because the extent of land acquired is much* larger in comparison to the transaction which is made the basis for determination of the compensation. Not only that the reference court has also declined to grant any escalation in

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price for a period of 3 years that separate the said transaction from the date of the preliminary notification. We do not see any illegality or irrationality in that view to call for interference in these appeals. Having regard to the extent of land, its location and the non-agricultural potential it possessed, a deduction of 53% would be fair and would have met the ends of justice. The amount fixed by the reference court is in fact lower than what would have been payable to the land owners after making a deduction of 53%. In the circumstances, there is no room for any further deduction out of the amount awarded by the reference court. These appeals accordingly fail and are hereby dismissed but in the circumstances without any orders as to costs.

Sd/-
Judge

Sd/-
Judge

Jm/-