
(1992) 03 AP CK 0034

In the Andhra Pradesh High Court

Case No : Appeal No's. 1455 and 2815 of 1987

L. Suryaprakasa Rao

APPELLANT

Vs

District Social Welfare Officer and L.A.O.

RESPONDENT

Date of Decision : 23-03-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 17(3A), 23, 4(1), 54

Citation : (1993) 1 ALT 716

Hon'ble Judges : Radhakrishna Rao, J;Iyyapu Panduranga Rao, J

Bench : Division Bench

Advocate : K.V. Satyanarayana, N. Krishna Murthy, G. Vijaya Kumar and S. Satyanarayana Prasad, for the Appellant; G.P., for the Respondent

Judgement

Radhakrishna Rao, J.—Ac.2-80 cents of land situated at Kunuru Agraharam covered by R.S. No. 65/2 belonging to the claimant has been acquired by the Government for the purpose of providing house sites to the weaker sections. The claimant himself volunteered and gave consent for the acquisition of the said land as early as on 22nd Jan 1980. The Land Acquisition Officer inspected the site on 23rd June, 1983. The Notification was made in the Gazette u/s 4(1) of the Act on 21-3-84. Possession was taken on 23-4-84. The award was passed on 26-3-85. The L.A.O. duly considered the sales statistics, and came to the conclusion that Rs. 28,000/- per acre would be the reasonable compensation. On reference, the lower court granted at the rate of Rs. 35,000/- per acre for the acquired land and Rs. 56,500/- for the trees and Rs. 7,000/- for the filter point.

2. Now the point for consideration in these appeals is whether the lower Court was right in enhancing the compensation and further whether the claimant is entitled to further enhancement in the compensation?

3. P.W.I is the claimant He deposed that Ac.2-80cents of land which was in his personal cultivation was acquired by the Government and that the said land is a dry land. He was raising commercial crops on the said land and that there are 45 coconut trees and one mango tree. P.W.2 is the cultivator of the adjacent land.

P.W.3 is the vendor of Ex.A-7. P.W.4 is the Sugarcane Inspector. He spoke about the cost of sugarcane in the year 1984-85. P.W.5 is the Agricultural Officer, Andhra Sugars Limited, Tanuku. P.W.6 is a resident of Kahuru Agraharam. According to him there is a bore-well in the acquired lands. Exs.A-1 to A-6 are the Adangals for the Fasli 1388 to 1395. Ex.A-7 dt.18-4-83 is the copy of the sale deed executed by one K. Peda Venkata Reddi in favour of D. Sitarama Chandra Murthy. It shows that Ac.0-05 cents of land was sold for Rs. 500/- per cent. Ex. B-I is the file and Ex.C-1 is the Commissioner's Report. So far as the ownership of the land and the number of trees lying on the said land, there is no dispute. With regard to the coconut trees, the lower court held that as there is no evidence on either side to show that all the 45 trees need not be felled, it would be reasonable to take the average of 35 trees as not necessarily to be felled as the value of the live trees and the rest 10 trees should be valued as the dead wood. As the dead wood will not fetch more than Rs. 200/- per tree, it fixed Rs. 2,000/- for the 10 coconut trees and for the live coconut trees it fixed the value at Rs. 1,500/- per tree and granted Rs. 52,500/- for the 35 coconut trees. For the mango tree also it valued at Rs. 100/- and multiplied the same with 20 thereby granting Rs. 2,000/- for the mango tree.

4. So far as the 35 live coconut trees are concerned, the fixation at Rs. 1,500/- per tree appears to be reasonable and we do not want to interfere with the same. But the lower Court found that 10 trees can be treated as dead trees and granted Rs. 200/- per tree. That is not the correct view. In the case of coconut trees, if they are not fruit bearing, there is no question of granting any compensation. It is only in the case of old bamboo trees and some other useful trees which can be used as fuel etc., some compensation can be granted. The lower court is also not correct in holding that on an average only 35 trees can be taken as live trees. Whether the trees are within the approved lay out or in the bunds, it is immaterial. There is no detailed evidence to show that 10 of those trees are not at all useful. When there is no material evidence on record, all the 45 coconut trees can be granted at the rate of Rs. 1,500/- per tree. With regard to the mango tree the fixation of compensation of Rs. 2,000/- is not correct and as per the circular issued by the Government, Rs. 1,500/- would be the reasonable compensation as against Rs. 2,000/- awarded by the lower court. It is also to be noted that the said mango tree is a stray tree and it is very difficult to save the crop of that tree. If it is in a well protected garden, then; there is some scope for saving the crop. So, Rs. 1,500/- would be the reasonable compensation that can be granted to the mango tree. The lower court has granted Rs. 7,000/- for the filter point and we do not want to interfere with the same. With regard to the well, though its existence is established, no amount has been granted. We feel that an amount of Rs. 3,000/- can be granted for the well.

5. With regard to the value of the land, the claimant relied upon the sale deeds and the evidence itself shows that it is a dry land. P.W.1 himself admitted that there is a sale of land for Rs. 28,000/- per acre in the year 1983, but that does

not represent the true value. P.W.2 also stated that though some surrounding lands were sold at Rs. 60,000/- per acre, the sale deeds were executed for Rs. 28,000/-only. But such an exaggeration cannot be taken into account. Also as per Section 92 of the Evidence Act, one cannot be permitted to go against the recitals of sale-deeds and adduce evidence. On a consideration of the evidence of P.Ws.1 to 7, we feel that what has been granted by the lower court at Rs. 35,000/- per acre, is a reasonable compensation. In the Adangals it is shown that Ac.0-40 cents of land is occupied by these coconut trees, we feel that the claimants are not entitled for that Ac.0-40 cents of land covered by these coconut trees as we have already granted the value of the trees. The contention of the claimant is that these trees are located on the bunds. But at the time of preparing adangals the revenue authorities found that these 45 coconut trees occupy an extent of Ac.0-40 cents of the acquired land. So, the lower court order is modified and the claimants are entitled for compensation excluding the Ac.0-40 cents of land from the entire area that has been acquired by the Government under the said Notification.

6. The last point that has been urged is that on account of the severance and non-supply of water from the filter point, the claimant is deprived of the use of maximum extent of the remaining of land in the said survey number. But according to P.W.1 himself, the value of the house sites is more. The mere acquisition in this case is for providing house sites. So, the remaining land in the said survey number will naturally fetch more amount. Hence the access that has been lost on account of the severance cannot be said to be a disadvantage. Moreover, it is an advantage to him. Sri K.V. Satyanarayana, learned Counsel for the claimant, relied upon *Collector of Dinagepore v. Girja Nath Roy*, ILR 25 Cal 346. In that case the District Board of Dinagepore erected a bridge over the Tulai river. Where the bridge now stands there used to be a ferry owned by the Maharajah of Dinagepore through whose estate the river Tulai flowed. That ferry ceased to exist when the bridge was erected. Under those circumstances it was found that the Maharajah was entitled under the Act to compensation for the loss of the ferry. The Madras High Court in *Nathar Hussain Meera v. Deputy Collector, Usilampathi*, 31. I.C.259. held as follows:

"There is uncontradicted evidence that the remaining lands of the claimants were in jurally affected by the constructions of the channel and flood bank. They are entitled to be compensated for this injury, even if the loss was more than counter-balanced by the advantages they gained from the execution of the project."

7. In another case the Madras High Court in *The Revenue Divisional Officer, Chidambaram Vs. A.N. Damodara Mudaliar and Others*, ., held as follows:

"We are unable to agree that this head of compensation provided for in Section 23 of the Act would ever take in any such claim at all. "Severance compensation" as the term itself indicates, is compensation awardable to the affected person because of the severance of the land into different parcels by reason of the

compulsory acquisition. What is said is that because of the well in the land has also been acquired and for which compensation has also been paid, the surrounding lands of his have suffered damage."

8. We feel that this is a direct case on this point and we are of the view that this Bench judgment of the Madras High Court can be applied as against the decisions of the Calcutta High Court and the Madras High Court in *Collector of Dinagepore v. Girja Nath Roy* ILR 25 Cal 346, and *Nathar Hussain Meera v. Deputy Collector, Usilampathi*, 31.I.C.259., respectively. So the claimant is not entitled to any compensation on account of the severance. Also this is not a case of compulsory acquisition and this is a case of voluntary surrender of land and the possibility of the execution of Ex.A-7 with the active connivance of the clerk before the 4(1) Notification cannot be ruled out.

9. The learned counsel for the claimant next contended that 80% of the compensation, as estimated by the Collector for such land, has to be paid to the claimants as per Section 17(3-A) of the L.A. Act, and as the same has not been paid or deposited as on the date of notification, they are entitled for interest from the date of the Notification. Section 17(3-A) came into force subsequent to the date of Notification. So at the time when the 4(1) Notification was made, the authorities could not have contemplated about the deposit of 80% of the value as estimated by the Collector. However, as the award has been passed on 26-3-85, the claimants are entitled for all the benefits under the Amendment Act, including the interest at 9% for a period of one year from the date of taking over possession and thereafter at 15% till the date of payment.

10. In the result, the appeal filed by the Government is partly allowed and the appeal filed by the claimants is also partly allowed. No costs.