
(2001) 10 AP CK 0139
In the Andhra Pradesh High Court
Case No : Appeal Suit No. 491 of 2000

Land Acquisition Officer

APPELLANT

Vs

T. Raja Vittal

RESPONDENT

Date of Decision : 11-10-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4, 4(1)

Citation : (2002) 2 ALT 307

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; V. Tulasi Reddy, for the Respondent

Judgement

G. Rohini, J.—The Land Acquisition Officer is the appellant in this appeal, which is directed against the order of the Court of the Senior Civil Judge, Bodhan dated 9-7-1999 in O.P.No. 35 of 1995. Whereas the Land Acquisition Officer filed regular appeal aggrieved by the compensation fixed by the Court below at the rate of Rs. 60/- per square yard, which works out at Rs. 2,90,400/- per acre as against the compensation awarded by the Land Acquisition Officer at the rate of Rs. 26,000/- per acre, Cross-Objections are filed by the claimant contending that the compensation as awarded by the Court below is inadequate and claiming enhancement at the rate of Rs. 100/- per square yard.

2. The brief facts of the case are that an extent of Ac. 0-36 gts. of land situated in R.S.No. 50/1 of Dudyaltarfa at Bodhan in Nizamabad District was acquired for the purpose of providing graveyard for Scheduled Caste community by publication of notification dated 15-7-1994 u/s 4(1) of the Land Acquisition Act. The Land Acquisition Officer, on the basis of the sale statistics obtained for the preceding three years from the date of the notification u/s 4(1) of the Act, fixed the market value of the acquired land at the rate of Rs. 26,000/- per acre, and accordingly passed award dated 30-8-1995. Dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the claimant sought reference u/s 18 of the Act. Accordingly, reference has been made to the Court

below and the same had been taken up as O.P.No. 35 of 1995. Before the Civil Court, the Claimant examined three witnesses on his behalf and filed Exs. A-1 to A-9 documents in support of his claim for enhancement of compensation. On behalf of the Referring Officer, the Revenue Divisional Officer, Bodhan was examined as R.W. 1 and the award dated 30-8-1995 has been marked as Ex. B-1. The Court below on examination of the evidence adduced, by order dated 9-7-1999 held that the claimant is entitled to the compensation for the land acquired at the rate of Rs. 60/- per square yard which works out at Rs. 2,90,400/- per acre as against Rs. 26,000/- per acre awarded by the Land Acquisition Officer, apart from granting interest and other benefits provided under the Land Acquisition Act, as amended by Amendment Act 68 of 1984. Aggrieved by the said order, the Land Acquisition Officer preferred the present appeal.

3. The learned Government Pleader appearing for the appellant submits that the impugned order of the Court below in enhancing the compensation from Rs. 26,000/- per acre to Rs. 2,90,400/- per acre is without any basis and highly excessive. He also submits that the Court below erred in relying up Ex. A-2 and proceeded on presumptions and assumptions and erred in enhancing the compensation more than "10 times over and above the compensation awarded by the Land Acquisition Officer. On the other hand Sri V. Tulasi Reddy, learned Counsel appearing for the claimant-respondent, who also preferred Cross-Objections claiming compensation at the rate of Rs. 100/- per square yard, submitted that the Court below having accepted Ex. A-2 erred in making a deduction of about 50 per cent. The learned Counsel submitted that the compensation as awarded by the lower Court cannot be said to be excessive and as a matter of fact the claimant is entitled to the compensation at the rate of Rs. 100/- per square yard on the basis of Ex. A-2, since the land acquired is situated very near to the land covered under Ex. A-2.

4. Now the points for consideration are:

- (i) Whether the compensation as awarded by the Court below at the rate of Rs. 60/- per square yard is justified and supported by evidence on record; and;
- (ii) Whether the respondent-X-Objector is entitled to the compensation at the rate of Rs. 100/- per square yard, as claimed by him.

5. Having heard the learned Government Pleader as well as learned Counsel for the respondent and on a perusal of the impugned order of the Court below and on examination of the evidence adduced before the lower Court, it is noted that among the nine documents marked on behalf of the claimant, Ex. A-1 is the protest application given by the claimant. Ex. A-2 is the certified copy of the judgment of this Court in A.S.No. 1408 of 1989 dated 1-3-1994. The said appeal was directed against the order of the Court of Senior Civil Judge, Bodhan in O.P.No. 37 of 1987 under which the market value of the land acquired was fixed at Rs. 50/- per square yard. It is pertinent to note that the land covered by the

said O.P.No. 37 of 1987 which is an extent of Ac. 2.27 gts. was situated in Survey No. 51 of Dudyaltarfa, Bodhan and the same was acquired for the purpose of establishing a Bus Depot under the notification dated 17-2-1978 issued u/s 4(1) of the Act. It is on record that the said land was classified as double crop wet land. Aggrieved by the compensation awarded by the Civil Court in O.P.No. 37 of 1987 at the rate of Rs. 50/- per square yard, the State preferred A.S.No. 1408 of 1989 before this Court and on consideration of the entire material, this Court reduced the compensation to Rs. 32/- per square yard. One of the claimants in O.P.No. 37 of 1987 has been examined as P.W. 2 and he stated that the land under acquisition is on the border of Bodhan Municipal area and it is classified as dry land. He also deposed that his lands, which are the subject matter of O.P.No. 37 of 1987, are double crop wet lands.

6. Another document marked on behalf of the claimant is Ex. A-6, which is a certified copy of the sale deed dated 16-6-1992 in respect of 150 square yards of land situated in Survey Nos. 51 and 52 of Bodhan. The vendor under the said sale transaction has been examined as P.W. 3, who deposed that he sold the said extent of Ac. 150 square yards at the rate of Rs.300/-per square yard and that he further stated that the land covered by it is situated within the Municipal limits of Bodhan Municipality and is situated on the road side of the road leading from Bodhan to Banswada.

7. The claimant also filed Ex. A-3 which is a certificate issued by the Sub-Registrar dated 8-10-1998 to the effect that the market value of the property in Plot No. 2-5-2/1 is situated in Dudyaltarfa locality at Bodhan, was Rs. 200/- per square yard as on June, 1994. Ex. A-4 marked on behalf of the claimant is the proceedings of the Municipal Commissioner dated 22-6-1991, which shows that the property comprised in Municipal No. 2-5-2/1 situated in Survey No. 50/1, was transferred in the name of the claimant-respondent herein. Ex. A-5 is the Municipal Tax Receipt dated 31-3-1995, which shows that the respondent-claimant paid property tax to the Municipality on 31-3-1995 for the assessment year 1994-95. Ex. A-7 dated 30-4-1994 is a certified copy of the proposals submitted by the Mandal Revenue Officer, Bodhan to the Sub-Collector, Bodhan seeking acquisition of the land situated in Survey No. 50/1 for the purpose of graveyard for the Scheduled Caste people of the locality mentioning that the market value of the land as per the Basic Value Register is Rs. 130/- per square yard. In Ex. A-8 dated 6-5-1994 which is a letter addressed by the Assistant Collector, Bodhan to the District Collector at Nizamabad also there is a mention about the Basic Value Register maintained by the Sub-Registrar at Rs. 130/- per square yard. In Ex. A-9, which is a certified copy of the draft declaration proposals also the Mandal Revenue Officer proposed the market value of the acquired land at Rs. 130/- per square yard.

8. So far as the oral evidence is concerned, the claimant-respondent who got himself examined as P.W.1 deposed about the potentiality of the acquired land stating that the acquired land is situated in commercial area in Bodhan which is a

Municipality having all civil amenities and it is also a Sub-Division Headquarters. He also stated that RTC Bus Depot is at a distance of 1/4th kilometer from the acquired land and that the said depot was constructed having acquired the land 16 years ago by paying a compensation at the rate of Rs. 32/- per square yard. He claims that the acquired land is a better land than the lands acquired for constructing the Bus Depot, however, in the cross-examination, he admitted that the acquired land is a dry land. Though he denied the suggestion put to him that the acquired land is being used as a graveyard even prior to the acquisition, it is pertinent to note that P.W. 3 who was examined on behalf of the claimant has categorically stated in the cross-examination that since about 7 to 10 years the land under acquisition is being used as a graveyard and that he never saw any cultivation in the said land.

9. It is also pertinent to note that the land under acquisition is classified as dry land, whereas the lands covered under Ex. A-2 are classified as double crop wet land as per the evidence of P.W. 2 who was a claimant in respect of lands, which are the subject matter of Ex. A-2. Further, R.W. 1 who was examined on behalf of the Referring Officer also categorically stated in his oral evidence that the land under acquisition though situated abutting Bodhan to Nanded road, it is a banjar land and not useful for agriculture nor for any construction purposes. He also stated that the lands covered under Ex. A-2 judgment couldn't be compared to the land under acquisition since they are situated faraway at a distance of 2 1/2 Kilometers. It can also be seen from the award dated 30-8-1995, marked as Ex. B-1, that the Land Acquisition Officer observed that the land under acquisition is a waste, uncultivable land and highly elevated one, though it is situated within the limits of Bodhan Municipality.

10. It is noted from the impugned order that the Court below has rightly refused to treat Ex. A-6 as a comparable sale on the ground that the said sale transaction relates to a small bit of land for building purpose. Exs. A-3 to A-5 and Exs. A-7 to A-9 were not rightly taken into consideration since they have no evidentiary value and were not marked through concerned persons. However, the Court below relying upon Ex. A-2, which is a judgment of this Court in A.S.No. 1408 of 1989 held that the claimant is entitled for the compensation as awarded for the land covered by Ex. A-2. The Court below further held that since the land covered by A.S.No. 1408, of 1989 has been acquired under the notification dated 17-2-1978, whereas the notification for acquisition of the present land was issued after a long gap of about 16 years, the compensation shall be determined taking into consideration the escalation in prices at 10% per annum for a period of 16 years. Curiously, the Court below ignored the fact that the compensation fixed at the rate of Rs. 50/- per square yard by the civil Court in O.P.No. 37 of 1987 had been reduced to Rs. 32/- per square yard by this Court under Ex. A-2 judgment and calculated the escalation of prices at 10% per annum on the basis of the compensation awarded by the Civil Court at Rs. 50/- per square yard. On such calculation, the lower Court concluded that the claimant should be entitled to Rs. 135/- per square yard. Having held so, the Court below deducted 50 per

cent for the formation of roads and for providing electricity etc., and gave a further deduction of Rs. 7/- on the ground that the land under acquisition is situated about 2 or 3 furlongs away from the land covered by Ex. A-2 and ultimately held that fixing the market value of the acquired land at Rs. 60/- per square yard would meet the ends of justice.

11. In our considered opinion the entire procedure adopted by the Court below in determining the compensation for the land under acquisition is erroneous and not in accordance with law. Apart from the fact that the calculation of escalation in prices at 10% per each year, on the basis of Rs. 50/-per square yard as awarded in O.P.No. 37 of 1987, is apparently wrong, we are also of the view that the Court below failed to properly appreciate the evidence on record and also failed to apply the correct legal principles in determining the compensation for the land acquired.

12. It is true that where any evidence of sale transactions in or about the notification under which the lands are acquired is not available and the Court is required to rely upon the sale transactions which took place long back, it is necessary to take into consideration the appreciation of prices of the land for determining the market value as on the date of the notification. The escalation in price of land at 10% per year has been recognized by the Courts as reasonable for determining the market value on the basis of sale transactions entered long prior to the notification. However, this cannot be taken as an absolute rule, particularly where the evidence on record shows that the land under acquisition had no potentiality and there was no scope for upward rise in the price of the land during the date of transaction of sale relied upon by him and the date of notification, we are of the view that it is not open for the Courts to adopt the method of escalation of price at the rate of 10% per year mechanically. It is well settled that the market value of the land under acquisition would be such at which the vendor and the vendee were willing to sell or purchase on the date of notification. Hence the evidence on record as to the disadvantages suffered by the land in question cannot be ignored and the Court cannot presume as to appreciation of prices of land in every case as a matter of abstract principle.

13. Section 23 of the Land Acquisition Act enumerates the facets to be taken into consideration in determining the compensation for the land acquired. The first among the factors so enumerated u/s 23 of the Act is "the market value of the land at the date of publication of the notification u/s 4(1) of the Act". What is the prevailing market value as on the date of the notification is a question of fact to be proved by adducing evidence and it is well settled that the burden is always on the claimant to prove the same. However, it may not be possible in every case to get the evidence of transaction of sale of lands similarly situated and the question of true market value of lands acquired cannot be solved by abstract formula with mathematical precision and accuracy. Some times it is necessary for the Court to make certain presumptions bearing in mind all the relevant facts relating to the case on hand.

14. In Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , the Supreme Court held:

"Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification u/s 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor face of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The Judge should sit in the armchair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions. The Court is, therefore, enjoined with the bounden duty of public function and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition."

15, In Karan Singh and others etc. Vs. Union of India, , the apex Court held:

"When a land is compulsorily acquired, what is basically required to be done for awarding compensation is to arrive at the market value of the land on the date of the notification u/s 4 of the Act. the market value of a piece of land for determining compensation u/s 23 of the Act would be the price at which the vendor and the vendee (buyer and seller) are willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transaction on the date of notification issued u/s 4 of the Act or a few days before or after the issue of notification u/s 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land has to be assessed in terms of those transactions. The sale of land on or about the issue of notification u/s 4 of the Act is stated to be the best piece of evidence for determining the market value of the acquired land. Often evidence on transaction of sale of land on or a few days before the notification u/s 4 is not available. In the absence of such evidence contemporaneous transactions in respect of lands which had similar advantages and disadvantages would be a good piece of evidence for determining the market value of the acquired land. In case the same is not also available, the other transaction of land having similar advantages nearer to the date of notification u/s 4 of the Act would guide in determination of the market value of acquired land.

16. In Kanwar Singh and Others Vs. Union of India, , the Supreme Court held:

.....the amount of compensation for the land acquired depends on the market value of land on the date immediately before the notification u/s 4 of the Act or when same land is acquired and offer of compensation is made through an

award. Whether such an offer of compensation represents the market value of the land on the date of notification u/s 4 of the Act, has to be determined on the basis of evidence produced before the Court. The claimants have to prove and demonstrate that the compensation offered by the Collector is not adequate and the same does not reflect the true market value of the land on the date of notification u/s 4 of the Act. This could only be done by the claimants by adducing evidence to the effect that on the relevant date, the market value of the land in question was such at which the vendor and the vendee (buyer and seller) were willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transactions on the date or preceding the date of notification issued u/s 4 of the Act generally shows the market value of the acquired land and the market value of the acquired land to be assessed in terms of those transaction. Sale instances showing the price fetched for similar land with similar advantages under bona fide transaction of sale at or near about the issue of notification u/s 4 of the Act is well recognized to be the appropriate evidence for determining the market value of the acquired land.

.....Generally there would be different situation and potentiality of the land situated in two different villages unless it is proved that the situation and potentiality of the land in two different villages are the same."

17. In the light of the above settled principles if the evidence on record is examined, it can be seen that the land in question was acquired for the purpose of providing graveyard. One of the witnesses examined on behalf of the claimant admitted in his evidence that since 7 to 10 years the land under acquisition was being used as a graveyard. It is clear from the evidence on record that even prior to the notification u/s 4(1) of the Act the land under acquisition was being used as a graveyard and it had no potential value either for agriculture or for house-sites by the date of notification.

18. In the circumstances, we are of the view that the Court below in the face of positive evidence available on record that there was no scope for appreciation of the value of the land under acquisition, ought not to have determined the compensation applying the method of escalation in price at the rate of 10% per year, on the basis of the compensation awarded to the lands covered under Ex. A-2. In our considered opinion the market value of the land as fixed by the Court below at the rate of Rs. 135/- per square yard is abnormal and without any basis. It may also be pointed out that the procedure followed by the Court below in making deduction of 50% for formation of roads and for providing electricity is also erroneous since the land in question is not acquired for the purpose of providing house-sites. At any rate, on the totality of the facts and circumstances of the case and the evidence on record we have no hesitation to hold that even the price fixed at Rs. 60/- per square yard after giving deductions is also excessive and cannot be upheld.

19. Then the question to be decided is what would be the reasonable compensation to which the claimant-respondent is entitled?

20. Fixation of compensation for the land acquired involves an act of estimation of the market value of the land as on the date of the notification on the basis of the evidence on record with regard to the value of the land with similar potentiality. However, where no such direct evidence is available, Courts have to assess the value of the land under acquisition taking into consideration all the relevant facts and circumstances of the case on hand.

21. A Division Bench of this Court in the case of *The Special Dy. Collector (Land Acquisition), Railways Vs. Panthangi Vidya Sagar Rao and Others*, while dealing with the case of inadequate evidence of similarly situated lands, observed as follows:

"Where evidence is not coming forth directly as to the price of large areas of land in the area of acquisition, and the Courts are called upon to determine, the valuation on the basis of evidence which is inadequate, necessarily an element of best judgment-assessment is involved to make the valuation. Of course the valuation cannot be made in vacuum and necessarily also not arbitrarily but on cogent reasons and plausible inferences which must steer clear of any arbitrariness or unreasonableness."

22. In the light of the principle stated above, we are of the opinion that, since no other direct evidence is available to arrive at the market value of the land under acquisition, the compensation awarded by this Court under Ex. A-2, in respect of the lands acquired under the notification dated 17-2-1978, may be taken as the basis in view of the proximity of the location of the said land. Thus, the market value of the land under acquisition as on 17-2-1978 can be taken as Rs. 32/- per square yard as fixed under Ex. A-2. So far as escalation of price is concerned, as expressed above, this is not a fit case where the escalation can be calculated at the rate of 10% per year for the entire period of 16 years. The evidence, on record shows that the land under acquisition is being used as graveyard since about 10 years prior to the notification. Therefore, it is clear that for the past about 10 years prior to the notification, there was no demand for sale of land either for agriculture or for house-sites and there could not be any appreciation of land value. However the claimant cannot be denied the rise in the prices of land prior to its conversion as graveyard. Since the notification was issued in the year 1994, it can be presumed that till 1984 i.e., till it was converted as graveyard, there must be increase in the price of the land on par with the lands in the vicinity and the same can be taken at: 10 per cent per year. On such calculation the escalation in price of the land acquired during the period from 1978 to 1984 may be fixed at Rs. 18/- per square yard, and accordingly the market value of the land under acquisition as on the date of notification i.e., 15-7-1994 can be arrived at Rs. 50/- per square yard.

23. However, the learned Counsel for the respondent/Cross-Objector contended that though the land under acquisition is being used as graveyard, it is always open for the claimant to convert the said land into house-sites and therefore it is necessary to bear in mind the possibility of the use of the land for more

profitable purpose in future while determining the compensation. "Accordingly the learned Counsel for the respondent contends that the claimant shall be granted compensation at the rate of Rs. 100/- per square yard as claimed in the Cross-Objections. We do not find any force in the contention of the learned Counsel for the respondent.

24. For assessing the potential value of the land under acquisition on the basis of its expected user in future for more beneficial purpose, it is essential for the Courts to examine the possibility of such proposed user in future in the facts and circumstances of that particular case. Unless the Court is satisfied that the proposed user in future for profitable purpose is almost a certainty, Courts will refuse to take into consideration the proposed user of the land in future. We are of the view that in the present case such possibility is very remote and therefore we are unable to accept the submissions made by the learned Counsel for the respondent. As stated supra, in our considered opinion it is reasonable to fix the market value of the land under acquisition as on the date of the notification at Rs. 50/- per square yard and the claim of the respondent-Cross-Objector for fixation of compensation at the rate of Rs. 100/~ per square yard is unsustainable.

25. Accordingly we hold that the respondent-Claimant shall be entitled for compensation of the land under acquisition at the rate of Rs. 50/- per square yard. Therefore, the impugned order of the Court below stands modified to the extent indicated above. The claimant shall be entitled to all the statutory benefits as available under the Land Acquisition Act, as amended under the Amendment Act 68 of 1984. It is also made clear that the claimant shall be entitled for interest on solatium as held by the apex Court in *Sunder v. Union of India* 2001 (5) ALT 51 (SC) : 2001 (2) An.W.R. 343 : 2001 ALT 30 (SC) : 2001 (5) DT (SC) 191.

26. Accordingly, A.S.No. 491 of 2000 is partly allowed and the Cross-Objections stand dismissed. There shall be no order as to costs.