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**(1995) 09 AP CK 0038**  
**In the Andhra Pradesh High Court**  
**Case No : L.P. Appeal No. 36 of 1990**

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| B. Narasimha Reddy and Another      | APPELLANT  |
| Vs                                  |            |
| Revenue Divisional Officer (L.A.O.) | RESPONDENT |

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**Date of Decision :** 06-09-1995

**Acts Referred:**

Land Acquisition Act, 1894 — Section 23, 4(1)

**Citation :** (1996) 1 ALT 356 : (1996) 2 APLJ 358 : (1996) 1 APLJ 358

**Hon'ble Judges :** Ramesh Madhav Bapat, J;P. Venkatarama Reddi, J

**Bench :** Division Bench

**Advocate :** P. Innayya Reddy, for the Appellant; Govt. Pleader for Education, for the Respondent

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## Judgement

P. Venkatarama Reddi, J.—This Letters Patent Appeal is preferred against the judgment in Appeal No. 347/84 filed by the respondent herein u/s 54 of the Land Acquisition Act questioning the award made by the learned Subordinate Judge, Nalgonda, in O.P. 31/82 on a reference u/s 18 of the act.

2. An extent of Ac. 6-00 of land belonging to the appellants in Survey No. 493 situate at Nakrekal village, Nalgonda district was acquired under the provisions of the Land Acquisition Act for the purpose of providing house-sites to poor. The notification u/s 4(1) of the Act was published in the Nalgonda District Gazette on 25-10-1977. The Land Acquisition Officer passed the award on 26-8-1981 fixing the compensation at the rate of Rs. 2,000/- per acre. The appellants protested and sought reference to the civil court. Appellants claimed compensation to be awarded at the rate of Rs. 30/- per sq. yard. Two agreements of sale and two registered sale-deeds were relied upon before the reference Court by the claimants as furnishing proof of comparable sale value of the land acquired. The learned Subordinate Judge placed reliance only on Ex. A-5 which is a registered sale-deed executed on 17-2-1976 by one Sogara Begum in favour of Kotagiri Somaiah. Under that sale-deed, an extent of 363 sq. yards situate in S.No. 334 of the same village was sold for the alleged consideration of Rs. 3,630/-. In view

of the fact that the land covered by Ex. A-5 is nearer to the village than the acquired land and having regard to the distance of the acquired land from the village, the learned Subordinate Judge did not fix the compensation at the same rate as in Ex. A-5, but fixed the compensation at Rs. 30,000/- per acre. The Land Acquisition Officer (respondent herein) filed appeal in this Court. The learned Single Judge allowed the appeal for the reasons hereinafter mentioned, and fixed the market value at Rs. 15,000/- per acre. It may be stated that the appellants-claimants filed cross-examinations. As a consequence of allowing the appeal filed by the Land Acquisition Officer, the cross-objections of the claimants were dismissed. Aggrieved by the judgment of the learned single Judge, the present Letters Patent Appeal has been filed.

3. Before proceeding further, we may note that the learned single Judge was not inclined to place reliance on Ex. A-5 for two reasons. Firstly, the sale under Ex. A-5 is in respect of a small extent of 363 sq. yards of site situate in an adjacent village and it is one Km away from the land in question, and secondly, though the sale-deed was marked in evidence, neither the vendee nor the vendor was examined to show the circumstances under which the sale-deed came to be executed and as regards the passing of consideration. Having felt that Ex. A-5 cannot form a reasonable basis for determination of the market value, the learned Judge made a reference to the fact that surrounding lands in the village were being sold as house sites and fixed the market value at Rs. 15,000/- per acre on a rough and ready basis.

4. The learned Counsel for the appellants has assailed before us the correctness of the reasoning adopted by the learned single Judge in disregarding the sale covered by Ex. A-5. As far as the first reason is concerned, there seems to be an apparent mistake in the impugned judgment in assuming that the land acquired and the land covered by Ex. A-5 are in different villages. But we find from the evidence on record that both the parcels of land are located in the same village in different survey numbers. If the sale transaction is otherwise proved and found relevant, the court need not discard the same merely because it relates to small extent of land. It is well settled that even small plots will form the basis for fixation of compensation of larger extents in the absence of any other evidence subject to making appropriate deductions for development, etc.

5. But the more formidable objection is the one pointed out by the learned single Judge, that is to say, the non-examination of the vendor or vendee or a person connected with the execution of the document. In this context, the learned Counsel for the appellants has placed reliance on a Division Bench judgment of this Court in *Sub-Collector, Vijayawada v. Rahimunnisa* 1976 (1) APLJ 4 : A.S. No. 729/72, dt. 25-11-1975. Reference was made in the said judgment, to two unreported judgments rendered by two other Division Benches of this Court in A.S. 490/66 dated 16-4-1970 and A.S. 620/69 dated 30-12-1971. The learned Judges held therein that when the claimants have been relying upon certain sales from the inception and produced the sale deeds into the Court, the court cannot

refuse to look into those documents merely because the claimants have not examined either the vendor or the vendee. Once those sale-deeds have been produced into the Court and when there is no contest from the respondents that they do not represent bona fide transactions, it is not necessary that the claimants should call either the vendor or the vendee, in order to prove that it is a bona fide transaction of lands possessing similar advantages.

6. But, we must take note of the fact that much water has flown under the bridge subsequent to the aforementioned decision. The proposition laid down in the above case can no longer be countenanced in view of the subsequent pronouncements of this court and the Supreme Court to which we may make a brief reference. In *Tahsildar, L.A. v. P. Narasing Rao* 1985 (2) ALT 492 : 1985 (1) APLJ 99, K. Ramaswamy, J. speaking for the Division Bench expressed the view that unless the relevant recitals in the sale-deed including passing of consideration is admitted, mere marking of the document does not amount to proof that consideration recited under that document is the actual consideration paid thereunder. It was also pointed out that "substantive evidence as to price paid would be the testimony of the persons who had actual personal knowledge of the matter viz., the buyer and the seller or the person present at the time of settlement of bargain or payment." It was then observed:

"The recitals in the sale-deed can be the evidence of the matter only if they are relevant as admissions. The non-objection for the reception of the document evidenced cannot be regarded as tantamounting to the admission by the respondent that the price mentioned in the document were the prices really paid though of course it was open to them to have admitted that and dispensed with proof thereof. At the most, it can be said that the appellant did not dispute that the documents were in fact executed by the persons whom they purported to have been (sic) executed and nothing more."

It may be noticed that the earlier Division Bench judgments (referred to supra) were not noticed by this Division Bench. The decision of the Gujarat High Court in *Maharao Shri Madansinhji Vs. State of Gujarat*, , which was dissented from by the Division Bench in *Rahimunnisa* case (1 supra) was cited with approval by the Division Bench in *P. Narasing Rao* case (2 supra). The decision in *Seemakurty Achyutam Vs. Seemakurti Kasi Annapurnamma and Others*, , which was followed by the Division Bench in *Rahimunnisa* (1 supra) was impliedly disapproved in the above case.

7. The correctness of the Division Bench decision came up for consideration before a Full Bench in *Land Acquisition officer v. N. Venkatarao* 1990(3) ALT 305. The Full Bench laid down three legal propositions. Firstly, if the oral sale-deed or certified copy thereof is marked as Exhibit without any objection, it cannot be contended later that it cannot be looked into as none connected therewith was called as a witness. Secondly, the certified copies furnished by the Sub-Registrar must be treated as secondary evidence and once they have acquired such a status, the marking of such documents at the trial without any objection results

in such documents and their contents being evidence in the case; and thirdly, the list of sale-transactions mentioned in the award by the Land Acquisition Officer cannot be treated as evidence before the Court. The Division Bench ruling in P. Narasinga Rao (2 supra) was referred to and over-ruled by the Full Bench. Adverting to the decisions of the Kerala and Madhya Pradesh High Courts viz., State of Kerala Vs. Mariamma Abraham and Another, , P.R. Modi Vs. The Collector, Durg, and The Collector Vs. Chaturbhuj Panda and Others, , and dissenting from the views expressed in P. Narasinga Rao's case (2 supra), it was observed :

"Further we find that certain passages in the said judgments accept the admissibility of the certified copies and say that unless there is corroborative oral evidence regarding the price mentioned in the deeds, the recitals by themselves cannot be relied upon. That is a matter dealing with sufficiency of evidence rather than admissibility."

After this Full Bench judgment, we find a series of decisions from 1992 onwards rendered by several Division Benches of this Court to which Radhakrishna Rao, J. was a party in which it was consistently held that in the absence of the examination of the parties to the sale-deeds, such sale-deeds, though not challenged, have no evidentiary value and relevance in arriving at the market value of the acquired land as on the relevant date. (Vide The Revenue Divisional Officer Vs. Raja J. Rameswara Rao and Another, , The Mandal Revenue Officer and Another Vs. Sri Sri Sri Jagannadhaswamyvari Temple, , P. Ram Reddy Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, and Sridevamma v. Sub-Collector, Madanapalle 1993 Supp.1 ALT 197. In Ram Reddy case,<sup>11</sup> Radhakrishna Rao, J. speaking for the Division Bench relied upon the judgment of the Supreme Court in Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, and Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, and expressed the view that the observations of the Full Bench on the question of admissibility of certified copies of the sale-deeds in evidence without proof is not good law. Whether or not the learned Judges were right in observing that the view taken by the Full Bench on the question of the very admissibility of certified copies of sale-deeds in the absence of objections raised by the other side is good law in the light of the pronouncements of the Supreme Court is a question on which we do not propose to express any opinion. We are not inclined to go so far as to say that the law laid down by the Full Bench stands completely over-ruled by the Supreme Court. Suffice it to observe that even the Full Bench did not lay down that the certified copies once admitted and marked without objection, the contents there of should automatically be accepted as true and genuine. On the other hand, it was indicated that corroborative oral evidence may be insisted by the Court without regarding the production of sale deeds as sufficient.

8. We are relieved of the necessity to dilate further on this aspect of view of the decision of the Supreme Court in Periyar and Pareekanni Rubber Ltd. v. State of

Kerala (14 supra). In that case, K. Ramaswamy, J. speaking for the Division Bench of the Supreme Court referred extensively to the observations made in *Tahsildar, L.A., Visakhapatnam v. P. Narasinga Rao* (2 supra) to which His Lordship was a party. It was observed :

"In proof of the sale transaction, the relationship of the parties to the transaction, the market conditions, the terms of the sale and the date of sale are to be looked into. These features would be established by examining either the vendor or vendee and if they are not available, the attesting witnesses who have personal knowledge of the transaction etc. The original sale deed or certified copy thereof should be tendered as evidence. The underlying principles to fix a fair market value with reference to comparable sales is to reduce the element of speculation. In comparable sales, the features are: (1) it must be within a reasonable time of the date of notification; (2) it should be a bona fide transaction; (3) it should be a sale of land acquired or land acquired adjacent to the land acquired; and (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as stated above the parties to the sale or persons having personal knowledge of the sale transactions. The proof also would focus on the fact whether the transactions are genuine and bona fide transactions."

9. After referring to the decision in *Mehta Ravindrarai Ajit rai case* (13 supra) (which was relied upon by Radhakrishna Rao, J. in *Sri Jagannadhaswamy Vari Temple case* (10 supra), the Supreme Court observed:

"In *Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat*, , this Court reiterated the ratio in *West Bengal Administrator General's case* that the persons to prove the fair (sale) transaction are either the vendor and the vendee or the person conversant with the sale and they are to be examined. The original sale deed or the certified copy of the sale deed are to be produced. The same is the view in *Dr. Hari Singh Thakur's case*. This was also the view of the *Andhra Pradesh High Court in Narasing Rao's case* (2 supra)."

10. On a conspectus of the various decisions adverted to above, it must be taken to be settled law that someone connected with the document who is in the know of relevant particulars contained in the document and the features of the property sold must be examined to impart credibility to the transaction and to establish its relevance. It is not enough if the certified copy of the registered sale-deed is produced and marked as an exhibit without demur by the other party. Technically, in the absence of any objection, such document can at best be treated as a document legally admissible in evidence and there may not be taboo to look into it, as pointed out by the Full Bench in *Land Acquisition Officer v. N. Venkata Rao* (5 supra). But, from the catena of decisions adverted to above, it has emerged as a rule of prudence to insist on the examination of a party to the transaction or an attest or who can speak to the relevant facts. The underlying ratio seems to be that the oral evidence of the transaction embodied in the document lends assurance to the correctness of the recitals and bona fides of the

transaction. The other side will have an opportunity to elicit the truth and information on material particulars.

11. Viewed in this background of the settled legal position, we have no doubt that the facts of the case underscores the need to examine the vendor or vendee of the sale-transaction covered by Ex. A-5. On a perusal of Ex. A-5, it is seen that the consideration was paid on 20-1-1973 i.e., three years earlier pursuant to an anterior agreement of sale. The related agreement of sale has not been produced. In a transaction of this nature where an anterior agreement of sale and passing of consideration pursuant thereto is being relied upon, it would have been in fitness of things to examine the vendor or vendee. Moreover, the particulars regarding the location of the land and the special advantages, if any, possessed by the land are not evident from the sale-deed. P.W.I admitted that the acquired land is quite far off from the site sold under EX. A-5. Some light would have been thrown by examining a person connected with the document to establish not only the passing of the sale consideration, but also the features of the land and the circumstances under which the said land was purchased at the rate of Rs. 10/- per square yard even in the year 1973. The failure to examine the vendor or vendee connected with the sale deed is therefore fatal to the appellants' case and we agree with the learned single Judge that the trial Court was not justified in placing reliance on Ex. A-5, especially when it relates to a small plot of land located in the village proper.

12. The learned Counsel for the appellants has contended that an opportunity may now be given to the appellants to adduce oral evidence by examining the vendor or vendee of Ex. A5 and the matter be remanded for this purpose. The learned Counsel for the appellants seeks support from a passing observation of the Supreme Court in Mehta Ravindrai Ajitrai (13 supra). We may straightaway point out that the Supreme Court has not expressed any view on the question whether in the given circumstances of the case, the remand which was ordered by the High Court was correct or not. The Supreme Court merely referred to the fact that after remand, the situation did not improve because the evidence of a party who was a minor at the time of execution of the document was let in. Moreover, no hard and fast rule can be laid down on the propriety or desirability of remanding a case to the trial Court. It is well settled that a remand cannot be ordered solely to enable the litigant to improve his case by adducing additional evidence or to fill up the lacuna in the case. That apart, a remand at this long distance of time may lead to travesty of justice. The transaction took place in the year 1976, pursuant to the alleged agreement of sale that was entered into in the year 1973. It is difficult to expect at this stage that the attendant facts culminating into the transaction and various relevant particulars will come to the surface in their correct perspective. We do not therefore consider it a fit case to direct remand. Incidentally, we may point out that the Division Bench of this Court in Sri Jagannadha Swamyvari Temple case (10 supra) rejected a similar request for remand.

13. Before closing our judgment, we may refer to the fact that the learned single Judge fixed the compensation at Rs. 15,000/-and directed usual benefits under the Amendment Act to be accorded. We would like to clarify that in view of the Constitution Bench judgments of the Supreme Court reported in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , K.S. Paripoornan Vs. State of Kerala and Others, and the latest decision in Mir Fazeelath Hussain and others Vs. Special Deputy Collector Land Acquisition, Hyderabad [OVERRULED], , the appellants are entitled to solarium at 30% as per the Land Acquisition Amendment Act and enhanced rate of interest inasmuch as the award of the Court came to be passed in the instant case on 30-8-1993 i.e., in between the two crucial dates specified in the judgment of the Supreme Court. Accordingly, we reaffirm the finding that the appellants will be entitled to solarium at 30% and higher rate of interest on the compensation amount as per the Land Acquisition (Amendment) Act of 1984.

14. In the result, the appeal is dismissed subject to the above clarification. No costs.

15. The learned Counsel for the appellants has made an oral request seeking leave to appeal to Supreme Court of India. We do not think that any substantial question of law of general importance which is fit to be decided by the Supreme Court is involved in the instant case. We, therefore, decline to grant Certificate under Article 134A read with Article 133(1) of the Constitution.