
(1964) 11 AP CK 0012
In the Andhra Pradesh High Court
Case No : Appeal No. 198 of 1962

K. Subrahmanyamma

APPELLANT

Vs

District Welfare Officer, Eluru

RESPONDENT

Date of Decision : 16-11-1964

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 25, 25(2), 9

Citation : AIR 1966 AP 15

Hon'ble Judges : Venkatesam, J

Bench : Single Bench

Advocate : D. Narasaraju, for G. Radhakrishna Rao, for the Appellant; N.V.B. Sankara Rao, 2nd Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatesam, J.—This Appeal is directed against the award of the District Judge, West Goduvan at Elurn in O. T. No. 1/61 and I. A. No. 863/6 on his file. O. P. No. 1/61 is a reference u/s 18 of the Land AcquisitionLand Acquisition Act (hereinafter called the Act) for enhancement of the compensation awarded to Kurapati Subrah-manyamma, the appellant, hereinafter referred to as the claimant. The facts briefly arc as follows:

2. An extent of laud measuring Acs. 3-75 tents and situated in the Village of Komadavole a zamindari village, in Eluru Taluk was acquired by the Government for providing house sites to Harijam. It comprised S. Nos. R. S. 126 measuring Acs. 2-99 cents and R. S. 127/2/B measuring 76 rents, in all of a total extent of Acs. 3-75 cents. It is not disputed that the claimant is the exclusive owner R. S. 126, she having got it as a gift from her father, and that others have no manner of interest whatever in the same. In this appeal we are concerned only with R. S. 126 and not with R. S. 127/2/B. As the acquisition was to provide house sites for the needy and the poor Harijans. proceedings were taken up under the urgency clause of Section 17(2)(b)(ii)(c) of the Act. The notification u/s 4(1) of the Act was made, on 22-1-1959. Komadavole is about one mile from the out-skirts of

Eluru town. S. No. 126 is Hanked on the East and the west by Mala Colony and Madiga Colony respectively, and on the south by the road leading to Chalaparri From Eluru. On the south of the road also there are several house. Komaduvole being a Zamindari village was taken over by the Government under the Madras Estates Abolition and Conversion into Ryotwari Act, 1948. On the date of acquisition, the land was being cultivated as a wet field, and paddy and gingelly were raised thereon. The District Welfare Officer. West Godavari, Eluni, who is the Land Acquisition Officer in this case, issued a notice, Ex. B. 3, u/s 9(3) on 4-3-1959 calling upon the claimant to appear before him on 22-3-1959 at 11 A. M. at Komadavole Village and to put in a statement in writing showing the nature of her interest in the lands. the amount of compensation in such interest with particulars thereon and her objections if any to the measurements. Pursuant to that notice the claimant filed her statement before 22-3-1959 (Ex. B. 4). In that statement she stated that it was filed in compliance with the notice dated 4-3-1959 under Sections 9(3) and 10 of the Act, that she is the owner of R. S. 126 measuring Acs. 2-99 cents ot wet land in the village of Komadavole, and that she was enclosing the patta issued to her by the landholder. She admitted that the measurements of the land in the notice are correct and that no other person is interested in the land, The rest ot the statement may be usefully extracted:

"4. I have been getting at the rate ot twenty bags per acre, (i.e.) sixty bags of paddy for the entire land per year, for the last three Years.

5. There are houses just adjoining the land, There is great demand For house sites in the locality. People have already purchased land tor house sites.

I pray your Honour to be pleased to enquire into the prevailing prices for house sites in the locality and award compensation on that basis. My land has a high potential value, as it is useful for house sites."

3. The Land Acquisition Officer took the view that the Land in question had no potential value for bouse sites and that her request to value the land as house sites did not deserve consideration. He considered the land to he a wet field of black soil yielding about 15 bags of paddy per acre, and on which gingelly and sun-hemp can also he raised and that at the time of enquiring there was gingelly crop, and awarded compensation on that basis. He granted Rupees 7,601-66 nP. as the value of the land and 15 per cent solatium Rs. 1,341-31 nP., in all amounting to Rs. 8.942-97, which works out at Rs. 2,600 per acre. Aggrieved by this award on 25-5-1959 she requested the Land Acquisition Officer to make a reference u/s 18 of the Act. In her claim in the Court she stated that she was realising 20 bags per acre of 80 bags of paddy on the entire land for the last three years, that there are houses adjoining the land that there is a great demand for house sites in the locality, and that people already purchased land for house sites. She stated that notice u/s 12 served on her on 21-1-1959 and that the compensation awarded to her is too low and in adequate. She alleg-ed that the land acquired had it potential value as house sites, and that she claimed

compensation at least at the rate of Rs. 1 per Sq. Yard, besides 15 p. c. solatium and that the case may be referred to civil court u/s 18. The reference made by the Officer is registered as O. P. No. 1/61.

4. The Government filed their counter stated 13-3-1961 contending that the land is adjacent to the pre-existing Harijan cheri but the land has no market value as house site. They also denied that the land in question can be sold as house site at Rs. 1 per Sq. Yard and it is a low lying wet land, and had to be filled up with earth in order to make it fit as house site. It was then contended that the claimant did not make any claim before the Land Acquisition Officer at the time of the enquiry, though she was served with a notice u/s 9(3) and 10 of the Act. She no doubt filed a statement dated 21-3-1959, but averted in that statement she did not specify the amount claimed by her. The Government contended that the claimant is therefore debarred from claiming any enhancement u/s 25 of the Act. Thereupon the claimant filed I. A. No. 863/61 on 8-8-1961 praying that the Court may be pleased to condone the omission in specifying the amount claimed.

5. The learned District Judge held that there was no ground to condone the failure to submit the statement in accordance with Section 25, and dismissed the I. A. No. 863/61. He found that the land acquired was fit for house site and fixed the compensation as Rs. 3,630 per acre or Rs. 12 per sq. yard in addition to 15 p.c. solatium. Since in his opinion the penal provisions u/s 28 applied to the case, he held that compensation in excess of what was granted by the Land Acquisition Officer could not be awarded by him, and dismissed the petition with costs. Aggrieved by this award the claimant has preferred this appeal.

6. Sri Narsaraju, the learned Counsel for the appellant made the following submissions:

(1) The claimant in the instant case submitted her claim but only did not specify the amount claimed, and it was due to a sufficient reason and as such the District Judge should have condoned the irregularity.

(2) Even granting for the sake of argument that the claim as a house site was not made, the Court is entitled to award compensation at that count also, so long as it did not exceed the value claimed even on the basis that it is a wet land.

(3) On the evidence the appellant is entitled to compensation at the rate of Rs. 1 per sq. yard.

7. In order to appreciate the contentions raised it may be useful to extract Sections 9 and 25 of the Act. Omitting the unnecessary words Section 9 reads thus:

"9 (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all person.....The Collector may in any

CASE REQUIRE such statement to be made in writing.....

(3) The Collector shall also serve notice to the same effect..... and on all such persons interested therein

(4)" Section 25 is as follows:

"25 (1) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or he less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim. the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the judge) to make such claim, the amount awarded to him by the Court shall not be less than and may exceed, the amount awarded by the Collector." Section 9 is mainly intended to give notice of the intention to acquire and an opportunity to all the persons interested in the land to put forward their claims. Non-compliance with the Section is provided for by Section 25. Section 25(2) compels obedience to the notice u/s 9(2) to appear and state the claim as required thereunder to enable the Acquisition Officer to make a proper award. If without sufficient cause Section 9(2) is not complied with, an absolute bar arises as to the obtaining of a greater sum than what was awarded by the Collector. The rigour of Section 25(2) is mitigated by Section 25(3), According to it if the Court is satisfied that there was sufficient reason for the appellant's lapse in filing his claim u/s 9, the Court can award a sum in excess of the sum awarded by the Collector. Thus the Court on being satisfied about the bona fides of the claimant's conduct, can remove the penalty imposed by Section 25(2) and grant a compensation in excess of what has been awarded by the Land Acquisition Officer.

8. Courts have considered the scope of Section 25 in a number of cases.

9. In *Ranchhodlalji v. Acquisition Officer, Ahmedabad*, AIR 1945 Bom 49 a Bench of the Bombay High Court held that there cannot be a hard and fast definition of "sufficient reason". It is to be gathered from the facts of each case. In that case the fact that the agent who received the notice on account of his mismanagement was dismissed, had not been disproved, and their Lordships held that it was not improbable that the claimant was not aware of the receipt of the notice by the Agent, and the proceedings before the Collector took place without the claimant's knowledge. It was held that good faith and absence of negligence are the two important ingredients in sufficient reason". In that case no claim was at all made u/s 9. but the claimant appeared through a pleader in the initial proceedings of the acquisition when the first notice was issued, and

their Lordships held that there was no reason at all why in his own interest he would not have appeared before the Collector if he was aware of the notice given to him u/s 9. As the evidence did not disclose that the claimant was negligent it was held that the claimant was entitled to receive the amount which in the opinion of the Judge he would but for his case falling u/s 25 of the Act.

10. This decision was followed in *Lakshmi Narasimha v. Rev. Divisional Officer Mangalore*, AIR 1919 Mad 902. In that case *Rajamannar, C. J. and Panchapakesa Ayyar, J.* held that where in response to a notice u/s 9 the owner of the land puts forward his claim, that the valuation adopted was grossly inadequate and low and that he was entitled to not less than a certain amount per acre of the land, he must be deemed to have made a claim and it is open to him to pray for enhancement of award made by the Land Acquisition Officer. Considering the nature of the land, its situation, yield and the disadvantage caused by the acquisition to the adjoining lands of the claimant, he contended that he is entitled to not less than Rs. 3,000 per acre of nanja lands and Rs. 2,000 for garden lands exclusive of the value on trees. *Rajmanner, C.J.* distinguishing *Chigurupati Subbanna Vs. The District Labour Officer*, held that in the case before him the claimant did mention the figures for nanja lands and for garden lands respectively, which were, as understood by the Land Acquisition Officer, to be the rates claimed, and that the Subordinate Judge was not right in holding that the provisions of Section 9(2) had not been complied with, and that the claimant was not entitled to claim enhanced compensation.

11. In *V.S. Subramania Chettiar and Another Vs. State of Madras*, *Govinda Menon and Krishnaswami Nayudu, JJ.* held that it was desirable and sometimes even necessary, though not required under the Act, that Acquisition Officer should in a proceeding as to valuation make it dear to the owners of the lands that any failure to state the amount of the claim would be a bar to their having a chance of the award being revised in their favour by the Court. The learned judges followed the decision in AIR 1945 Bom 49. On the evidence in that case the learned Judges held that the claimants acted in good faith throughout and were in no sense negligent, the good faith consisting in their bona fide belief that no award would be passed before their representation to the Government was finally disposed of, and that they could thereafter specify the exact amount. It was also held that there was no negligence as they appeared before the Land Acquisition Officer and objected to the acquisition and even earlier appeared before the Revenue Inspector and stated their objections. In those circumstances the learned Judge held that the omission to state the claim was for a sufficient reason and that the view of the Subordinate Judge to the contrary could not be upheld.

12. It may be mentioned at this stage that in *A.P.S. Karuppaiah Nadar Vs. Special Dy. Collector for Land Acquisition, Virudhunagar and Another*, *Rajamannar, C. J., and Raja-gopala Ayyangar, J.* disapproved the principle laid down in *V.S. Subramania Chettiar and Another Vs. State of Madras*, that there

was a duty cast on the Land Acquisition Officer to inform the claimant that he should claim for a particular amount of compensation, and that in the absence of any such notice or warning the provisions of Section 25(2) would not be attracted.

13. In *Nalamvari Annasatram and Another Vs. The Special Land Acquisition Officer, Co-operative Housing Schemes, Madras*, a Bench of this Court consisting of Bhimasankarani and Munikannaiah, JJ. held that in proceedings under the Land Acquisition Act when the owners of land failed to present their claim for compensation in pursuance of a valid notice u/s 9, the Court cannot award a higher sum than the amount awarded by the Land Acquisition Officer. They held that it is not the duty of the Land Acquisition Officer to draw the attention of the claimants to the penal consequences that follow a non statement of the claim, and that his failure to do so is not a sufficient justification for the owners not making a claim is not justified, for the Act does not impose any such obligation upon the Officer, and penal a.s the con.sequences are, the parties interested are supported to be aware of the provisions of the statute. The learned Judges dissented from the observations in *V.S. Subramania Chettiar and Another Vs. State of Madras*, to that extent. It must be pointed out that the tests of sufficient reason laid down by the Bombay High Court in AIR 1945 Bom 49 followed by the Madras High Court in *V.S. Subramania Chettiar and Another Vs. State of Madras*, had not been disapproved or dissented from even by the Andhra Pradesh High Court. Those tests have still been recognised to be valid for a determination of the question u/s 25(3).

14. In *Secretary of State v. F. E. Dinsbaw*, AIR 1933 Sind 21 Ferrers, J. C., and Rupchand Bilaram, A. J. C., held that where the District Judge had failed to apply his mind to the consideration of the question as to whether the failure of the claimant to specify the amount of his claim was with or without sufficient cause, and whether he would be prepared to condone such omission, the appellate Court can consider that question and condone the omission provided that there are sufficient grounds.

15. We shall now apply the principles in the above decisions to the facts of the instant case. This is not a case where a statement of the claim had not been filed at all. It cannot therefore be said that the claimant refused or omitted to file a claim. The objection on be-half of the Government is that no specific amount was claimed and therefore the requirements of Section 9(2) had not been satisfied.

16. The statement of the claimant extracted supra reveals that she asserted that she had been getting at the rate of 20 bags per acre or 60 bags of paddy for the entire land acquired during the last three years, and that the land is fit for house sites and that there is a great demand for house sites in that locality, as there are already houses adjoining the land. The claimant also prayed that the Land Acquisition Officer may be pleased to enquire into the prevailing prices of the house sites in the locality and award compensation on that basis and that the land has a high potential value as it is useful for the house sites.

17. A fair construction of this statement can only mean that viewing it as an agricultural land she is entitled to get compensation on the basis of an annual income of 60 bags of paddy, and even as a house site also it is valuable, as would be evident from a comparison of the prevailing house sites in the locality, and she prayed that compensation may be awarded on that basis. On the basis, that it is an agricultural land she claimed the capitalised value of the annual yield of 80 bags of paddy. As a house site she alleged that the land is of greater value, but did not specify the amount.

18. Let me apply the two tests adopted in all the cases viz., existence of good faith and absence of negligence. In reply to the notice u/s 9 she filed a statement dated 21-3-1959 on 22nd before the Land Acquisition Officer. She also attached a patta. It cannot therefore be said that there is lack of good faith or that she was negligent. The evidence of the claimant's husband, P. W. 1, is also to the effect that when the claimant got notice, they (himself and his wife) applied for enhancement. He did not know that specific amount should be mentioned in the petition. He admitted having received the notice. Ex. B. 3, and that he got Ex. B. 4 prepared by his clerk and filed it. P. W. 1 did not consult any vakil. He asked his clerk to write about the land and he wrote about the petitioners' right. The clerk read out Ex. B. 4, but he (P. W. 1) did not know that the price of the land should be set out and therefore did not go and tell the Acquisition Officer about the value of the land. There is no evidence contra. That he appeared before the Land Acquisition Officer is evident from the award, which stated that Kurapati Subrahmanyamma, the owner of S. No. 126, filed a petition at the time of award enquiry representing that she has been getting rent at the rate of 20 bags of paddy P. A. and that there is great demand for house sites in the locality.

19. In view of these circumstances and evidence I am of the opinion that the claimant was not at all negligent, but was acting with due diligence and in good faith. She was under a bona fide impression that the annual income from the lands realised by her provided a sufficient data for determining the amount claimed by her. Because she did not give any details for determining the compensation as a house site, it cannot be said that no claim at all was made pursuant to the notice u/s 9(2). The price of paddy on the date of the notification is available from the Gazette, and well-known to the Land Acquisition Officer as well as to others, and it can be taken judicial notice of. In those circumstances capitalisation of the value of 25 bags of paddy at the market rate on the date of notification u/s 4 would represent the amount claimed.

20. The learned Dist. Judge places reliance on Chigurupati Subbanna Vs. The District Labour Officer, and Nalamvari Annasatram and Another Vs. The Special Land Acquisition Officer, Co-operative Housing Schemes, Madras, but neither of these cases laid down a principle different from what has been enunciated in the cases cited above.

21. I therefore differ from the learned District Judge and hold that the penal consequences of Section 25 do not follow in the instant case, and that the

claimant is entitled to claim compensation in excess of what has been awarded by the Land Acquisition Officer.

22. The Land Acquisition Officer observed that the land under acquisition has no potential value as house sites and that claim did not deserve consideration. The learned District Judge took a contrary view and held that the land acquired had not only a potential value as a house site, but in fact it was a house site. I agree with the view of the District Judge. There are two colonies of Malas and Madigas on either side of the land acquired. On the southern side there is a road. Beyond the road there are the houses of Kalalees. The irresistible inference can only be that the land in question is not merely having a potential value as a house site, but is a house site. The fact that it is within a distance of one mile from the outskirts of the Eluru town, gave it a potential value as house site, but the fact that on all sides it is surrounded by houses makes it a house site, though on the date of the notification crops were raised thereon. The question then remains what compensation can be awarded as a house site? The answer is that so long as the amount claimed by the claimant as an agricultural land is not exceeded, compensation treating it as a house site can properly be awarded. For this proposition there is ample authority. In AIR 1933 Sind 21 the claimant only claimed compensation for the land, but did not claim any compensation on the ground of severance of the site acquired from the rest of his land. The Land Acquisition Officer awarded a particular sum of money only for the land. It was held that Section 25 was intended to refer to the whole claim made by the claimant, and the whole amount of compensation awarded to him u/s 11, and to empower the Judge to alter the award of the Land Acquisition Officer under any one or more of the sub-heads by either decreasing or increasing the amount awarded, provided he did not award less than the total amount awarded by that officer or more than the total amount claimed before that Officer by the claimant. A failure therefore to specify the amount claimed in respect of any particular sub-head of Section 23 of the Act, was held to be no bar to the judge reviewing the award of the Land Acquisition Officer in respect of such head.

23 That decision was followed by this Court in *Kompalli Nageswara Rao and Others Vs. Special Deputy Collector, Land Acquisition, Bapatla*, by *Umamaheswaram and Krishna Rao, JJ.* At page 182 (of Andh WR): (at p. 64 of AIR) it was observed thus:

"Before leaving this item, we would observe that we have not omitted to take note of the fact that the appellants claimed before the Collector only at the rate of Rs. 40 per tree for the sapota, guava. Citrus and lime trees. But no point u/s 25 arises nor has been taken on behalf of the Government. The reason is that the words "the amount so claimed" in Section 25 mean the total amount claimed before the Collector and not any claim under any particular item or head comprised in the total amount. *Gangadhura Sastry v. Deputy Collector of Madras* 23 Mad LJ 379; AIR 1933 Sind 21. The total amount of compensation claimed by the appellants before the Collector far exceeds the amount allowed by us."

The learned Judges held that subject to that limit the Court is entitled to award compensation under any of the sub-heads to which the claimant is legally entitled. It therefore follows that even though the claimant has not claimed any amount on the basis that the land acquired is house site, still he is entitled to claim compensation on that account, provided it does not exceed the amount claimed by her on the basis of its being an agricultural land.

24. In the instant case there is evidence that the price of a bag of paddy in 1959 is Rupees 25. There is no cross-examination on this point and that fact cannot be disputed. The annual income from the land at 20 bags per acre or 60 bags for the entire land, would be $60 \times 25 = \text{Rs. } 1,500$. Even capitalising it at twenty times the annual value it would be Rs. 30,000. In the instant case the learned District Judge awarded compensation at the rate of Rs. 3,630 per acre, for the entire land Rs. 10,853-70 nP. which is far below the compensation claimed as an agricultural land.

25. Even so, it is contended on behalf of the Government that the amount awarded by the District Judge as compensation is excessive, I shall now consider the evidence bearing on that point.

26-29. [After considering the evidence his Lordship proceeded]: On this evidence there can be no doubt that the claim made by the appellant for treating the land acquired as a house site and claiming compensation at the rate of Rs. 1 per sq. yard is reasonable. The learned District Judge deducted one-fourth of Rs. 1 for raising the level, and for the roads and costs of conversion into house sites, and thus fixed Rs. 3,630 per acre which works out at twelve annas per sq. yard, I consider that the amount fixed by the learned District Judge is reasonable and just and needs no interference in appeal.

30. On behalf of the Government it was argued that Exs. B. 1 and B. 2 should have been taken into account and lesser amount awarded, The learned District Judge had referred to those sale deeds, In fact the land covered by Ex. B. 2 is a part of the land acquired.

31. Having regard to all the circumstances, and the evidence I hold that the valuation of the land acquired as a house site by the District Judge is correct, and the fixation of the compensation at Rs. 12/- per sq. yard is fair and reasonable. In the result the appeal is allowed and the decree of the learned District Judge is set aside. Compensation will be paid to the appellant at the rate of Rs. 3,630 per acre in respect of Acs. 2-90 cents of the land acquired and 15 per cent solatium. Out of this the sum of Rs. 8,942-97 awarded by the Collector will be deducted and the balance will earn interest at 4 per cent from 14-5-1959 till payment. Having regard to the circumstances of the case I direct that the appellant shall recover from the respondent the entire costs on the sum decreed in the lower Court, and only the Court fee payable on the amount now decreed in this appeal, but with the Advocate's fee. The government will bear its costs in both the Courts.