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Manager, Matha Nagar School Vs Greater Cochin Development Authority and Others
Greater Cochin Development Authority Vs The Manager, Matha Nagar School and Others

Court: Supreme Court of India

Date of Decision: July 9, 2009

Acts Referred: Land Acquisition Act, 1894 â€" Section 23(1A), 4, 4(1), 6, 6(1)

Citation: AIR 2010 SC 106 : (2009) 9 SCALE 442 : (2010) 12 SCC 555

Hon'ble Judges: R. V. Raveendran, J; P. Sathasivam, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

R.V. Raveendran, J.
C.A. No. 6599/2002 is filed by Matha Nagar School, Cochin, (for short "the School") where the issue involved is

the validity of a demand for Rs. 76,48,237/- by the Greater Cochin Development Authority (`GCDA" for short) towards the cost 50.44 Ares of

of land delivered by GCDA to the school. C.A. No. 6600 of 2002 is filed by GCDA against the judgment dated 23.1.2001 passed by a Division

Bench of the Kerala High Court allowing the writ petition (O.P. No. 8749 of 1995) filed by the Matha Nagar School and declaring that the

acquisition notification dated 11.4.1987 issued by GCDA u/s 4 of the Land Acquisition Act and consequential proceedings including the award,

are not binding on the 50.44 Ares of land allotted to the school by GCDA. As the two appeals have common issues and are inter-linked they are

heard and disposed of by this common judgment.

2. One T.V. Joseph was the owner of land bearing survey No. 330/1 (subsequently numbered as Sy. No. 330/4 of Elamkulam) measuring a little

less than an hectare (97.91 Ares) adjoining the Matha Nagar Church and school. In view of the land use being freezed under the "Elamkulam

Road Scheme", he was finding it difficult to put the land to optimum use. He was also in urgent need of funds for his family needs. He therefore

wrote a letter dated 4.8.1981 requesting the GCDA to purchase his land excluding the portion occupied by his residence and give him the market

price therefor. GCDA on considering the said request made an order dated 11.12.1981 accepting the proposal and agreed to purchase the said

land (which had been approximately valued at Rs. 2,59,975/-) and authorized its Special Tehsildar (LA) GCDA to take advance possession of the

land and pay him Rs. 1,25,000 as advance on account. Accordingly possession was taken on 14.12.1981.

3. The school which was functioning near the said land was in urgent need of additional land for its expansion. Therefore it requested GCDA to

allot them an extent of one and quarter acre out of the said land. The GCDA Board considered the request and resolved on 28.2.1982 to transfer

1 acre 24.541 cents to the school. In pursuance of it, the Planning Committee of GCDA at its meeting on 17.12.1983 decided to sell the said

extent of land to the school without any kind of development on the following conditions : (a) the possession of the land would be transferred on

payment of a provisional sum subject to final determination of the value; (b) the sale deed would be executed only on payment of full consideration;

(c) the provisional value of the land to be sold to the school was Rs. 8000 per Are for the dry land portion and Rs. 5000 per Are for the wet land

portion; and (d) the School should pay an additional amount to be determined by GCDA subsequently as its profit. Thereafter, the Board of

GCDA passed a resolution on 31.3.1984 approving the proposal by the Planning Committee to sell the said extent of land to the school. It

directed that the provisional amount to be collected will be subject to final determination and the School should pay 50% of the land cost

determined by LAO as additional amount. The School sent a letter dated 5.4.1984 to GCDA confirming that it was agreeable to pay the cost of

acquisition plus 50%. In pursuance of the above, the GCDA sent a communication dated 17.4.1984 to the school informing that 1 acre 24.541

cents of land was allotted to it subject to a provisional payment of Rs. 310000, the actual value to be determined on completion of land acquisition

proceedings. It was made clear that the sum of Rs. 3,10,000/- was not to be considered as the final land value and no sale deed will be executed

until the land value was fixed and the full amount is paid. It was also informed that the decision of the Board fixing the sale price would be final and

if the amount paid by the School, was not sufficient, it may recover the balance amount by having resort to revenue recovery proceedings. In

pursuance of it, the school paid Rs. 3,10,000/- to GCDA on 7.5.1984 and took possession of the land, which was confirmed by issue of a

possession certificate by GCDA on 9.5.1984.

4. GCDA however did not finalize the full price payable to to T.V. Joseph. It is stated that though proceedings were initiated under the Kerala

Land Acquisition Act (which contained special provision for award based on private agreement). GCDA did not proceed further in the matter.

When matters stood thus, T.V. Joseph died, his legal representatives/successors (hereinafter referred to as the ""land owners"") started interfering

with the possession of the School, apparently on the ground they had not received the full consideration for the land from GCDA. Therefore the

school by letter dated 15.2.1985 requested the GCDA to pay the balance sale price to the landowners. That was not done. The land owners filed

a suit (O.S. No. 436/1985) for getting back the land as the payment was not made. They also filed a writ petition (OP No. 9445/1985) seeking a

direction to GCDA to return the land to them and for declaring the Ernakulam Town Planning scheme with reference to which the said land was

taken, to be inoperative and void. A learned Single Judge of the High Court by order dated 21.10.1985 dismissed the writ petition holding that the

land owners had delivered possession of the land to GCDA on receiving a part of the compensation and therefore the landowners were entitled to

only payment of balance of the compensation and not for return of the land. The writ appeal filed by the landowners was also dismissed on

10.1.1986 and attained finality.

5. Even thereafter GCDA did not arrive at any settlement with the land owners. On the ground that the proceedings initiated under the Kerala

Land Acquisition Act relating to the acquisition of the land had lapsed in September 1986, fresh proceedings were initiated for acquisition by issue

of a notification u/s 4(1) of the Land Acquisition Act, 1894 (''LA Act'' for short) by the state government at the instance of GCDA. It was

followed by a final declaration (gazetted on 16.8.1988) u/s 6(1) of the LA Act and an award was made valuing the land at Rs. 19150/- per Are

for dry land and Rs. 5530/- per Are for wet land. Not being satisfied the landowners sought reference to the civil court and the reference court by

award dated 31.1.1991 determined the compensation as Rs. 13500 per cent in regard to 0.1906 hectares of dry land and Rs. 12,000 per cent in

regard to 0.7885 hectares of wet land. The reference court also awarded 30% solatium on the enhanced land value and 9% interest from

24.12.1981 to 23.12.1982 and thereafter at 15% per annum. The reference court denied additional compensation u/s 23(1A) of LA Act. The

award of the reference court was challenged by the State Government in LAA No. 852 of 1992 and the High Court by judgment dated 24.5.2001

modified the award by fixing the land value as Rs. 10500 per cent uniformly for both dry and wet lands with interest as awarded by the reference

court. The High Court upheld the award of solatium, but denied interest on solatium.

6. In the meanwhile, on the basis of the compensation determined by the reference court, GCDA made a demand on the school on 5.1.1993,

stating that a sum of Rs. 52,16,060.12 was due towards the land cost with solatium and interest, and after deducting a sum of Rs. 3,10,000

already paid by the school, balance due was Rs. 49,06,065.02 and on adding Rs. 26,08,032.50 (50% of Rs. 52,16,065/) towards the profit of

GCDA the total amount due was Rs. 75,14,097.52 and called upon the school to pay the same. The school sent a reply dated 18.2.1993

contending that the land had been acquired from the land owner at an agreed price of Rs. 4500/- per Are for dry land and Rs. 2500/- per Are for

wet land and therefore it was only liable to pay the value on that basis and therefore, the demand was illegal and invalid. Thereafter a revenue

recovery notice dated 23.4.1993 was sent claiming payment of Rs. 73,73,616/- followed by another notice dated 28.7.1993 demanding Rs.

76,48,237/-. Feeling aggrieved the school filed a writ petition (O.P. No. 13813/1993). A learned Single Judge of the High Court dismissed the

petition by order dated 15.6.1994. He held that the school had agreed to pay the enhanced amount as determined by GCDA and a public

development authority like GCDA could not be expected, after paying the market price determined by the court to the land owner, to receive only

a small portion thereof from the allottee. He therefore held that the school was liable to pay the amount demanded. The said decision of the learned

Single Judge was challenged in W.A. No. 1204/1994 which was dismissed by judgment dated 21.10.1994, subject however to an observation

that if there was any error in calculation of the amount claimed by GCDA, the school may get the amount checked by GCDA and pay only the

actual amount due. The said judgment is challenged by the school in CA No. 6599/2002.

7. When the Division Bench rendered the said judgment upholding the demand, apart from filing an SLP challenging the said judgment, the school

filed another writ petition in (O.P. No. 8741/1995) challenging the acquisition notification dated 11.8.1987 u/s 4(1) of the LA Act and all

consequential proceedings there from, as being null and void. The said writ petition was allowed by a Division Bench of the High Court by

judgment dated 23.1.2001. The High Court held that T.V. Joseph had agreed for a compensation of Rs. 2,59,975/- determined by GCDA and on

that basis the land had vested in GCDA and GCDA had also sold a portion of it to the school and therefore there was no question of any ''lapse of

acquisition'' nor was there any need for a subsequent acquisition in a proceeding initiated under preliminary notification dated 11.8.1987; and

therefore the land-owners were entitled to claim only balance of the price. The High Court also held that as the school was in possession, without

issuing any notice to it, fresh proceedings for acquisition could not have been commenced and that was a colourable exercise of power. Lastly, the

High Court found that in regard to a neighbouring land, in similar circumstances, a consent award had been made with reference to the agreement

between the landowners and the GCDA, and therefore a similar procedure ought to have been followed instead of initiating a fresh acquisition

proceedings. Consequently, the High Court held that the preliminary notification dated 11.8.1987 and consequential proceedings for acquisition

were not binding on the land that was allotted by the GCDA to the school. The said order is challenged by GCDA in CA No. 6600/2002.

8. On the contentions urged, the following questions arise for consideration:

(i) Whether the land of T.V. Joseph had vested in GCDA and therefore it was unnecessary to initiate fresh acquisition proceedings under

preliminary notification dated 11.8.1987 followed by final declaration dated 16.8.1988 and award ?

(ii) Whether the school is liable to pay for the land given to it, only at the rate of Rs. 4500 per are of dry land and Rs. 2500 per are of wet land?

Or whether they are liable to pay the actual acquisition cost incurred by GCDA?

(iii)Whether GCDA is entitled to claim from the School, 50% of the amount acquisition cost, as profit in addition to the actual acquisition cost?

Re : Question (i)

9. The order dated 11.12.1981 of GCDA accords sanction for acquisition of T.V. Joseph''s land and refers to the approximate valuation in 1981

as Rs. 2,59,975. Even though possession was taken, only an advance of Rs. 125000, was paid to the land-owner. There was no agreement on

price, nor any consent award. There is nothing to show that T.V. Joseph or his LRs. had agreed to receive Rs. 2,59,975/- as full and final price.

Even the resolution allotting a part of the land to the school stated that the possession of the land had been taken in advance of the acquisition

proceedings and full compensation was yet to be paid to the landowner. It is possible that if GCDA had paid the entire value to the landowner in

the year 1981 itself by negotiating the final price, the landowner might have accepted Rs. 2,59,975 or some increase thereon in full and final

settlement. But except paying an advance of Rs. 125000 and taking possession, GCDA did not complete the transaction. Therefore it cannot be

said that the land vested in GCDA, merely on negotiations and possession, without any declaration u/s 6 or an award. Consequently the acquisition

proceedings initiated by issue of a notification dated 11.8.1987 u/s 4(1) of the Act, cannot be said to be redundant or unnecessary. But for such

acquisition proceeding, the land would not have legally vested in GCDA and the school might not have got a valid title to the land in spite of

delivery of possession. The proceedings for acquisition and the consequential proceedings for determination of compensation can not therefore be

said to be illegal or irregular.

Re : Question (ii)

10. The contention of the school that it was liable to pay only at the rate of Rs. 4500 per are for dry land and Rs. 2500 per are for the wet land, is

wholly untenable. The proceedings of the GCDA Planning Committee dated 17.12.1983 makes it clear that what was initially to be collected was

only a provisional amount, that the tentative rate of Rs. 8000 per are for dry land and Rs. 5000 per are for the wet land mentioned in the

proceedings, were provisional subject to finalization, and that full cost to be paid by the School would be known only after full settlement of the

claim of the landowners. Again by letter dated 17.4.1984 GCDA informed that Rs. 310000 was not the actual cost but was only a provisional on

account payment and the school had to pay the actual amount determined in the land acquisition proceedings. In fact the school had given a letter

dated 5.4.1984 offering to pay the amount so determined. The School, having taken possession of the land by agreeing to pay the actual

acquisition cost, cannot contend that the acquisition proceedings were null and void. It should also be noted that when there were delays and

laches on the part of GCDA, the school remained a silent spectator without taking any legal action to quicken the process. It can not therefore

escape its liability to pay the actual cost determined with reference to the compensation paid to the land owners.

Re : Question (iii)

11. This takes us to the next question as to whether GCDA should get 50% in addition to the cost as its profit. The proceedings dated 17.12.1983

provided that profit to be recovered from the school will be finalized later. It should be noticed that the profit that it was contemplating at that

juncture was with reference to a price in the range of Rs. 8000 per Are of dry land and Rs. 5000 per Are for wet lands. The said proceedings did

not say that 50% of the actual amount paid to the landowners should be paid as profit. The letter dated 17.4.1984 also does not say that 50%

should be paid as profit. The Board of GCDA at its meeting on 31.3.1984 while approving the recommendation of Planning Committee to sell 1

acre 24.541 cents to the school without development, stipulated that the transfer of land will be after payment of cost of the land determined with

reference to the actual amount paid for the land towards the land acquisition plus 50% thereof. The school also by letter dated 5.4.1984 stated that

it was agreeable to pay the land acquisition cost plus 50%.

12. If GCDA, to say the least, had acted with lack of care, diligence and expedition. As noticed above, the landowner offered the land on

4.8.1981, GCDA agreed to purchase the land on 11.12.1981, paid an advance of Rs. 125000 and took possession on 14.12.1981. There was

no impediment to negotiate and arrive at a final price with the land owner and pass a consent award. GCDA also had the sum of Rs. 310,000/-

received from the school at its disposal for paying any agreed price and the said sum would have covered the amount that was initially assessed as

the value of the land namely Rs. 259,975/- or even something more. Instead of negotiating the price and paying the balance in full and final

settlement, GCDA without any cause or justifiable reason, failed to settle the matter with T.V. Joseph, protracted the entire matter necessitating

acquisition proceedings to be initiated on 11.8.1987.

13. If GCDA had acted promptly and diligently by paying the amount due to the landowner from the amount recovered from the school, the huge

liability to the land owner could have been avoided and even 50% profit that would have been payable by the school would have been nominal.

Further, even as per the condition stipulated by GCDA, 50% could be claimed as profit, only on the actual compensation and not on the solatium

or interest paid by GCDA. GCDA cannot be permitted to make a profit out of its own delay and negligence. As the entire agreement to pay 50%

profit to GCDA was in the context of a negotiated price being paid to the land owner and that was thwarted by the negligence and inaction on the

part of GCDA, it cannot, in addition to saddling the school with a huge liability towards the cost of land, arbitrarily claim as profit, 50% of the huge

acquisition cost most of which is made up of interest. We therefore consider it appropriate to restrict the 50% profit claimed by GCDA, only on

the amount indicated by it as the probable cost of the land in its proceedings dated 17.12.1983.

14. GCDA has provided a statement showing the actual cost of the land given to the school (50.44 Ares) on the basis of acquisition cost, from

which figures at (i), (ii) and (iii) are extracted. We have arrived at the amount due to GCDA in the following manner:

(i) Total cost of acquisition of 97.91 ares Rs.89,29,131.08

of land (compensation with statutory

payment and interest as per judgment

of the High Court)

(ii) Cost incurred by GCDA per are Rs. 91,197.34

(iii) Actual cost of 50.44 Ares Rs.45,99,994.00

(iv) Profit at 50% on the tentative cost of 50.44

ares of the land (shown as Rs.8000/- per

are for 20% and Rs.5000/- per are for

the remaining 80% of the land, average

being Rs.5600/- per are). Rs. 141,232.00

Total of (iii + iv) Rs.47,41,226.00

(v) Less : Amount already paid by School Rs. 3,10,000.00

Balance amount payable by School Rs.44,31,226.00

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15. In view of the above and with the intention of doing complete justice between the parties we direct as follows:

(i) The school shall pay Rs. 44,31,226/- to GCDA in full and final settlement within four months from today. (If the school has paid any amount in

addition to Rs. 310,000/-, it will be entitled to adjustment thereof). If the school fails to pay the same within the time granted, the school shall be

liable to pay interest on the amount due at 15% per annum from this date to date of payment.

(ii) The landowners will be entitled to the compensation and other statutory benefits as awarded by the High Court in the judgment dated

24.5.2001 in LAA No. 852/1992. They will not be entitled to claim any additional amount u/s 23(1A) or interest on solatium by way of review or

amendment. [This is because the judgment has an error benefiting the landowners as it awards interest from the date of taking possession instead of

from the date of preliminary notification and because the order dated 24.5.2001 specifically denying additional amount u/s 23(1A) and interest on

solatium has attained finality.]

(iii) GCDA will not be entitled to claim any other amount from the school for the 50.44 ares of land.

(iv) Parties to bear their respective costs.