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STATE OF MAHARASHTRA ETC.

v.

DIGAMBAR BHIMASHANKAR TANDALE AND ORS. ETC.

FEBRUARY 2, 1996

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[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Land Acquisition Act, 1894 :

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Compensation—Award of—When large extent of land is acquired sales of small pieces of land though genuine cannot be relied upon—Also on date of notification though lands converted into non-agricultural lands, there was no development in the area—The lands did not possess potential value as building site on the date of notification—Therefore compensation cannot be determined on sq. yd. or Sq. mt. basis—However lands situated near Thermal Power Station fixed at Rs. 40,000 per acre—Claimants entitled to solatium and interest as also interest on enhanced compensation.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3374-76 of 1996 Etc.

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From the Judgment and Order dated 8.3.94 of the Bombay High Court in F.A. Nos. 68, 70 and 71 of 1988.

D.M. Nargolkar and A.S. Bhasme for the Appellants.

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V.N. Ganpule, Ashok Kumar Singh, Ms. Punam Kumar and A.B. Lal for the Respondents.

The following Order of the Court was delivered :

Delay condoned. Leave granted.

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We have heard the counsel on both sides. The notification under Section 4(1) of the Land Acquisition Act was published in the State Gazette on July 14, 1977 acquiring 12.50 acres of land for extension of the Thermal Power Station at Parali Vaidyanath Municipality. The Land Acquisition Officer in his award dated 20.9.1978 determined the compensation at Rs. 3,000 per acre, namely, 72.5 per Acre, On reference, the

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Additional District Judge by his award and decree dated April 27, 1987

enhanced the compensation at Rs. 5 per sq. ft. On appeal, the High Court while confirming the said determination, reduced 1/3rd of the amount towards development charges. Thus these appeals by special leave by the State as well as by the Electricity Board and also by the claimants against the deduction of 1/3rd amount. Thus these appeals are heard together. A

The only question is : what will be the just and adequate compensation to which the lands are capable to fetch in open market? It is settled law that the determination of compensation on sq. ft. basis is an illegal principle followed by the courts. The reference Court on feats of imagination has done it. When 12.50 acres of land is sought to be acquired, no reasonable prudent purchaser would come forward to purchase the land on the sq. ft. basis. It would be incredulous to believe such a purchase. Therefore, the premise on which the reference Court and the High Court had proceeded to determine the compensation is obviously illegal. It is not in dispute that as on the date of the notification the lands were agricultural lands though situated within the municipal limits. It is also in evidence that the lands were converted for non-agricultural purpose. But as on the date of notification there was no development in that area. the oral evidence was adduced in which it was shown that upto a distance of 3/4th km. to the lands there was development. Some illegal constructions were made on the lands. Under those circumstances, as on the date of the notification there was no potential value to the lands though converted into non-agricultural lands. The determination of the compensation on the basis of the potential value is also illegal. B C D E

The reference Court has relied upon several sale deeds dated 14.1.1976, Exs. 48, 49 and 50 of a small extent of land sold on sq. ft. basis and on that premise the Court had determined the compensation. It is settled law that when a large extent of land is acquired, the sales of small pieces of land though genuine, cannot be relied upon as the basis to determine the compensation. Accordingly, they are excluded. Having excluded those documents, there is no other acceptable evidence to determine compensation on the basis of sq. yd. or sq. mtr. Accordingly, it is not capable to determine the compensation on sq. yd. or sq. mt. basis since the lands are not possessed of potential value as building site as on the date of notification. F G

The question then is what would be the just, fair and adequate H

- A compensation the lands can fetch? In the facts and circumstances and in view of the statement made by the Land Acquisition Officer that the lands are abutting the Thermal Power Situation, the possibility of extension for building purpose can also be easily ruled out. However, the compensation for the lands situated near the Thermal power Station can be fixed at Rs. 40,000 per acre.

- C Accordingly, the appeals of the State as well as the Electricity Board are allowed and that of the claimants is dismissed. The claimants are entitled only to payment of solatium and interest under the Act as amended by Act 68 of 1984. They are entitled to interest at 9% per annum for one year on enhanced compensation from the date of taking possession and thereafter at 15% till the date of deposit. They are also entitled to payment of solatium at 30% on the enhanced compensation. However, they are not entitled to payment of additional amount under section 23(1-A) of the Land Acquisition Act. No costs.

G.N.

Appeals of State and
Electricity Board are allowed
and claimants appeal dismissed.