DOLLAR COMPANY, MADRAS

v.

COLLECTOR OF MADRAS

May 1, 1975

[V. R. KRISHNA IYER, R. S. SARKARIA AND A. C. GUPTA, JJ]

Land Acquisition Act—Section 23—Market Value—Principle on which Appellate Court interferes.

The suit land was acquired under the Land Acquisition Act. The Land Acquisition Officer awarded Rs. 800 per ground as compensation. The City Civil Court awarded at the rate of Rs. 1000/- per ground. The High Court on appeal awarded Rs. 1800 per ground. The appellant himself purchased the suit land about 10 months before the notification under s. 4 was made at a price of Rs. 410 per ground. The appellant spent a little money on filling up the pond.

HELD : Dismissing the appeal,

This Court interferes with the judgment of the High Court only if the High Court applies a principle wrongly or because some important point affecting valuation has been over-looked or misapplied. A court of appeal interferes not when the judgment under attack is not right, but only when it is shown to be wrong. [404 E-FG]

HELD FURTHER—Market value is what a willing purchaser will pay a willing vendor. The best evidence of the value of property is the sale of the very property to which the claimant is a party. If the sale was long ago, the Court would examine more recent sales of comparable lands as throwing better light on current land value. In the present case, the appellant himself purchased the land at the rate of Rs. 410 per ground. [404 H. 405 A.B]

HELD—There is no error in principle in the High Court judgment nor has any of the limited grounds on which these Court's jurisdiction can be legitimately exercised been made out. [408-CD]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 667 of 1968.

From the judgment and order dated 31st January, 1967 of the Madras High Court in Appeal No. 412 of 1962.

N. Natesan, K. Jayaram and R. Chandrasekher, for the appellant.

Govind Swaminathan, N. S. Sivam, A. V. Rangam and A. Subhashini, for the respondent.

The Judgment of the Court was delivered by

KRISHNA IYER, J.—This is a pedestrian appeal by a land-owner whose property, having been acquired compulsorily by the State, asks for more compensation, probably appetised by increases over the Collector's award granted by the City Civil Court and the High Court. The grounds urged are conventional, based on comparison of prices shown in land sales in the neighbourhood and the general escalation of urban land values in the country.

A 127 odd 'grounds' (a ground is around 5-1/2 cents; actually—2,400 sq. ft) were acquired in 1959 for the construction of a Housing Colony for the Madras Port Trust employees by the then Madras State. They comprise R. S. No. 4032/1 and other items with which we are not concerned, since the owners of those items have not come up in appeal to this Court. The relevant notification under s. 4(1) B was made on August 12, 1959 and so the compensation has to be pegged to the market value as on that date. Of course, 16 years have rolled by since, thanks to delay which has come to stay in the administrative and forensic processes of our land. That is by the way. The Land Acquisition Officer awarded Rs. 800/- per ground. The City Civil Court, approaching the problem of valuation plot-wise, as for a housing colony, made the necessary deductions involved in that C process and awarded at the rate of Rs. 1,000/- per ground. The High Court, on appeal, made an upward revision, discarding the trial court's approach and awarded Rs. 1,800/- per ground. The State has not come up in appeal, but the unquenched claimant asks for more in appeal, demanding at least Rs. 2,200/- per ground.

D Generally speaking, a cardinal component in the escalation of prices of urban realty which does not find sufficient expression in the ancient Land Acquisition Act, 1894 is the developmental operations inevitable in a rapidly industrialising society for which the individual owner makes no social contribution. Be that as it may, courts have to apply the legislation as extant, it being left to the law-makers to harmonize social justice which individual rights by appropriate reforms. E We have to proceed to determine the compensation according to the canons crystallized in s. 23 of the Act.

At the outset, we must warn ourselves of the broad guideline that in an appeal from an award granting compensation this Court F will not interiere unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion but that the judgment cannot be supported by reason of a wrong application or principle or because some important point affecting valuation has been overlooked or misapplied. Moreover, there is a prudent condition to which the appellate power, generally speaking, is subject. A court of appeal interferes not when the judgment under G attack is not right but *only* when it is shown to be wrong. These twin principles serve as backdrop to our approach to the rival contentions in the case.

It is true that compensation for compulsory acquisition, as governed by s. 23, gives high priority to the market value of the land at the date of the publication of the notification under s. 4, sub-s. (1). H But what is market value ? It is a common place of this branch of jurisprudence that the main criterion is what a willing purchaser would pay a willing vendor. Ordinarily a party will be entitled to get the amount that he actually and willingly paid for a particular property, provided the transaction be bona fide and entered into with due regard to the prevalent market conditions and is proximate in time to the relevant date under s. 23. We may even say that the best evidence of the value of property is the sale of *the very property* to which

the claimant is a party. If the sale is of recent date, then all that need normally be proved is that the sale was between a willing purchaser and a willing seller, that there has not been any appreciable rise or fall since and that nothing has been done on the land during the short interval to raise its value (See Parks 'Principles & Practice of Valuations' p. 29—Eastern Law House—Calcutta,—IV Edition 1970). But if the sale was long ago, may be the Court would examine more recent sales of comparable lands as throwing better light on current land value. We emphasize this facet because the appellant himself purchased the land in question just ten months before the notification under s. 4(1), at a price of Rs. 410 per ground. There was a pond in the pot, the filling up of which is alleged to have cost some extra money according to the appellant, but he gave no evidence before the court on this matter with the result that we are left with the estimate made by the Public Works Department for the filling up of the pond which works out at a much lesser figure. In short, less than a year before the date of commencement of acquisition proceedings, the appellant himself had purchased this land at a price around Rs. 450 (making allowance for the pond which he had filled up) and he has been awarded Rs. 1,800 per ground by the High Court Instead of wandering around neighbouring lands or guessing as to what the price of the disputed land might have been, we have before us the actual purchase of the suit property by the appellant himself and he has not set up any case of special features or circumstances depressing the land value or affecting the particular transaction so that one could ignore that sale as the product of artificial circumstances. We have thus a situation where the law should express a judgment from the experience of the appellant himself as against a judgment from speculation based on other transactions.

Clinching evidence to correct uncertain prophesy is furnished here by the claimant's conduct. An actual transaction with respect to the specific land of recent date is a guide-book that courts may not neglect when called upon to fix the precise compensation. Viewed from a slightly different aspect, it is but fair that compulsory land-acquisition while assuring a just equivalent should not be converted into an avaricious windfall. Can an owner who brought the land at Rs. 400 per ground and laid out a little more money on it, grouse on the score of inadequate or unjust recompense, if *within a year* after his own purchase he is paid by the State 400 per cent of what he spent for the identical land ? Neither morality nor legality is violated in such a case; for even a black marketeer's bosom may not be uneasy at the prospect of such a fortune which he could not have bargained for when he became the owner of the land some months before. 'It is the duty of the state or federal government, in the conduct of the inquest by which compensation is ascertained, to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it' (See 27 Am Jur 2nd paragraph 266, p. 53 of Vol. 27). All things considered, the appellant stands self-condemned by his own deed of purchase.

Property valuation as a practised art is greatly influenced by legal and economic constraints. But, in this case, we do not have any

A complex considerations since helpful indicators are available. Price paid by the owner recently represents an expression of market value, as *bona fide* evidence of value, subject, to such matters as (a) the relationship of the parties; (b) the market conditions and the terms of sale and (c) the date of sale. It may not end the enquiry but goes a long way to solve the problem. In this conection it may be useful B to refer to the decision of this Court in *S. L. A. Officer v. T.A. Setty*(1) where it was observed :

> "It is not disputed that the function of the court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under S. 4(1) and the methods of valuation may be (1) opinion of C experts, (2) the price paid within a reasonable time in *bone fide* transactions of purchase of the *lands acquired* or the lands adjacent to the lands acquired and possessing similar advantages and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired".

D (p. 432, para 9—emphasis ours)

Appreciating this lethal consequence, Sri Natesan, learned counsel, suggested rather obscurely that there might have been peculiar possibilities why this land was sold to his client at a low price. But the reasoning breaks down because the claimant has not even E hinted in his pleading or cared to testify what special circumstances played upon the transaction by which he got this identical land at the price he paid. We cannot be swayed by surmises floating in mid-air, particularly where the party who urges these feathery likelihoods stood mute at the trial stage. He failed to speak only to become a martyr for silence.

F Sri Natesan switched on to the prices of other lands in the locality to overcome the self-created obstacle of his client's purchase. This is specious logic. When decisive evidence of the market value of the land compulsorily acquired is unavailable you seek light from comparable neighbourhood. Such is not the case here. Even so, we travelled with counsel on to other lands, to gather whether any grave G error had crept into the High Court's assessment. The discovery made was that lands in the *near* neighbourhood were sold sometime earlier at prices ranging from Rs. 300 to Rs. 400 and in one case Rs. 900 (Ex. R2 to R7) while distant neighbours like that covered by Ex. C11 were valued by court at around Rs. 2,200 or Rs. 2,400 per ground. This wide disparity may be a trifle mystifying. Even so, we go by lands close by and not by one a mile-and-half away as Ex-C11 H plot. In an industrial area, land prices are sensitive to an intricate variety of factors.

Propinquity to highway or ports and many industrial and social imponderables enter the verdict of evaluation. So much so we cannot antomatically assert, with reference to a piece of land a mile-and-half

(1) A.I.R. 1959 S.C. 429.

away, that it serves as a guide for fixing the price of the suit plot. What the High Court has done is to have at the back of its mind the various sales, Exhibits R2 to R7, which fall far below the value demanded by the claimant and the high prices awarded by the same High Court in regard to other lands distances away, have regard to the then growing industrial potential and make an intelligent guess. May be as the learned Advocate General has pointed out, in the light of evidence regarding the precise land and the particular owner, there was no justification for awarding such a high price as has been done but the State has not bothered to come up in appeal and we cannot hold that the High Court was in error in making out of the totality of materials available, a best judgment assessment of the market value. No serious flaw in principle, no omission to consider important material or like infirmity has been pointed out to fault the judges on the appraisal.

Nevertheless, Shri Natesan contended strenuously that the sales showing low prices were not reliable for two reasons. They were 'distress' sales and prices had gone up from the dates of those deeds which were of 1949-50. Neither argument is conclusive. True, a few of the sales suggest some pressure inducing the vendors to dispose of their land. But there are other deeds which are unblemished by any such depressant. Having gone through the documents in question we are satisfied that none of the sales bear marks of throwaway prices.

The other argument that prices must have inexorably risen from 1949 to 1959 is no axiomatic proposition. True, generally speaking, there has been an inflationary spiral in India which has not spared realty. But there is evidence in the present case to show that between 1949 and 1952 lands in this very area stood stationary in their prices. Various geo-economic factors have affected land prices, some to boost them, others to slump them. Therefore we cannot be persuaded to hold that a relentless rise in land prices has come to stay. Take but one example : If a land adjoins a factory which needs to be expanded further, a higher price may be offered by *that* factory owner. Likewise, if a heavy tax on construction of buildings or ceiling on vacant urban land is in the offing, prices of building sites may come down. It may even be said that such a factor as the application of the MISA to smugglers may depress prices of many items, including land and foreign cars, in certain places. Another exotic example. In some American cities the influx of certain coloured races into the downtown area brings down the market value of real estate, under current social conditions.

While it is true that the area we are concerned with is an industrial belt, we cannot forget that there are housing colonies also as adjuncts so that some lands may be less suitable for industrial buildings but may still be useful for workers' houses. It is in evidence that the plots acquired here had ponds, the appellant himself having filled up the pond in his plot. This shows incidentally that high-rising constructions may require pile-driving at high cost. We need not guess at the various chancy factors except to state that having

A due regard to the conspectus of circumstances, including the appellant's own cost price, the Court has made a sound judgment. In this view, we do not think there is need for further discussion of the facts pressed before us by the appellant. We agree with him that the purpose for which the land is acquired has no bearing on the value to be determined by the Court but our conclusion remains unaltered.

B

We see no reason, no law nor justice, to interfere with the judgment under appeal. Maybe, the appellant is aggrieved that slightly inferior lands acquired simultaneously and adjoining his plot have been given the same value as has been awarded to him. It may also be that each court he has approached has improved upon the price awarded by the earlier one and therefore he might have obtained certificate hopefully.

C And looking at his lost land now, years later, when real estate has risen in price much more, he may sigh at what is fixed and strive to get more. But a closer examination has disclosed no error in principle in the High Court's judgment nor has any of the limited ground on which this Court's jurisdiction can be legitimately exercised been made out.

D

The appeal is dismissed but, in the circumstances, without costs.

P.H.P. *Appeal dismiseed*