

(1972) 02 KAR CK 0010

Mysore High Court

Case No: M.F.A. No's. 7, 8, 9 and 232 of 1968

Special Land
Acquisition Officer,
CITB, Bangalore

APPELLANT

Vs

J.B. Kempanna Setty
Charities

RESPONDENT

Date of Decision: Feb. 18, 1972

Acts Referred:

- City of Bangalore Improvement Act, 1945 - Section 18

Citation: AIR 1973 Kar 121 : AIR 1972 Kar 121

Hon'ble Judges: Venkataswami, J; Honniah, J

Bench: Division Bench

Advocate: V. Krishnamurthy and Sekhara Setty, in M.F.A. No. 261 of 1967 and B.K. Ramachandra Rao, for the Appellant; V. Krishnamurthy and Sekhara Setty, in M.F.A. No. 232 of 1968 and A.J. Sadashiva, for the Respondent

Final Decision: Partly Allowed

Judgement

Venkataswami, J.

These appeals arise out of a common Order made by the Principal District Judge, Bangalore on 22-12-1966 in L. A. Mis. Cases Nos. 271, 272 and 273 of 1961 and 94 of 1962. Hence, they are disposed of by a common judgment.

2. It is relevant to mention that under the common Order made by the learned District Judge, he has also dealt with L. A. Mis. Case No. 149 of 1962, the relevant M. F. A. in regard to that being M. F. A. No. 10 of 1968. Since one of the respondents is reported to be dead, in the said appeal, it has been detached from the group of appeals for the purpose of disposal separately, after the legal representatives, if any, of the deceased respondent are brought on record.

3. M. F. A. Nos. 7, 8, 9 and 232 of 1968 have been preferred by the Special Land Acquisition Officer, City Improvement Trust Board, Bangalore, M. F. A. No. 261 of 1967 is an appeal for enhancement of compensation preferred by the claimant in L. A. Mis. Case No. 273/61.

4. We may at this stage itself point out that in regard to M. F. A. No. 232/68 Sri A. J. Sadashiva, learned Counsel appearing for respondents 9 to 11 therein, submitted that he had nothing to say in regard to the enhancement of compensation. What, however, he submitted was that his clients had remained ex parte in the proceedings before the lower Court, and in that connection he had preferred an application for setting aside the order placing them ex parte and that the same is pending disposal in the said Court. He, therefore, submitted that in case his application were to be allowed, he would have to lead evidence in regard to apportionment only. He, therefore, had nothing more to say with regard to the question of apportionment at present. We, therefore, propose not to refer to this aspect of the case any further.

5. It is also relevant to note that in regard to L. A. Mis. No. 272/61, there is a note made on 1-3-1968 by the learned District Judge, while disposing of I. A. No. 1 to the effect that in L. A. Mis. No. 272/61, a decree had not been drawn up. He has also directed that the same should be drawn up as the parties had no objection to such a course. We have referred to this fact only to direct the attention of those concerned for the drawing up of the decree as early as possible in accordance with the above directions of the learned District Judge.

6. The following table would give the particulars regarding the numbers of the appeals, corresponding L. A. Mis. Cases before the lower Court, survey numbers and the extent of the lands acquired:

Appeals Numbers	Corresponding No, before lower Court	Survey Number	Extent of land
			A-Cs
M. F. A. 7/68	L. A. Mis. Case	57/5	1-37
M. F. A. 26/67	No. 273/61		

M.	L. A. Mis.	57/4	2-06
F. A.	271/61		
8/68			
M.	L. A. Mis.	8	1-34
F. A.	94/62		
9/68			
M.	L. A. Mis.	57/2	1-09
F. A.	272/61		
232/68			

In the lower Court, common evidence was recorded in respect of the above cases. The learned District Judge determined the compensation payable to the claimants on the basis that the lands were eminently fit for building sites. He also determined the market value of the lands at Rs. 18 per square yard. In computing the total compensation payable, he applied that rate to the lands under acquisition and made allowances for the "conversion fine", wherever he thought necessary. He, however, did not provide for any allowance in regard to the "lay-out charges" that might have to be incurred in all cases where a lay out of sites had to be formed on agricultural lands or any other large tract of land. Further, while recognising the fact that some area of land is bound to be taken up for the formation of roads, drains and lung-spaces and such other amenities in a lay-out of sites, he did not take into account such extent in determining the total compensation payable, in some of the cases.

We shall have occasion to deal with these questions, in regard to each of the cases, separately at a later stage, and therefore, it is unnecessary to refer to them in detail at this juncture. Aggrieved by the said order the appellants have preferred the above appeals.

7. On behalf of the Special Land Acquisition Officer Sri B. K. Ramachandra Rao, learned Government Advocate, contends thus: The learned District Judge was not justified in determining the market value of the sites in the neighbourhood of the acquired lands at Rs. 18/- per square yard based on Exts. P-15 and P-16, which are sale deeds in respect of well laid-out municipal sites. He was also not entitled to act on them, without making a notional reduction of the lands under acquisition into a lay-out of building sites and making proper allowances for the area that would be taken up for roads, drains, lung spaces and other amenities. Further, he should also have taken into account the cost of making a layout of sites which is commonly known as "lay-out charges" in addition to the premium known as "conversion fine" payable to Government under the relevant Revenue Laws for securing permission to use agricultural land for non-agricultural purposes. There was no justification for the learned District Judge to ignore any of the said considerations while computing the

compensation payable in respect of the lands in question.

8. Sri V. Krishnamurthi, the learned Counsel appearing on behalf of the appellant in M. F. A. No. 261/67, and principal claimants-respondents in all the other appeals, submitted that the lower Court while determining the compensation payable in respect of the lands in question, has taken into consideration all the circumstances referred to in the submission on behalf of the appellant in regard to the requirements of a pay out of building sites. It was also urged that it would be open to the respondents to show that the rate as determined by the lower Court, namely Rs. 18/- per sq. yd. would be too low, and the same ought to have been Rs. 23 to Rs. 25 per sq. yd. and if it was so determined, it would take within its ambit any charges that may have to be paid towards "conversion fine" and "layout charges", which would not be more than Rs. 5 per square yard, in all. It would, therefore, follow that if the rate is maintained at Rs. 18 per square yard, no further amounts by way of "conversion fine" and lay-out charges" would become payable. According to him, Exts. P-14 to P-16, which are sale-deeds of sites in the neighbourhood of the lands under acquisition, would clearly support the determination of the rate at Rs. 23 per sq. yd. This argument was also urged in support of the claimants' appeal in M. F. A. No. 261/67.

9. It is relevant to briefly advert to certain facts which are not in dispute. The acquired lands are situated in a well developed locality between Gavipur and Guttahalli Extensions of Bangalore City. They are all agricultural lands. One of the lands under acquisition, namely S. No. 57/5 is bounded on two sides by well-laid out municipal roads. The principal claimants in regard to these lands are a trust known as "J. B. Kempanna Setty Charities" and Sri Ramakrishna Ashrama, which is a Hindu Religious Institution. Round about the acquired lands well developed extensions of 30 to 50 years standing are located. Those buildings are within a furlong or two from all these lands. The claimants have claimed compensation ranging from Rs. 15 to Rs. 50 per square yard in regard to these lands on the basis that the lands were fit for building sites and they should be evaluated as such on the basis of the price per square yard. On behalf of the Special Land Acquisition Officer, the situation, extent of the lands and their potentialities for building sites are not seriously disputed.

10. Before proceeding to consider the cases individually, appeal-wise, it is necessary to examine the contentions in regard to the determination of the value of the building sites in the neighbourhood of the lands in question. The lower Court has determined the rate at Rs. 18 per square yard, mainly on the basis of certain sale deeds, Exts. P-15 and P-16. Ext. P-15 is dated 13-1-1948. Under the said deed, a site ad-measuring 320 sq. yards has been purchased for a consideration of Rs. 6,000/-. On this basis the rate per square yard of land is slightly less than Rs. 19/-. It is pointed out by the learned Government Advocate that the value under this deed would include the cost of a foundation (plinth) and a well, and if some allowance is made in that behalf, the rate would work out at less than Rs. 15 per sq. yd. It is true

that the factual position is as contended for by the learned Counsel. But, it is to be remembered that the lands under acquisition are situated in a well developed urban area and the evidence discloses that the land values were showing an upward trend. The relevant date for the purpose of determination of compensation as per the Notification u/s 18 of the City Improvement Act is 17-3-1949. The sale deed, Ex. P-15 is 14 months anterior to the aforesaid date. If some allowance is made for the rising prices, the determination of the rate at Rs. 18 per sq. yd. could not be said to be unreasonably excessive.

The position in regard to Ex. P-16 is much better. That deed was executed on 31-8-1947, i.e., nearly one year and 7 months anterior to the relevant date, i.e., 17-7-1949. The rate as determined on the basis of the consideration for that deed would work out to Rs. 15 per sq. yd. On behalf of the Special Land Acquisition Officer considerable reliance was placed on the said deed. It is fairly well established that in a well developed urban area where demand for building sites is great, the prices are bound to show an upward trend. Indeed, if allowance is made for such rising prices, the determination of the rate of Rs. 18 per sq. yd. would not become unreasonable. In this context, it is relevant to refer to Ex. P-14, a sale deed dated 8-1-1958, on which Sri V. Krishnamurthi placed some reliance. The rate under the said deed would work out to Rs. 30 per sq. yd. Reliance is placed on this deed on behalf of the respondents only to show that the prices were showing an upward trend. In a space of about ten years, between 1948 and 1958, the price had risen by about Rs. 12 per sq. yd. This of course, affords some justification for the allowances made for the rising prices of sites between the dates of the sale deeds Ex. P-15 and Ex. P-16 and the date of the Notification u/s 18 of the City of Bangalore Improvement Act,

It is, however pointed out by Sri Ramachandra Rao, that the municipal sites concerned in the sale deeds, Exs. P-15 and P-16, are all full-fledged building sites, situated in a fully developed locality, whereas the lands under acquisition are in the neighbourhood of slums as could be seen from the evidence adduced on behalf of the parties. If this circumstance is taken into account, even if sites are formed on the acquired lands, so long as they are in the neighbourhood of slums, they would not fetch the same price as the municipal sites concerned in the said sale deeds. We are unable to accept this argument as sound. A slum on a revenue paying land generally sprouts on account of the landlord leasing out in favour of the lessee small bits of land on a monthly rent, subject to the lessee being able to put up a small hutment for his residence. In fact, the evidence in the present case clearly points to this fact. In these circumstances, it would be clear that these slums are of a temporary character and are liable for clearance at the instance of the landlord. We are, therefore, of the view that this circumstance would not operate as a restriction to be taken into account while determining value of the acquired lands on the basis of their potentialities for putting up buildings.

For all these reasons, we are clearly of opinion that the rate of Rs. 18 per sq. yd. as determined by the learned District judge does not call for interference by us. The contention of Sri Ramachandra Rao that the said rate was excessive and unreasonable has, therefore, to fail.

11. We have already referred to the fact that in some cases, the lower Court, while notionally reducing the acquired lands into building sites for the purpose of determining their market value as building sites, has not made any reduction in the area acquired on account of the fact that certain extent of the land would be taken up for the formation of roads, drains, etc. With regard to "lay-out charges", which has to be incurred in all cases, without exception, no deduction has been made by the lower Court on this account from the total compensation determined in any of the cases. The reasons given by that Court in support of the said conclusion is that the lands do not require to be laid into site by providing for roads, drains etc. In other words, the lands can be used as sites as they are, after payment of the necessary "conversion fine" to the State Government. In our opinion, this view of the lower Court is wholly erroneous. We, however, wish to observe that in all cases the learned District Judge has reduced the compensation to the extent of the "conversion fine" payable to the Government, and the same has not been questioned by any one in these appeals.

12. It is a fairly well settled principle that while evaluating an agricultural land situated in the midst of well developed urban localities, its potentiality for building should be taken into account. It is also settled that in the determination of compensation the following three methods could be adopted: (1) the opinion of experts as regards the nature and the value of the land acquired; (2) the prices fetched from the sales of lands with advantages and restrictions more or less similar to those possessed by the acquired lands, at or about the time relevant; and (3) by the capitalisation of the net income from the acquired properties. In the instant cases, the second of the above methods has been adopted. It was no doubt faintly contended at one stage that all these lands were yielding income on account of agricultural and horticultural operations carried on them. But there is no material placed before the Court as to the net income thereof, after allowing for all the expenses incurred in earning such income. Nor has this contention been urged before the lower Court at any time. Hence, recourse to this method is not possible in the circumstances of these cases. Moreover, the method of evaluation of agricultural land situated in a well developed urban locality is fairly well settled. It is, that the lands in question should be notionally reduced into building site after making allowance for the area that might be taken up for providing for the amenities, such as roads, drains etc. and the cost to be incurred in providing for such amenities, and any other factor which may have relevance for the making of such a lay-out. It is not open to the Special Land Acquisition Officer or the Court to take into consideration the extent, nature and the situation of the particular lands in disallowing allowances to be made in regard to the said factors as it must be

remembered that the lands, in order to be evaluated as building sites, have to be notionally reduced into such building sites, and in doing so all the relevant factors concerned in any such process of making of a hypothetical lay-out should be given due weight.

13. For these reasons, we are not in agreement with the conclusions of the lower Court in regard to the allowances to be made for the provisions of amenities and the cost of making a lay-out in regard to the acquired lands. We are, therefore, clearly of opinion that in all these cases, the lower Court should have taken into account the extent of the land required for the provision of amenities and the expenditure that is usually incurred for making a lay-out from agricultural lands.

14. As regards the extent of the land that must be deducted from the area comprised in the lands acquired for the purposes of amenities to be provided, in order to convert the agricultural land into one suitable for buildings in an urban locality, the lower Court has determined such area which might be taken up for amenities to be as 20 per cent of the total area acquired. Though some argument was addressed on behalf of the appellant that that percentage should be increased to 25 to 30, on the material placed before us, we are not persuaded to accept that contention. It is to be remembered that the extents of the lands acquired in these proceedings are very small and in no case it exceeded two acres and six guntas. In these circumstances, having special regard to the size and extent of the individual land acquired, we see no reason to interfere with the determination made by the lower appellate Court that 20 per cent of the land would be sufficient for the provision of amenities in regard to such a lay-out.

15. We have earlier observed that in regard to the "conversion fine" in respect of these lands, no arguments were addressed before us. It is also seen from the order under appeal that the lower Court has in all these cases made proportionate reduction of the compensation on this account.

16. In regard to the "lay-out charges, we have earlier stated that there is no warrant for not making provision for it by reducing the compensation by an amount that might have to be expended for making a layout. We do not think that merely because an agricultural land situated in an urban locality abuts a road, it should be evaluated as a building site, without making any provision for deduction by way of "lay-out charges" apart from any other consideration. For an agricultural land to be laid into sites, the first step to be taken would be to secure permission of the State Government or any other authority empowered in that behalf under the relevant Revenue Laws, for utilisation of the lands for non-agricultural purposes. Such permission is ordinarily granted on payment of a premium popularly styled as "conversion fine". The next step would be to lay it out into sites by the formation of roads, drains and laying of water and electric mains, in addition to providing lung spaces such as parks and playing fields, wherever they are found to be necessary. It is only after all these steps are taken that the land can be said to be a building site in

an urban locality. It is clear from the above that certain percentage of the area of the land which is taken up for the amenities could not partake of the character of building sites, and the said area would be lost to the owner of the land permanently. It is further clear that the formation of roads and drains, and laying out of sewage, water and electric mains would involve considerable expenditure. It is not disputed before us that generally this expenditure is computed on the basis of rate per square yard and it is commonly known as "lay-out charges". In the instant cases, it is in the evidence of the Special Land Acquisition Officer, examined as RW. 1 that the "lay-out charges" at the relevant time were Rs. 3 to Rs. 4 per sq. yd. and this evidence has not been seriously challenged in cross-examination nor was any serious argument addressed before us. It is clear from the evidence of this witness that he had been associated with the City Improvement Trust Board, Bangalore, as its Special Land Acquisition Officer from the year 1954 to 1959. His qualification to speak to the rate, therefore, cannot be seriously in doubt. However, we feel that between the two rates mentioned by this witness, the rate most beneficial to the claimants should be adopted.

We, therefore, hold the "lay-out charges" to be taken into account in determining the total compensation payable to the claimants should be taken as Rs. 3 per square yard. 17. We shall now proceed to determine the compensation in each of these cases keeping in view the above principles and the conclusions arrived at by us. M. F. As. Nos. 7/68 & 261/67 M. F. A. No. 7/68 is by the Special Land Acquisition Officer and M. F. A. No.

261/67 is by the claimant. These appeals concern Survey No. 57/5 measuring 1 acre and 37 guntas. The claimant's appeal relates to enhancement of compensation from Rs. 18 to Rs. 23 to be made before the compensation is actually computed. It is necessary to decide the appeal of the claimant relating to enhancement.

18. On behalf of the claimant, it was contended that S. No. 57/5 was better situated than the other lands. In awarding an uniform rate of Rs. 18 per sq. yd., the lower Court has ignored the additional advantageous features possessed by the land in question. It is bounded by two roads on two sides and is nearer to the well developed localities in the neighbourhood than the other lands. It was contended therefore, that these advantages must be evaluated in terms of money and suitable enhancement made in the rate as determined by the lower Court.

19. Sri Ramachandra Rao, appearing on behalf of the Special Land Acquisition Officer, by way of reply, submitted that the lower Court had in fact taken all these advantages in determining the market value at the rate of Rs. 18 per sq. yd. and in these circumstances the Court was not justified in awarding compensation to the other lands at the same rate. In short, the argument is that the market value of the other lands should be proportionately reduced, retaining the value of the land in question, at Rs. 18 per sq. yd. We are not persuaded to accept this contention urged on behalf of the Special Land Acquisition Officer. We have also held that the

determination of the market value at Rs. 18 per sq. yd. based as it was on Exs. P-15 and P-16, was the proper compensation payable in respect of the lands in question. It, therefore, follows that the market value in respect of the other lands is the correct value payable for such lands. In this view, it follows that in regard to the market value of S. No. 57/5, concerned in this appeal, some increase is permissible in view of its special advantages, as mentioned earlier. The claimant has claimed an increase of Rs. 5 per sq. yd. on this account. On giving our anxious consideration to the matter we think an increase of Rs. 2 per sq. yd. would meet the ends of justice. As a result the market value of the land S. No. 57/5, in question, has to be computed at the rate of Rs. 20 per sq. yd. The appeal of the claimant in M.F.A. No. 261/67 is, therefore, partly allowed to the extent indicated herein.

19. M.F.A. No. 7/68, is an appeal by the Special Land Acquisition Officer against the enhancement generally. The lower Court, in determining the compensation payable has not made any allowance for the expenses to be incurred towards the layout charges. In the light of the earlier discussion, this deduction should have been made from the total compensation payable. To this extent, this appeal succeeds. M. F. A. No. 7/68 therefore stands partly allowed to the extent indicated above.

20. We now proceed to compute the compensation payable. The total extent of the land in terms of sq. yds. would be 9,317. Out of this 20 per cent of the area has to be deducted towards the area to be taken for formation of roads and other amenities. After such deduction, the remaining area is 7,453 sq. yds. The total compensation on such reduced extent, computed at the rate of Rs. 20 per sq. yd. would be Rs. 1,49,060. Out of this sum, an amount towards "lay-out charges" computed at the rate of Rs. 3 per sq. yd. has to be deducted. Such charges work out to Rs. 27,951. In addition, "conversion fine" of Rs. 7,670 as determined by the lower Court has to be deducted. After giving deduction to all these amounts, the net compensation payable to the claimant in L. A. Mis. Case No. 273 of 1961 comes to Rs. 1,13,439. The claimant, therefore, would be entitled to Rs. 1,13,439 which represents its total market value, together with the statutory allowance of 15 per cent on this amount and interest at six per cent per annum on the said sum computed from the date of taking possession of the property in question. The decree in L. A. Mis. Case No. 273/61 stands modified accordingly.

M. F. A. No. 8 of 1968aa 21. This appeal arises from the Order made in L. A. Mis. Case No. 271/61 and the land concerned bears S. No. 57/4 and its extent is 2 acres and 6 guntas. In this case, the lower Court has deducted 20 per cent of the area towards the lay-out for roads, etc. Provision has also been made for the deduction of "conversion fine". But the "lay-out charges" at the rate of Rs. 3 per sq. yd. has not been deducted from the compensation arrived at. After deducting the area and the amount payable as "conversion fine", the lower Court has arrived at Rs. 1,35,936 as the net sum payable as compensation. From this a further reduction towards the "lay-out charges" has to be made, which we have earlier determined as Rs. 3 per sq.

yd. The total area of the land acquired is 10,406 sq. yds. It will, therefore, be seen that a sum of Rs. 31,218 has to be provided, towards the "lay-out charges". After giving deduction to the said sum, the net compensation would be Rs. 1,04,718. The decree in L. A. Mis. No. 271/61, therefore, stands modified accordingly. There shall be a decree for Rs. 1,04,718, which represents its total market value, together with the statutory allowance of 15 per cent on this amount with interest at six per cent per annum from the date of taking possession of the land in question.

M. F. A. No. 9 of 1968

22. This appeal relates to L. A. Mis. No. 94/62. The land in question is S. No. 8, its extent being 1 acre and 34 guntas.

The lower Court has not made any deduction towards area taken up for providing amenities. It has also not deducted any amount payable towards "lay-out charges" computed at the aforesaid rate. We proceed now to compute the compensation.

23. The total area of the land is 8,954 sq. yds. 20 per cent of the said area would be about 1,791 sq. yds. The area left for evaluation as site is 7,163 sq. yds. The total compensation computed at the rate of Rs. 18 per sq. yd. would work out to Rs. 1,28,934. The total of the "lay-out charges" and the "conversion fine" would be Rs. 36,112. After giving deduction to the said sum, the net compensation payable is Rs. 92,822. The claimant in L. A. Mis. No. 94/62 is, therefore, entitled to a sum of Rs. 92,822, as the market value of the land, together with 15 per cent statutory allowance on that sum with interest at six per cent per annum from the date of taking possession of the land.

M. F. A. No. 232 of 1968

24. This appeal arises from the order made by the lower Court in L. A. Mis. No. 272 of 1961. It concerns S. No. 57/2 and the extent involved is 1 acre and 9 guntas. In this case, the claimant had claimed the value of certain wells. The lower Court has rejected the claim in regard to the said wells. Before us also, no arguments were addressed in regard to this question, rightly, in our opinion, as when the land is evaluated as a site, wells and trees standing thereon, cannot be separately valued the reason being that if a land is converted into sites, trees and wells will necessarily have to be cut down or filled up as the case may be. Therefore, we confirm the finding of the lower Court in this behalf.

25. In this case, the lower Court has deducted 20 per cent of the land towards the lay-out for roads etc. After giving such deduction the net area would be 4,743 sq. yds. The compensation payable thereon at Rs. 18 per sq. yd. would be Rs. 85,374. Out of this sum, the amounts due as "conversion fine" and lay-out charges" have to be deducted. These two items add up to Rs. 23,912. The net compensation therefore, would be Rs. 61,462. The claimant is, therefore, entitled to Rs. 61,462, as the total market value together with 15 per cent of that sum as statutory allowance

and interest at the rate of six per cent per annum from the date of taking possession of the land. The decree in L. A. Mis. No. 272/61 stands modified accordingly.

26. In the result, all the above appeals succeed only in part and they are allowed to the extent indicated above. The parties in all these appeals will bear their own costs in this Court.