

(1980) 11 AP CK 0005

In the Andhra Pradesh High Court

Case No : Appeal No's. 157 to 163 of 1978

Land Acquisition Officer, Khammam

APPELLANT

Vs

Katta Venkaiah and Others

RESPONDENT

Date of Decision : 21-11-1980

Acts Referred:

Constitution of India, 1950 — Article 31(B)

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

Citation : AIR 1981 AP 310

Hon'ble Judges : P.A. Choudary, J

Bench : Single Bench

Advocate : T. Anantha Babu, for the Appellant; C. Narasimhacharya, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Choudary, J.—The Land Acquisition Officer, Khammam, had acquired a total ex-ten-t of Ac. 6.00 cents of Khanapur village situated in the adjoining Survey Nos. 187/20, 187/2C, 184, 185, 186, 187 etc., through his notification published under S. 4(1) of Land Acquisition Act on 30-3-76. The lands are all contiguous and, axe adjacent to Kham-mam town within its immediate vicinity. They were acquired for the purpose of erecting an electric sub-station. The Land Acquisition Officer awarded compensation at the rate of Rs. 2,600/- per acre except in case of Ac. 4-04 cents of land situated in Survey Numbers 184, 185 and 186, where he awarded at the rate of Rs. 3,200/- per acre. In addition to the above, he gave compensation for the mango and neem trees calculated on their capitalized value. The land owners were dissatisfied with ibis level of compensation and had the matter referred to Civil Court.

2. Before the Civil Court, the claimants claimed compensation on the basis that their lands were house sites. They had claimed compensation at the rate of Rs. 10/- pec sq. yard. However, the Civil Court had awarded them only Rs. 2/- per sq. yard in addi-tion to compensation for the mango and neem trees. It is

against this award the present appeals are filed.

3. It is now argued by Mr. Raja Rao, the learned counsel for the appellants, that the order of enhancement made by the Civil Court increasing the compensation payable to the owners of the land is erroneous inasmuch as that order had ignored the rate of compensation paid to the owners of binds compulsorily acquired and situated just opposite to the present lands acquired. It appears, about Ac. 101-80 cents of land situated across the road opposite to the present acquired lands was acquired by the Government paying compensation of Ra. 3,172/- per acre only. The argument of the appellants is because those lands were near to these lands, the Civil Court should have relied upon those rates only. Whereas, the Land Acquisition Officer had awarded compensation basing himself upon the award made in the above acquisition proceedings of Ac. 101-00, the Civil Court disregarding that award and relying upon a sale deed dated 24-1-74 of a far away land at one mile distance, enhanced the compensation. It is, therefore, argued that the Civil Court should have relied upon the acquisition proceedings evidenced by the award acquiring 101 acres. It is secondly argued that the Civil Court had erred in awarding compensation without reducing the rate at least by 1/3rd representing the land acquired for formation of roads and providing other amenities. Thirdly it is argued that following the judgment of the Madras High Court in *The State of Madras Vs. Alameluthayammal and Others*, , the Civil Court ought not to have granted compensation on the basis of capitalized value of the mango and neem trees, which ought to have been valued merely as charcoal.

4. It was amply borne out by the evidence on record, particularly the evidence of P. W. 1 in O. P. No. 8/77 that these lands are adjacent to Khammam town. They are abutting a city college and a housing colony. It was therefore not right for the Land Acquisition Officer to treat these lands as agricultural lands. The Court below, therefore, had rightly valued these lands as house sites and not as mere agricultural lands. Awarding of compensation at the rate of Rs. 2/- per sq. yard on that basis cannot be regarded as excessive. It is clearly on the low side. The lower Court refused to follow the rates awarded for 101 acres as nobody for the Land Acquisition Officer, explained why such low rates were paid or accepted. I agree.

5. The next argument of the appellants is that while treating these lands as house sites, a portion of it ought to have been deducted from being available for the hypothetical sale as house sites. The argument is that an undeveloped land cannot be sold as a whole as a house site. A part of it should be left for development. The value of that part should not be separately valued and compensated, in support of this argument Mr. Raja Rao cited the decisions reported in *Smt. Tribeni Devi and Others Vs. Collector of Ranchi*, and *S. M Hadi Jaffery v. v Spl. Dy. Collector, L. A.*, (1975) 2 Andh WR 28. It is no doubt true that when a Court is computing the hypothetical market value of any undeveloped land on the basis that it would be sold as a house site, the area

required for its development and use as a house site must be deducted from the total area and accordingly either the value per sq. yard hypothetically fixed by the Court must be correspondingly reduced or the extent of the land available for sale as site must be reduced. There is no objection in principle to accepting this submission of Mr. Raja Rao. But, the difficulty arises in applying his principle to the facts of this case. There is no absolute rule and there cannot be any, which would help a Civil Court to determine how much of the land should be taken out of the total extent as being available for hypothetical sale as house sites. It is all a matter of pleading and proof in individual cases. If this question arises in an area governed by the Municipal Rules and Regulations, it can be said with reference to those Building Rules and Regulations of the Municipality, a definite extent of land would be required for development. But, if the same question arises with reference to a land situated in a village, the question cannot be answered except on the basis of pleading and proof. What is the extent of the land that has to be left out is not a question of law, but is a question of fact. The Land Acquisition Officer in this case had never gone into the box and had never shown to the Civil Court what is the exact extent which must be deducted in the circumstances peculiar to the house building in a place like Khanapur village. In the absence of such evidence, it would not be open for the appellants now to contend that some portion of the land ought to have been deducted from out of the total extent for the purpose of road-building, laying of parks and providing amenities etc., without knowing the exact or even approximate extent arrived for evidence, it is impossible to make a guess. Such a process would be inconsistent with the duty to pay compensation. Although I agree with Mr. Raja Rao's contention on this point, I cannot, in the absence of any material placed before the Civil Court, uphold it.

6. Finally, Mr. Raja Rao argued that the method of valuation followed by the Civil Court for fixing the compensation for the mango trees is wrong. He relied upon *The State of Madras Vs. Alameluthayammal and Others*, to contend that the lower Court ought not to have separately valued the mango trees and the neem trees. The facts stated in the *State v. Alameluthayammal* are that the learned First Additional Subordinate Judge made an elaborate calculation of the net income from the coconut trees for a period of 20 years and separate compensation was awarded for the coconut trees, and that these coconut trees were situated on the acquired land which was valued as the house site. The learned Judges upheld the argument of the Government that once the site has been valued as a house site, the coconut tree should not have been valued again on the basis of its being a fruit yielding tree. The learned Judges observed that such mode of valuation will really result in duplication of values. With great respect to the learned Judges, I am unable to follow how there could be any duplication in values, where a land has been acquired for house sites and valued as such. I do not find anything illogical in putting separate value on the trees standing on that site. It all depends on the method of valuation adopted and also on the question whether the trees standing on the site can be used along with

the house-building. Where there are a large number of trees planted on a small bit of land such a land cannot be used as house site unless the trees are removed. In that case it may be reasonable to say that the valuation of the site as house site includes the valuation of the trees also. This is so because without the trees being removed the site cannot be converted into house site. The trees can only be valued as fire wood. But where there are only a few trees as in the present case, it is not necessary to remove the trees. Their continued standing would only enhance the value of the house sites. It was therefore, possible for the mango trees to be used in the land acquired for the imaginary construction of houses without destroying them. These trees would not be an obstacle for the use of the land as house sites. I am, therefore, not able to follow the aforesaid decision.

7. Section 23(1) of the Land Acquisition Act specifically directs that in determining the amount of compensation to be awarded for the land acquired under that Act the Court shall take into consideration the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof. I do not find that the statutory provision had been considered by the Madras decision. For these reasons, I uphold the order of Civil Court awarding separate compensation for the trees.

8. The grant of Rs. 2/- per sq. yard even by the Civil Court, I think, is extremely low. There appears to me that the Land Acquisition Officers are not treating the question of fixing proper compensation for the agricultural land compulsorily acquired with all seriousness. They generally fix low rates. This is clearly not performing their statutory duty of fixing just value imposed by the Land Acquisition Act as well as by the second proviso to Article 31(B) of the Constitution either honestly or efficiently. The Land Acquisition Officers should note that many of these agriculturists are completely uprooted by some of these acquisitions. Compensation full and just guaranteed to them by the Land Acquisition Act and the Constitution should be fixed and paid to them. I hope and trust that the Land Acquisition Officers would realise that by doing so they would only be doing their statutory duty.

9. These appeals are dismissed. No costs.