

HASANALI WALIMCHAND (DEAD) BY L.RS.

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v.

STATE OF MAHARASHTRA

JANUARY 6, 1998

[DR. A.S. ANAND AND S. RAJENDRA BABU, JJ.]

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Land Acquisition Act, 1894 :

Compensation—Determination of—Land situated at a distance of one and a half miles from city—Urban character and future potential of land to be taken into account—Award of reference court restored with modification that out of the amount fixed by reference court deduction @ 50 paise per square foot would be made towards development charges.

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State of Orissa v. Brij Lal Misra & Ors., [1995] 5 SCC 203 and P. Ram Reddy & Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors., [1995] 2 SCC 305, cited.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8911 of 1983.

From the Judgment and Order dated 1.12.81 of the Bombay High Court in First Appeal No. 19 of 1974.

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Krishan Mahajan, Amit Dhingra and P.H. Parekh for the Appellants.

G.B. Sathe and D.M. Nargolkar for the Respondents.

The following Order of the Court was delivered :

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This order will dispose of both appeals as they arise out of the same judgment and order of the High Court of Bombay, dated 26.9.1979. Land measuring 14 acres and 9 Gunthas, which is subject matter of these appeals, situate in village Kedgaon, Taluka Nagar, District Ahmednagar, Maharashtra was acquired by the State. Notification under Section 4 of the Land Acquisition Act (hereinafter the Act) was issued on 1.3.1969. Notification under section 6 of the Act was published in the gazette on 26.6.1969. The land was acquired for public purpose for extension of living place for the population as also for construction of government godowns. The Land Acquisition Collector, vide Award dated 29.9.1970 determined the market value of the land at Rs. 3,000

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- A per acre and Rs. 3200 per acre. Compensation amounting to Rs. 49,301 was awarded. Aggrieved by the Award of the Land Acquisition Collector, the claimants sought a reference under Section 18 of the Act. The learned joint Civil judge, vide his Award dated 28th August, 1971, determined the market value @ Rs. 1 per square foot, *inter-alia* after taking into account rates fixed by a Cooperative Housing Society for sale of plots by it to its members and outsiders in the vicinity of the acquired land. The reference court awarded a total compensation of Rs. 6,16,118.60 ps. The respondent - State approached the High Court against the award of the reference court. On 26.9.1979, the High Court set aside the award of the reference court made under Section 18 of the Act and restored that of the Land Acquisition Collector, dated 29th September, 1970. Hence, these appeals by special leave by the claimants.

Mr. Krishan Mahajan, learned counsel appearing for the appellants has assailed the judgment and order of the High Court principally on the ground that the High Court failed to take into account future potentiality and instead based itself only on the realized possibility and thus committed an error.

- D Learned counsel has, in support of his contention, relied on *State of Orissa v. Brij Lal Misra & Ors.*, [1995] 5 SCC 203 and *P. Ram Reddy & Ors. v. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors.*, [1995] 2 SCC 305. Both the judgments do support the submission of Mr. Mahajan.

- E Mr. Sathe, learned counsel appearing for the State has supported the judgment and order of the High Court and submitted that the land was agricultural land, the High Court rightly took into account that fact and disapproved the approach of the reference court which, according to the learned counsel, was influenced by the rates fixed by the Ambika Cooperative Housing Society which consideration was not a relevant consideration since the land of the Ambika Cooperative Housing Society was developed land and had been sold in plots to its various members and outsiders.

We have given our thoughtful consideration to the submissions made at the bar.

- G The High Court has noticed in the impugned judgment and order that the 'location' of the land indicates that it has building potential but fell into an error in ignoring that factor by observing:

- H "There is no record of any income being received by any of the land

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owners. These lands must, therefore, be valued as agricultural land with no potentiality whatsoever in the foreseeable future.” A

We are unable to find any justification for such observation and finding. The above finding of the High Court is contradictory to the earlier finding based on the location of the land. It is nodoubt correct that the reference court was influenced by sale transactions in respect of developed land and it failed to make any deduction for development of land while enhancing the compensation, but the High Court fell in error in ignoring the future potential of the land in question and instead resting its finding as realized potential only. The evidence on the record clearly establishes that the acquired land did have future potential on account of its location. It is not denied that the area around the city of Ahmednagar is fast developing and the land in question was located only at a short distance of about one and a half miles form Ahmednagar town. The finding recorded by the High Court to the effect that there was no demand of any urban character in respect of the land in question is belied by the evidence on record. Indeed the land unlike the Housing Society Land was not developed and, therefore, proper course for the High Court would have been that it should have taken note of development charges and made some suitable deduction for the same. The reference court had made the Award based on the material on the record but had failed to notice that the acquired land was still undeveloped. It, therefore, appears appropriate to us to set aside the impugned judgment and order of the High Court and restore the award made by the reference court with the modification that out of the amount fixed by the reference court @ Rs. 1 per square foot, deduction to the extent of 50 paisa per square foot, towards development charges, shall be made and compensation calculated on that basis and shall paid to the claimants in accordance with their holdings, along with the statutory benefits of solatium and interest. B C D E F

The impugned judgment and order of the High Court is set aside. With the aforesaid modification of the award of the reference court, the appeals are disposed of. There shall, however, be no order as to costs.

R.P.

Appeals disposed of. G