
(1961) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Appeal No's. 276 and 298 of 1958

District Welfare Officer, Guntur

APPELLANT

Vs

Pillalamarri Ramakrishna Somayajuly and Others

RESPONDENT

Date of Decision : 27-07-1961

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 24

Citation : AIR 1963 AP 328

Hon'ble Judges : Satyanarayana Raju, J; Anantanarayana Ayyar, J

Bench : Division Bench

Advocate : M.V. Nagaramayya, for N.V.B. Sankara Rao, Govt. Pleader, A. Venkata Ramana and M.B. Rama Sarma, for the Appellant; M.B. Rama Sarma, N.S. Raghavan, Principal Government Pleader and A. Venkata Ramana, for the Respondent

Final Decision : Dismissed

Judgement

Satyanarayana Raju, J.—These are two connected appeals from the judgment and decree of the Court of the Additional Subordinate Judge, Guntur in O. P. No. 18 of 1954 modifying an award of the Land Acquisition Officer.

2. The land to which these appeals relate consists of an area of 4 acres and 10 cents and is situated in Malkapuram Agraharam. This land was acquired by Government for the purpose of providing house sites for harijans pursuant to a Government notification, dated the 13th May, 1953 issued under the provisions of the Land Acquisition Act. On the date of the notification, the land was occupied by two tenants. The tenants did not prefer any claim for compensation, but the land-holder (hereinafter referred to as "the claimant") demanded compensation at the rate of Rs. 3,000/- per acre. The Land Acquisition Officer decided to apply a flat rate in respect of the land under acquisition and to fix flat rate at Rs. 1,000/- per acre.

3. The claimant did not accept the award and he duly required the valuation of his land to be referred for the determination of the Court u/s 18 of the Land

Acquisition Act. The case was in due course referred by the Land Acquisition Officer to the Court of the Subordinate Judge, Guntur. The learned Judge, after a consideration of the evidence adduced Before him by the claimant and the Acquisition Officer, enhanced the compensation to Rs. 2,000/- per acre and added 15 per cent to the market value for compulsory acquisition and directed the Government to deposit the enhanced compensation within three months from the date of his judgment. The decree also directed that the amount should carry interest at 6 per cent after the expiry of the period of three months fixed for the deposit of the enhanced compensation. The learned Judge disallowed costs to the claimant on the ground that his claim at Rs. 9,000/- per acre was "frivolous and without any sense of reality".

4. The Land " Acquisition Officer has preferred A. S. 276 of 1958. In this appeal it is contended that the market value fixed by the Land Acquisition Officer was proper and that the learned Judge erred in enhancing the amount of compensation. In the connected appeal, A. S. 296 of 1958, the claimant has contended that the market value determined by the Court was inadequate and that the amount of compensation should be fixed at Rs. 3000/-per acre.

5. The question for decision in these appeals is as to the proper amount of compensation in respect of the land acquired. Though there was some dispute Before the lower Court as to the extent of the land acquired, it is now agreed that the area of the land is 4 acres and 10 cents.

6. It is contended by Mr. M. B. Ramasarma, the learned counsel for the claimant, that the principles to be applied in the matter of fixation of the market value of the land acquired have not been kept in view by the lower Court and that in particular, the Court below has not correctly evaluated the potential value of the acquired land. Now, it is beyond controversy that the market value of the land acquired has to be determined as on the date of the publication of the Notification u/s 4 of the Land Acquisition Act. It is provided by the Act that in determining the compensation that ought to be allowed to the claimant for his land, the Land Acquisition Officer shall be guided by the provisions contained in Sections 23 and 24 of the Act and it will be convenient to set out those provisions in so far as they are material for the present purpose : --

"23 (1) In determining the amount of compensation to be awarded for land acquired under this Act, the court shall take into consideration : --

First, the market-value of the land at the date of the publication of the notification u/s 4, Sub-section (1);

Secondly, the damage sustained by the person interested, by reason of the fading of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land

from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property moveable or immovable in any other manner, or his earnings; *****

24. But the Court shall not take into consideration -- First, the degree of urgency which has led to the acquisition;

Secondly, any disinclination of the person interested to part with the land acquired;

xx xx xx xx xx xx xx xx

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

xx xx xx xx xx xx xx xx."

7. Among the methods of valuation of land acquired under the Act are:

"(1) the price paid within a reasonable time in Bona Fide transactions of purchase of the lands acquired or the lands adjacent to the land acquired and possessing similar advantages;

(2) a number of years' purchase of the actual or immediately prospective profit from the lands acquire".

The compensation must be determined by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The best evidence to prove what a willing purchaser would pay for the land under acquisition would be the evidence of genuine sales effected at or about the time of the notification for acquisition either in respect of the land or any portion thereof or the sale of lands precisely parallel in all its circumstances to the land under compulsory acquisition. The onus of proving the value of land acquired lies upon the claimant and to establish the value and selling prices of neighbouring lands, it is necessary for him to adduce numerous or at least sufficiently numerous instances of sales of land in similar condition and use for similar purposes in the neighbourhood.

8. Indeed, in the present case, that was the basis on which the claimant endeavoured to substantiate his claim for compensation of the land acquired at Rs. 3000/-per acre. In support of his claim, he relied upon the sale deeds Ex. A-5 to A-11. As already noted, the date of the preliminary notification u/s 4 is the 13th May. 1953. The sale-deeds, Exs. A-5 to A-8 are all dated the 5th July 1950. They relate to the sale of small extents of land in the village of Mandadam, which, according to the evidence, is situated at a distance of about four furlongs from the Agraharam village of Malkapuram in which the acquired lands are situated. As was pointed out by a Division Bench of the Madras High Court

consisting of Waller and Madhavan Nair, JJ. in Chettiammal and Others Vs. Collector of Coimbatore,

"the rates paid for plots of small extents (in that case the plots were of the extents of 4 and 6 cents) are no criterion in valuing a large block of land (in that case it was over seven acres) for the whole of which there is no immediate demand and much of which would have to be devoted to roads and lanes".

That apart, the claimant himself admitted in his evidence that Exs. A-5 to A-8 were in respect of sites plotted for house construction in a lay out, that the sites covered by those sale-deeds were originally lands growing tobacco, and that those sites were abutting tobacco barns and houses. The Prices of lands covered by these sale-deeds cannot, therefore, furnish a proper criterion for the valuation of the lands under acquisition. Moreover there is an interval of about three years between the dates of these sale-deeds and the preliminary notification in the present case, the plots sold under the sale-deeds are in respect of small extents and they are admittedly better situated. Therefore, the conclusion is irresistible that the lands covered by these sale-deeds and the land under acquisition are not similarly situated and have not the same advantages.

9. The claimant also relied upon three other sale-deeds, Exs. A-9 to A-11. Ex. A-9 and A-11 are dated 15th June 1946 and Ex. A-10 is dated 14th March, 1955, Of the two sale-deeds viz., Exs. A-9 and Ex. A-11, the former covers an extent of 6 1/2 cents and the latter covers an area of 2 cents. Ex. A-10 is in respect of a post notification sale. The criticism that sales of small extents of land cannot furnish a proper criterion for the valuation of large Blocks is equally valid in the case of these sale-deeds. (After discussing the evidence the judgment proceeded)

10. The learned trial Judge was, in our opinion, right in not relying on the sale-deeds viz., Exs. A-5 to A-11 for the purpose of determining the compensation in respect of the acquired land. Before us, the learned counsel for the claimant could not seriously urge that the values afforded by the above-mentioned sale deeds should be taken into consideration for the determination of the market value of the land acquired. He has contended that in valuing the land which has been acquired for public purposes under the Land

Acquisition Act, it is necessary to enquire what is the market value of the property, not according to its present disposition, but having regard to its future potentialities. He has argued that the harijans for whom the sites were acquired rejected alternative sites as not being suitable for the purpose of building houses and that they were intent upon having the present land and that that fact furnishes an indication of the future potentialities of the land acquired. It has also been brought to our notice by the learned counsel for the claimant that the acquired land abuts a highway which runs from Amaravathi to Mangalagiri.

11. Mr. Ramasarma, has relied upon a decision of the Privy Council in what is known as Chemudu's case, AIR 1939 98 (Privy Council) and a decision in Rajah of Vijianagaram v. Revenue Divisional Officer, Vizagapatam AIR 1954 AP 12 as

supporting his contention that in valuing the land acquired the potentialities or the future possibilities of the land should be taken into consideration.

12. As pointed out by their Lordships of the Supreme Court in a recent judgment in Haji Mohammad Ekramul Haq Vs. The State of West Bengal,

"one of the principles for ascertaining compensation u/s 23(1) of the Land Acquisition Act is to evaluate the potentialities of the land or the premises as the case may be."

The principles governing the determination of the compensation by taking into account the future possibilities are succinctly set out in the judgment of their Lordships of the Privy Council in the Chemudu case, (1939-2 Mad LJ 45 at p. 52: (AIR 1939 PC 98 at p. 102):

"In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by "the market value" in Section 23. But some times It happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification u/s 4(1)), but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one."

It must however be borne in mind that in the case of land which is certain or even likely to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land or is being used for agricultural purposes the owner however willing a vendor he might be would be content to sell the land for its value as waste or agricultural land as the case may be. There is no doubt that in ascertaining the value of such land the possibility of its being used for building purposes would have to be taken into account. But it is equally true that the land must not be valued as though it had already been built upon. That is the effect of the principle embodied in Section 24(5) of the Act which is expressed by saying that it is possibilities of the land and not its realised possibilities that must be taken into consideration.

13. That in evaluating a particular piece of land which can possibly be used for building purposes, the potential or the future possibility must be estimated by the Land Acquisition Officer or the Land Acquisition Court as best as it may from the materials before it for the land in that particular position and with those particular potentialities. in the Chemudu case, 1939-2 Mad LJ 45: (AIR 1939 PC

98) their Lordships of the Privy Council have pointed out that the value of the potentiality must be ascertained by the arbitrator on such materials as are available to him and "without indulging in feats of imagination." However compensation for the future utility or potentiality cannot be ascertained with mathematical accuracy. It must be estimated by prudent business calculations and not by mere speculative and impractical imagination.

14. The principle that in the case of land which can reasonably be put to future use as a building site, it must be evaluated not on the basis of its existing value as a piece of agricultural land but with the future potentiality added to it, is too well settled to be the subject-matter of any controversy at the present date. But difficulties have arisen and are bound to arise in the application of the principle. Indeed the learned trial Judge has taken into account the fact that the land under acquisition must be evaluated not only on the basis of its present market value but also on the basis of its having a future potentiality. The complaint made by the claimant in these appeals is not that some erroneous principle has been invoked but that the future potentiality has not been adequately valued. According to him, the potentiality and the market value should be cumulatively determined at the least at Rs. 3,000/- per acre, which was the amount of compensation claimed by him before the Land Acquisition Officer.

15. Before the lower Court there was a sale deed, Ex. B-2, upon which the Acquisition Officer relied for the purpose of arriving at the market value. This sale deed, which is dated March 2, 1953, is in respect of an extent of Ac. 5-88 cents, out of which an extent of Ac. 2-98 cents is situated in Malkapuram Agraharam, and the balance of Ac. 2-98 cents is in the village of Velagapudi. The aggregate extent of Ac. 5-88 cents was sold for a total consideration of Rs. 12,348/-. The sale price under Ex. B-2, it must be noted, is a composite price for the totality of the extent of Ac. 5-88 cents. The sale deed contains no apportionment of the respective values of the lands situated in Malkapuram Agraharam and Velagapudi village. It has been stated by C. W. 2, whose evidence has already been referred to, that the Velagapudi land covered by Ex. B-2 is black cotton soil in which tobacco and chilly crops are grown and that it could be sold at the rate of Rs. 3000/- to Rs. 3400/- per acre.

It is indeed common ground that the Velagapudi land is superior land and is much more valuable than the land of Ac. 2-98 cents situated in Malkapuram Agraharam. It was presumably on the basis of the evidence of C. W. 2 that the lower Court arrived at the market value of the Malkapuram Agraharam land at Rs. 1,000/- per acre. This sale deed seems to have been relied upon by the Land Acquisition Officer as well in the award proceedings. It is, no doubt, true that C. W. 2 nowhere stated that the Malkapuram land, covered by Ex. B-2, could be valued at Rs. 1000/- per acre and what all he stated was that the Velagapudi land covered by that document would sell at Rs. 3000/- to Rs. 3400/-. It is also true that the witness was giving evidence in 1957 whereas the sale deed was of the year 1953. But barring the evidence of C. W. 2, from which it could

reasonably be inferred that the Malkapuram Agraharam land covered by the sale deed, Ex. B-2, would fetch a price of Rs. 1,000/- per acre, there is no other evidence which would furnish a proper criterion for the determination of the market value of the land acquired. Though the method of valuation adopted by the Land Acquisition Officer and the lower Court cannot be considered to be wholly satisfactory, still in the absence of better material placed by the claimant, we are led to conclude that the market value fixed by them is the best that could be done under the circumstances of the case.

16. Having once arrived at the market value, what the lower Court did was to add Rs. 1000/- as the value of the potentiality and here, in fact, the claimant and the Government are both dissatisfied. The claimant would say that having recognised the need for evaluating the potentiality, the lower Court made an underestimate of that potentiality by putting it at Rs. 1000/- per acre, while Sri N. S. Raghavan, Principal Government Pleader, has argued that the lower Court really indulged in a feat of imagination -- which their Lordships of the Privy Council stated that it should not -- In valuing the potentiality of the land at Rs. 1,000/- per acre. There is no evidence adduced by the claimant that there were any prospective purchasers who were willing to buy the acquired land for house building purposes. It is, therefore, contended by the learned Principal Government Pleader that in the absence of any such evidence, the lower Court should have confirmed the compensation awarded by the Land acquisition Officer as being the best under the circumstances.

17. The learned trial Judge, as we have already mentioned, did recognise the need for evaluating the potentiality. We are in agreement with the lower Court that the land under acquisition has a potentiality but in evaluating the potentiality the fact must be taken into account that C. W. 2 as well as C. W. 3 have stated that the village of Malkapuram Agraharam has been extending to the east i.e., towards Mandadam, which village is to the east of the land acquired. In evaluating the potentiality this fact cannot be ignored and it is, therefore, that we have come to the conclusion that the claimant is not justified in putting the value of the potentiality at Rs. 2000/- per acre. We are not also persuaded that the learned Government Pleader is right in his contention that this potentiality should not be evaluated even at Rs. 1000/-. On an overall consideration of the facts of the case, we think that the lower Court has struck a via media between two extremes and we see no ground for interference with the valuation arrived at by the lower Court, the more so because no erroneous principle has been invoked by the lower Court and no important piece of evidence has been overlooked or misapplied, these being the grounds on which an appellate Court would interfere in appeals involving questions of valuation.

18. There remain two subsidiary contentions raised by the claimant in his appeal: (1) costs, and (2) interest. Taking the question of costs first it is contended by the learned counsel for the claimant that the lower court was not justified in disallowing costs to the claimant, it is urged that the lower Court was under the

erroneous impression that the claimant made a claim for the compensation at the rate of Rs. 10,000/- per acre and that before the Land Acquisition Officer the claimant prayed for fixation of compensation at Rs. 3,000/- per acre and that under no circumstances could the claimant be allowed to make a claim for a higher compensation before the Land Acquisition Court. It is, no doubt, true that a claimant cannot make a claim for compensation over and above what he had made before the awarding officer. But if this particular case, the claimant did make a claim for compensation at Rs. 10,000/- per acre in his application for reference. That would not, however, really matter in this case because the decree disallowing costs to the claimant could be supported on a slightly different ground.

As is plain from the award proceedings, the claimant claimed Rs. 3,000/- per acre, while the awarding officer fixed the compensation at Rs. 1,000/-. In the lower court the claimant did press for the award of compensation at Rs. 3,000/- per acre which means he wanted an enhanced compensation at Rs. 2,000/-. Eventually he was awarded compensation at Rs. 2,000/- that is, over and above the compensation awarded by the Acquisition Officer he was allowed Rs. 1,000/- per acre. His claim to the balance of Rs. 1,000/- was admittedly disallowed. Therefore, the claimant succeeded in getting enhanced compensation at Rs. 1,000/- per acre but failed to the extent of Rs. 1,000/-. Therefore the measure of success and failure was equal; and the lower Court was in our opinion, justified in disallowing costs to the claimant. The decree for costs is therefore sustained though on a different ground.

19. On the question of interest, it is contended by the learned counsel for the claimant that the lower court committed an error in fixing a period of three months for enabling the Government to deposit the enhanced compensation and in giving a direction that the amount of enhanced compensation should carry interest at 6 per cent thereafter. This contention is really sound and must be given effect to. A claimant is entitled to interest on the compensation awarded to him from the date when possession of the land acquired is taken by the Government. In this case as the parties are not in agreement as to the actual date when possession was given to the Government. This date will be ascertained and interest calculated as from the date in the execution proceedings.

20. It was stated before us by the learned Government Pleader that by reason of the Land Acquisition (Madras Amendment) Act, 1953, which received the assent of the President on the 29th June 1953, and which was published in the Fort St. George Gazette on the 8th July, 1953 interest on the compensation amount which was formerly statutorily fixed at 6 per cent, was reduced to 4 per cent. This amendment came into force on the date of its publication in the Official Gazette viz., 8-7-1953. The possession Of the acquired land in the present case was admittedly taken after the date of the coming into force of the Amendment Act. Therefore the claimant is entitled to interest not at the rate of 6 per cent but at the rate of 4 per cent on the total amount of the compensation awarded to

him from the date when the possession of the acquired land was given to the Government. It is, of course, true that the claimant will not be entitled to draw interest on the amount deposited into Court pursuant to the award proceedings; in other words, the interest at 4 per cent will run on the whole or part of the amount of compensation amount till the date of its deposit in Court and such interest will cease to run on the amount already deposited.

21. Inasmuch as the claimant has substantially failed in his appeal A. S. 296 of 1958 is dismissed with costs. A. S. 276 of 1958 is also dismissed with costs.