
(2003) 09 AP CK 0103
In the Andhra Pradesh High Court
Case No : AS No. 960 of 1994

K. Chandraiah

APPELLANT

Vs

Special Deputy Collector, L.A. Unit II

RESPONDENT

Date of Decision : 16-09-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 25

Citation : (2004) 5 ALD 141 : (2004) 5 ALT 547

Hon'ble Judges : P.S. Narayana, J; B. Sudershan Reddy, J

Bench : Division Bench

Advocate : C. Ramesh Sagar, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Judgement

B. Sudershan Reddy, J.—The claimant in OP No.517 of 1992 on the file of II Additional District Judge, Karimnagar, is the appellant in this appeal preferred u/s 54 of the Land Acquisition Act, 1894, for short "the Act".

2. In order to consider as to whether the order and decree under appeal suffer from any legal infirmity requiring our interference in the matter, a few relevant facts leading to the filing of the appeal may be noticed.

3. The State of Andhra Pradesh, represented by Executive Engineer, I&PDCD-2 Lower Manair Dam, sent requisition for acquisition of the land and other structures situated in Hasnapur Village of Karimnagar Taluq for the purpose of submergence under Lower Manair Dam Reservoir. On the said request, the Government proposed to acquire huge extents of land situated in that village which included double crop wet lands, single crop wet lands and dry lands together with structures like houses, wells, trees etc. The draft notification u/s 4(1) of the Act and as well as the declaration u/s 6 of the Act were simultaneously published in the District Gazette dated 24-3-1977. The Land Acquisition Officer conducted enquiries and passed various awards with reference to claim of each of the owner of the land whose lands were acquired for the said public purpose.

4. The appellant herein is the owner of lands in S. Nos. 562, 566 and 534 of Hasnapur Village, admeasuring a total extent of Acs.8.00 of dry land. The Land Acquisition Officer under the award dated 15-7-1978 awarded a total compensation of Rs. 13,399-10 including solatium and interest. Not satisfied with the said award, the appellant herein sought for a reference u/s 18 of the Act requesting the Land Acquisition Officer to refer the award for adjudication for the purposes of fixation of the true and correct market value of the acquired land.

5. We are required to notice that the appellant herein claimed the market value at the rate of Rs. 1,000/- per gunta i.e., Rs. 40,000/- per acre for the acquired lands in S. Nos. 562 and 566, but restricted the claim at the rate of Rs. 12,000/- per acre in respect of the land in S. No. 534.

6. The Reference Court after an elaborate consideration of the matter held that the appellant herein is entitled for the benefit of enhancement of market value at the rate of Rs. 25,000/- per acre for the acquired lands situated in S. Nos. 562 and 566 in view of the authoritative pronouncement of the Supreme Court in K. Krishna Reddy and Others Vs. Special Deputy Collector, Land Acquisition Unit II, Lmd Karimnagar, Andhra Pradesh, . In the said decision, the Supreme Court having-noticed that all the lands situated in Hasnapur of Karimnagar Taluq were acquired for submergence under Lower Manair Dam Reservoir and further having noticed that the Land Acquisition Officer awarded compensation ranging from Rs. 1,320/- to Rs. 4,000/- per acre depending upon the nature of the land and the crop thereon, found fault with the order passed by the Reference Court fixing the compensation at the rate of Rs. 85,000/- per acre and accordingly held that the same was on the high side. In the said same decision, the Supreme Court observed at Para 14 of the judgment:

"It sees to us that this is not a case of no evidence. This is a case of both relevant and irrelevant evidence mixed up together. We must exclude the irrelevant and exaggerated claim. The claimants have not justified the award generously given by the District Judge, Rs. 85,000/- per acre appears to be on the high side as against the award EA-5. In the first place, Section 4 notification concerned in that award was dated 16 February 1978. It was almost a year after the notification in these cases. Secondly, the lands therein were close to the town of Karimnagar. The situation is not similar in this case. Here the lands are 3 Kms. away from Karimnagar Town. It is in this background we have carefully considered the rough estimates given by Counsel on both sides. We have also examined the relevant material. A distance of 3 Kms. from a growing town of District headquarters should not, however, make a world of difference. We are of opinion that the compensation at the rate of Rs. 25,000/- per acre regardless of categorization would be sufficient to meet the ends of justice. It is needless to state that the claimants are entitled to mandatory solatium at 30 per cent and also statutory interest." (emphasis is of ours)

7. The learned Trial Judge, however, in the instant case held that the appellant herein is entitled only for a sum of Rs. 12,000/- per acre in respect of the land

situated in S. No. 534 of the said village, for the reason that the appellant himself has claimed compensation at the rate of Rs. 12,000/- per acre and the Court cannot award more than what has been claimed by the appellant in his claim petition filed before the Land Acquisition Officer. The learned Trial Judge obviously rested his decision on the unamended Section 25 of the Act as it stood prior to the amendment in the year 1984.

8. In this appeal, Sri Ramesh Sagar, the learned Counsel for the appellant contended that in view of the amendment brought to Section 25 of the Act in the year 1984, there is no embargo on the Reference Court to award compensation to the claimant more than what has been claimed before the Land Acquisition Officer. The amended provision, according to the learned Counsel for the appellant, is applicable even in respect of the acquisitions made prior to the amendment made to Section 25 of the Act. The learned Counsel relied upon a judgment of Division Bench of this Court in Sub-Collector and Land Acquisition Officer, Gudur Vs. Venkata Kumaraswamy, .

9. We are unable to accede to the submission made by the learned Counsel for the appellant since the judgment in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy, (supra), appears to us to be no longer good law. This Court in the said decision, after referring to a Full Bench judgment of the Karnataka High Court in The Special Land Acquisition Officer (NHW) Dharwad Vs. Kallangouda and others etc., and a decision of the Division Bench of this Court in V. Jayashanker v. State 1997 (4) ALD 116 observed:

"In the light of the elaborate discussion made by the Full Bench of Karnataka High Court in the decision in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy, (supra) and a Division Bench of this Court in the decision in Special Land Acquisition Officer (NHW) Dharwad v. Kallangouda (supra), on the competency of the Civil Court granting compensation on the basis of the evidence adduced before it by the claimants without regard to the claim made before the Land Acquisition Officer, in the light of the amendment brought to Section 25 of the Land Acquisition Act, we do not wish to add more than what is decided in the two decisions. We agree with the view taken by the Full Bench of the Karnataka High Court and the Division Bench of this Court in the decisions cited in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy and Special Land Acquisition Officer (NHW) Dharwad v. Kallangouda (supra)."

10. It is true that the observations of the Division Bench of this Court in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy (supra), following the Full Bench judgment of the Karnataka High Court in Special Land Acquisition Officer (NHW) Dharwad v. Kallangouda (supra) support the point urged by the learned Counsel for the appellant. The facts leading to the decision in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy (supra) were that an extent of Ac.0.50 cents of land in S. No. 85/3B of Yerrapalem Village was acquired for laying road from GNT Road to Sriharikota

under draft notification published in the Gazette on 11-11-1976. The Land Acquisition Officer passed award dated 13-5-1977 offering compensation at the rate of Rs. 12,000/- per acre for the acquired land apart from granting other benefits according to law. On reference, the Civil Court in OP No.14/79 initially dismissed the claim of the claimant for enhanced compensation by an order dated 4-8-1981 against which the claimant therein filed AS No. 1136/81 and this Court by an order dated 3-10-1988 remanded the matter to the Civil Court for fresh disposal according to law after giving opportunity to the claimant to adduce further evidence in support of his claim for enhanced compensation. The Civil Court disposed of the reference and fixed the compensation at the rate of Rs. 28,800/- for Ac.0.50 cents of the land acquired from the claimant therein. The Civil Court having found that the market value of the land to be at Rs. 98,000/- per acre, restricted the compensation at the rate of Rs. 12/- per sq. yard only on the premise that the claimant had made the claim for compensation only at the rate of Rs. 12/- per sq. yard before the Land Acquisition Officer and therefore the compensation cannot be granted more than what has been claimed by him before the Land Acquisition Officer. In the appeal it was urged that prior to the amendment of Section 25 of the Act, there was an embargo on the Civil Court in awarding more compensation than claimed by the claimant even though sufficient evidence is adduced on behalf of the claimant seeking enhanced compensation, but however, after amendment to Section 25 of the Act, the fetters on the Civil Court have been removed and the Civil Courts are entitled to fix reasonable compensation on the basis of the material available before them irrespective of the claim made before the Land Acquisition Officer. This argument was found favour with the Division Bench in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy (supra). The Division Bench rested its decision relying on the Full Bench judgment of the Karnataka High Court in Special Land Acquisition Officer (NHW) Dharwad v. Kallangouda (supra) and also the decision reported in V. Jayashanker v. State (supra) and accordingly held that the amended Section 25 of the Act shall be equally applied and shall govern all the acquisitions made prior to 24-9-1984, the date on which Act 68 of 1984 came into force.

11. The short question that falls for our consideration in the present appeal is as to whether the amended provisions of Section 25 of the Act have any retrospective effect ?

12. This question is no longer res Integra and the same is squarely Covered by an authoritative pronouncement of the Supreme Court in Land Acquisition Officer-cum-DSWO, A.P. v. B. V. Reddy and Sons 2002 (4) ALD 47 wherein after elaborate consideration of the matter, the Supreme Court held that the amended Section 25 of the Act is a substantial provision, but not a procedural one and the amendment cannot be given retrospective effect. The Supreme Court further held that in cases governed by unamended section, the Civil Court cannot grant compensation in excess of the amount claimed by the claimant before the Land Acquisition Officer. The Supreme Court further observed:

".....the unambiguous and clear language of Sub-section (1) of Section 25, as it stood prior to the amendment, makes it explicitly clear that if the claimant has made a claim pursuant to a notice u/s 9, then the Court would be incompetent to award any amount exceeding the said claim. In our considered opinion, Sub-section (5) of Section 25 will be of no assistance to the claimants-respondents in the present caseIt is a well settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24-9-1984, the date on which Act 68 of 1984 came into force.....In that view of the matter, the question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was ending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act." (Emphasis is of ours).

13. In view of the authoritative pronouncement of the Supreme Court, the decisions of this Court in Sub-Collector and Land Acquisition Officer, Gudur v. Venkata Kumaraswamy (supra) and V. Jayashanker v. State (supra), are no more good law. Accordingly, we hold that the amended Section 25 of the Act has no application whatsoever in respect of the acquisitions and the claims made before 24-9-1984 i.e., before the amended Section 25 of the Act came into force.

14. In the instant case, admittedly the acquisitions as well as the claim were made prior to the amended Section 25 of the Act coming into force with effect from 24-9-1984. Admittedly the appellant herein/ claimant restricted his claim and claimed compensation only at the rate of Rs. 12,000/- per acre insofar as the land in S. No. 534 of Hasnapur is concerned. Neither the Land Acquisition Officer nor the Reference Court, or for that matter, this Court, can award any compensation more than what has been claimed by the appellant herein/ claimant in the claim petition before the Land Acquisition Officer. The Reference Court rightly restricted the claim of the appellant herein and accordingly awarded compensation at the rate of Rs. 12,000/- per acre in respect of the land acquired in S. No. 534 of Hasnapur Village, Karimnagar Taluq, Karimnagar District, and we do not find any error having committed by the Reference Court.

15. However, the appellant herein/ claimant is entitled for grant of interest on 30% solatium.

16. In the result, the appeal is partly allowed. No costs.