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V.M. SALGOACAR AND BROTHER LTD.

v.

UNION OF INDIA

JANUARY 11, 1995

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[K. RAMASWAMY AND MRS. SUJATA V. MANOHAR, JJ.]

Land Acquisition Act, 1894—Sec.4(1)—Award of compensation—Where compensation to be determined at the market value of the land on the basis of small sale transactions or at the potential value thereof.

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Appellant's lands were acquired and the Land Acquisition Officer determined the compensation at Rs. 5 per sq. metre. He relied on the appellant's stated purpose of usage of the land for staff quarters, the fact of a freeze on land development and used the purchase price of the appellant as a base added compound interest and a small increase to arrive at the said market value of Rs. 5 per sq. metre. On reference under S. 18 of the Act the District Judge enhanced it to Rs. 50 per sq. metre. The respondents moved the High Court against the order of enhancement. The High Court reversed the award and decree of the District Judge and confirmed the award of the Collector.

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The appellants challenged the High Court order in this Court contending that the lands possessed by them were of potential value as there was a rising trend in the market when land was sold out in small plots. They had brought four sale instances on record as a foundation for determining the market value of the lands in question. They argued that the High Court erred in excluding those sale instances as irrelevant.

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The respondents contended that the sale instances were small and a few of them were post-notification sales. Development and appreciation of land had been frozen to enable proper determination of the market value as the land was to be acquired for public purposes, therefore, there would be no potential buyers. As appellant himself had not purchased the property for sale to third parties the District Judge was not justified in relying on the sale instances to determine the market value.

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Dismissing the appeal, this Court

HELD : 1.1. The Land Acquisition Officer was correct in starting with the factor of used of the land for the appellant's staff quarters, i.e. own use, the consideration of Rs. 60,000 paid for it and the fact of a freeze on development as a base to determine the market value. [191-B-C]

1.2. The sale instances and the prices, indicated therein are absolutely irrelevant for determining the compensation as the property was not purchased with a view to sell to third parties. [191-G]

1.3. The appellant is not entitled to the enhanced market value of Rs. 50 per sq. meter on the basis of small sale instance brought on record. The High Court in another case had determined Rs. 3 per sq. yard to be the market value of adjacent lands acquired in 1967. The District Judge committed palpable error in recording a finding that this determination was irrelevant. [191-F, 192-B]

1.4. In appropriate cases potential value of the land as on the date of notification, realised or realisable price, would form the basis for compensation but in the facts and circumstances of the present case the potential value of the land bears on relevance. [192-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3800 of 1989.

From the Judgment and Order dated 5.12.88 of the Bombay High Court in F.C.A. No. 54 of 1986.

R.F. Nariman, K.J. John and Pratap Venugopal for the Appellant

Ms. Indra Sawhney for Ms. A. Subhashini for the Respondent.

The following Order of the Court was delivered :

This appeal by special leave at the behest of the claimant arises from the judgment of the Division Bench of the Bombay High Court at Goa Bench dated December 5, 1988 made in First Civil Appeal No. 54/86. Notification acquiring an extent of 21920 Sq. metres situated in Chicalim village near Goa Airport was notified in the Gazette dated July 6, 1970 under s. 4(1) of the Land Acquisition Act, 1894, (for short the Act) for the Naval Air Station. The Land Acquisition Officer in his award dated March 26, 1976 determined the compensation at Rs. 5 per sq. metre. Possession

A was taken on February 28, 1977. On reference under s.18, the District Judge determined the compensation by his award and decree dated March 31, 1986 at Rs. 50 per sq. metre. Feeling aggrieved against the above enhanced market value, the State went in appeal. The High Court, as stated earlier, allowed the appeals reversed the award and decree of the reference court and confirmed the award of the Collector.

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Shri R.F. Nariman, learned Senior Counsel for the appellant strenuously contended that from the evidence on record, it would be clear that the lands are possessed of potential value for building purposes. The appellant himself purchased the property for construction of staff quarters for its officers. The company had applied for permission for construction. In the meanwhile, they developed the land and kept the material ready for construction. At that point of time, the notification came to be published. Four sale instances brought on record do indicate that there was rising trend in the market value of the lands when sold out in small plots. Though the small plots *ipso facto* may not form the basis *per se* to determine the compensation, they would provide the foundation for determining the market value. On its basis, giving proper deduction, the market value ought to be determined. The High Court, instead of adopting that procedure, had concluded on wrong premise that the lands are situated at 6 kms. away from the developing lands and held that the sale instances are irrelevant and having excluded those sale instances confirmed the award given by the Collector. The potential value was not taken into consideration to determine compensation. The view taken by the High Court is, thereby bristled with illegality warranting interference. Learned counsel for the State contended that the sale instances not only are small but few of them are post-notification sales. The land under acquisition has no approach road. There was freeze for development. In view of these facts, there would be no potential buyers for the land in question. The appellant himself had purchased the property for the purpose of constructing the staff quarters but not for sale to the third party. Having realised that the property would be acquired for public purpose, the Government had freezed the appreciation with a view to see that the proper market value would be determined. The High Court, therefore, kept these facts at the back of its mind above consideration rightly and agreed that the market value would only be at Rs. 5 per sq. yard and the Dist. Judge was not justified in relying on sale instances to determine the market value.

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Having given our anxious consideration to the respective considerations, the question that would arise for consideration is whether the High Court was right in determining the market value @ Rs. 5 per sq. yard. Indisputably, the appellant had purchased the very land in 1965 for a total consideration of Rs. 600,000. He Intended to use this property for the purpose of construction of staff quarters and for his own use. The Land Acquisition Officer has taken that factor as a base and then considered to what extant the appellant is entitled to the determination of the compensation. We think that the Land Acquisition Officer is right in starting with that premise and then to determine the market value. It is also an admitted fact that till April 1969 there was freeze in the sale of the land for any purpose. No doubt, the ground on which the freeze was imposed is not available from the record but it is common knowledge and that the fact is on record that in 1969 itself there was one notification issued for the same purpose which was later withdrawn and a fresh notification on January 6, 1970 was published in the Gazette. It is common knowledge that finalisation of the proposal for acquisition for public purpose would take long, time, at different levels of the government, to take a final shape. The Government issued a stay order freezing the developmental activities which was vacated in April 1969. Between April 1969 to the date of the Notification in January 1970, there was some escalation in the market value. It is found from the record that the lands are situated one kilometer away from the Airport and 500 meters away from the Air-port road. It would also be clear from the record that the High School was not established at the relevant time. Only three units have come up in the lands of the cooperative housing society. In other words till the date of the notification there was no appreciation in the value of the land except only small area where private parties were permitted to set up residential units. Keeping these factors into consideration, the question arises whether the appellant is entitled to the market value at Rs. 50 per sq. meter on the basis of small sale transactions as determined by the Dist. Judge. Taking all the above facts into consideration, we think that the Dist. Judge has taken totally erroneous view in the matter. It is not the case of the appellant that he purchased the property with a view to sell to the third parties. It was purchased for construction of staff quarters. Therefore, the sale instances and the prices indicated therein are absolutely irrelevant for the purpose of determination of compensation to the acquired lands. As stated earlier, the appellant himself estimated the market value for the entire land at Rs. 60,000 when he purchased the property in the year 1965. In the year it worked out @ Rs. 3,49 per sq. metre. There is evidence on record that in

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- A 1967, the notification under s.4(1) was published in the gazette on October 26, 1967 acquiring a large extent of the land in L.R.C. No. 28/81 etc. In that case, ultimately, the High Court in F.C.A. No. 27/80 by its judgment and decree dated September 4, 1984 determined the compensation @ Rs. 3 per sq. yard. The lands under acquisition are adjacent to the lands acquired in 1967. When the High Court determined the market value of the adjacent lands acquired in 1967 at Rs. 3 per sq. yard, the Dist. Judge committed palpable error of law in recording a finding that the above determination is irrelevant. The land Acquisition Officer has rightly applied the principle of interest at compounded rate and then increased another Rs. 1.25 per sq. meter for determining the compensation and worked out at round figure of Rs. 5 per sq. meter. The High Court, therefore, had rightly concluded that the market value would approximate to be Rs. 5 per sq. meter and the Dist. Judge committed gross error of law in determining the market value on the basis of sale instances and fixed at Rs. 50 per sq. meter. It is true that in an appropriate case, the potential value of the land as on the date of the notification, realised or realisable price would form the base and would be taken into consideration for determining the compensation. But it is to be considered in the light of the facts and circumstances of each case. Even his plan for construction of staff quarters was not approved. In view of the facts and circumstances of the present case, the potential value of the land bears no relevance.
- E The appeal dismissed, but with no order as to costs.

A.G.

Appeal dismissed.