

A THE LAND ACQUISITION OFFICER AND ASSISTANT
COMMISSIONER, MANGALORE

v.

BELEKAL KRISHNA BHAT

B AUGUST 7, 1996

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

Land Acquisition Act, 1894 :

C Ss.11, 18, 23(i) and 54—Acquisition of land—Compensation—Deter-
mination of—Land acquisition Officer determining compensation at the rate
of Rs. 2,50,000 per acre—Reference Court enhancing the compensation to Rs.
4,50,000 per acre—High Court further enhancing the compensation to Rs.
6,00,000 per acre relying on a sale deed for 71/12 cents of land regarding which
D reference court had recorded a finding that the sale was not a bona fide
transaction and was intended to inflate the market value—Held, High Court
was not at all justified in reversing the finding of reference court—Judgment
and decree of High Court set aside and that of reference court restored.

Evidence Act, 1872 :

E Statement of witness—Appreciation of—Before the reference court
under Land acquisition Act the witness admitted in respect of a sale deed
that he was aware of the proposed acquisition before the sale deed was
executed—High Court while interpreting the statement, and adding 'not' there-
in held that the witness denied the knowledge of acquisition—Held, it was not
F open to High Court to read something which would defuse the effect of the
admission made by the witness—Reference court had the advantage to ob-
serve the demeanour of the witness in the witness box which the appellate
court did not have.

G CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4415-16
of 1986.

From the Judgment and order dated 26.5.1982 of the Karnataka High
Court in M.F.A. No. 541 and 542 of 1977.

H M. Veerappa for the Appellant.

S.N. Bhat for the Respondent.

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The following Order of the Court was delivered :

A Notification under Section 4(1) of the Land Acquisition Act 1 of 1894 (for short, the 'Act') was published in the State Gazette on September 17, 1970 acquiring 11 cents of land in question for establishing a post office. The Land Acquisition Officer determined the compensation at Rs. 2,50,000 per acre. On reference, the Civil Judge by his award and decree dated May 28, 1977 enhanced the compensation to Rs. 4,50,000 per acre. On further appeal under Section 54 of the Act, the High Court by the impugned judgment dated May 26, 1982 further enhanced the amount to Rs. 6,00,000 per acre. Thus this appeal by special leave.

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It is not in dispute that the respondent relied upon the sale deed (Exhibit P-9) dated August 12, 1970 executed by P.W. 2 under which 71/12 cents were sold at the rate of Rs. 48,000 which worked out to the rate of Rs. 6 lakhs per acre. Another document relied on was Exhibit P-7, lease deed dated July 10, 1961 with provision renewal for a further period of ten years. The renewal from time to time first of which would be in July 19, 1971 with the enhanced lease amount which would work out on applying suitable multiplier to the rate of Rs. 5,280 per year. With the said multiplier, the compensation would work out to Rs. 4,50,000 per acre.

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The question is : whether the High Court was right in placing reliance on Exhibit P-9, sale deed? It was suggested to the witness in the cross-examination that he was aware of the acquisition and having had knowledge he got the sale deed executed to inflate the market value. He admitted that he was aware of the proposed acquisition and that thereafter the sale deed came to be executed. The High Court has interpreted this admission as the 'not' was not omitted in recording the evidence and that, therefore, 'not' was to be added. Adding the word 'not', the High Court held that he denied the knowledge of acquisition. The Civil Judge has rightly considered this aspect of the matter and recorded the finding that sale under Exhibit p- 9 is not a *bona fide* transaction and was pressed into serve to inflate the market value. The reasoning of the Civil Judge is correct. The High Court read something which was not recorded. The witness had admitted that he was aware of impending acquisition and got the sale deed executed; yet the High Court held that the Civil Judge would not have omitted the word 'not'. If really the witness had denied and yet the Judges wanted to, then

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- A the witness would have objected at the time of recording or signing the evidence of the witness which was not done. The counsel who appeared before the civil Court has also not contested it to be a mistake. Therefore, it was not open to the learned Judges of the High Court to read something which would defuse the effect of the admission made by the witness. Even otherwise, it would be common knowledge that the acquisition would take long time. It would be known to the people in the locality, when documents proximate to the time of acquisition were set up for inflating the compensation. The Court has to look into the attending circumstances whether documents are brought into existence with the intention to inflate the market value or are true and genuine documents; consideration is a device to know whether the vendor and the vendee are genuine parties or privy to pass off sale process. The Civil Judge has rightly gone into all these questions and disbelieved Exhibit P-9 as genuine one. The Division Bench was, therefore, not at all justified in reversing that finding of the civil Judge on strange reasoning and came to its own conclusion. It is settled law that civil Judge had advantage to observe the demeanour of the witness in the witness box and he formed his own opinion about the witness which the appellate Court did not have.
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The appeal is accordingly allowed. The judgment and decree of the High Court is set aside and that of the reference Court, civil Judge stands restored, but, in the circumstances, without costs.

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R.P.

Appeal allowed.