

(1997) 08 AP CK 0028

In the Andhra Pradesh High Court

Case No : Appeal No. 2452 of 1987 and Cross-objections

L.A.O. Special Dy. Collector

APPELLANT

Vs

T. Bhaskar

RESPONDENT

Date of Decision : 01-08-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 54

Citation : (1997) 5 ALT 254

Hon'ble Judges : P. Venkatarama Reddi, J;B.V. Ranga Raju, J

Bench : Division Bench

Advocate : Govt. Pleader for E and P, for the Appellant; S.C. Rangappa, for the Respondent

Judgement

P. Venkatarama Reddi, J.—An extent of Ac.9-07 guntas of dry land situate in Sy.Nos. 146 and 155 of Bheemaram village, Warangal district was acquired for the purpose of excavation of Kakatiya Canal. The notification u/s 4(1) of the Land Acquisition Act was published on 12-3-1979. That notification relates to some other lands as well. The Land Acquisition Collector by his Award dated 22-2-1980 awarded compensation at Rs. 3,100/- per acre and a sum of Rs. 21,873/- for the well (including Syphon system).

2. On reference u/s 18 of the Act the Subordinate Judge, Warangal enhanced the compensation by fixing the market value at Rs. 10,000/- per acre. For the well and "syphon system", the compensation was increased and fixed at Rs. 35,000/-. Aggrieved by this Award of the civil Court, the State filed this appeal u/s 54 of the Act. The claimant-Respondent filed his cross-objections seeking enhancement of compensation at Rs. 18,000/- per acre.

3. Before the lower Court, the claimant examined himself as P.W.1. His father was examined as P.W.3 (sic.2) for the purpose of filing a sale deed - Ex. A-5. P.W.3 is a retired Deputy Executive Engineer, who estimated the cost of well etc. Under Ex.A-5, an extent of 450 sq. yards in Sy.No. 148-B was sold, just before acquisition i.e., on 26-7-1978 at Rs. 10/- per sq. yard. The learned Subordinate

Judge held that it is not a comparable sale as it is closer to Hanmakonda town and abutting the main-road. No one connected with the document was examined and therefore it has no evidentiary value in view of what has been laid down in a series of recent pronouncements of the Supreme Court. Having thus rightly discarded Ex.A-5, the learned Subordinate Judge observed that even according to the sale particulars of Bheemaram village mentioned in the Award, in March, 1978, an extent of more than half-an-acre was sold for Rs. 8,300/- per acre and in view of the fertility and irrigation facilities the acquired land has, the Court thought it fit to fix the market value at a higher rate of Rs. 10,000/- per acre. This approach based on one of the sales statistics in the Award, in our view, is not correct. The Land Acquisition Collector having referred to the sale deed dt. 21-3-1978 by which 24 guntas (about half-an-acre) of land was sold for Rs. 4,980/- (Rs. 8,300/-) per acre), was not prepared to accept this sale as a genuine one. Right or wrong, he gave certain reasons for discarding the aforementioned sale. In substance, the LAO commented that having come to know that the land was coming under the Kakatiya Canal, the vendor who was still having possession of the land nominally sold 24 guntas in favour of his brother. In the absence of the relative sale deed being brought on record and the examination of the vendor or vendee of the document, the lower Court was not justified in relying on the sale transaction discarded by the LAO. It is pertinent to notice that as per the Award, there is another sale which took place on the very same day i.e., on 21-3-1978 in the very same survey number which had been acquired, by which 31 guntas of land was sold at the rate of Rs. 9,000/- per acre. That sale was effected by the claimant himself in favour of his father purportedly. The LAO also discarded that sale transaction on the ground that it was brought into existence to boost up the value of the land. Neither P.W.1 nor P.W.3 relied on this sale evidently because they were themselves not convinced about the veracity of their claim.

4. In view of the above discussion, it is obvious that the lower Court enhanced the market value taking into account certain irrelevant considerations and on an erroneous approach. At the same time, we feel that on the basis of material on record, the market value of the land in question can be fairly estimated at more than what was assessed by the lower Court. In this context, it is necessary to bear in mind the irrigation facilities which the acquired land has got and also the potentialities which it has on account of favourable location. It is seen from the Award of the Land Acquisition Officer that Bheemaram village is situate on the Warangal-Karimnagar road at a distance of 2 K.Ms. from Hanmakonda. It is also apparent from the evidence of P.W.1 (claimant) as well as Ex.A-2 plan that the acquired land is abutting the Hanmakonda-Karimnagar road. P.W.1 further stated that the acquired land is at a distance of one kilo metre from Kakatiya University (the word canal seems to be typographical error) and two furlongs from Bheemaram village. In the claim petition also it is stated that the land is very near to Kakatiya University Campus. We are mentioning this fact only to show that in the deposition there is a typographical error. As the land itself is acquired

for excavation of Kakatiya canal there is no sense in saying that it is one furlong from Kakatiya "Canal". Of course, it is not clear whether Kakatiya University complex was there even by the date of acquisition. But, the undisputed and indisputable fact is that the land is very near to Hanmakonda (Warangal town) adjacent to the main Road. A willing seller and a willing vendor, in normal circumstances, will not evaluate it merely as an agricultural land. Naturally, its future potentialities for being sold as house-sites will certainly be taken into consideration. Another important factor to be taken into account is that though the land in question is dry land, it commands irrigation facilities from a well of 40 ft. depth and 21 ft. diameter. A pipeline with syphon system was also laid to carry water to the fields. The case of the petitioner is that he used to raise cotton, chillies and other commercial crops and used to get net income of Rs. 25,000/- per acre. It may be an exaggeration to say that he was getting Rs. 25,000/- per acre and in the absence of filing any revenue accounts or adducing other independent evidence, it is not possible to implicitly believe the version of the petitioner. Though the depth of the well is not too long, there can be no doubt that the well was supplying water to substantial portion of the land acquired, though not the entire extent. The possibility of the petitioner getting net income of about Rs. 9,000/- per annum cannot be ruled out. Taking all these factors into account, we are of the view that the market value of the land could be reasonably fixed at Rs. 12,000/- per acre.

5. The learned Government Pleader, relying on the decisions of the Supreme Court in *O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others*, and *State of Bihar Vs. Madheshwar Prasad*, has contended that no separate compensation could have been awarded for the well and the pipeline. We see force in this contention. The Supreme Court in *Janardhan Reddy's* case pointed out - "Hence, the advantage which an agricultural land may have because of the irrigation facility it had from the irrigation well, could only enhance the value of the agricultural land depending upon the water yield from the well. In this situation, the irrigation well in an acquired agricultural land, cannot have a value apart from the value of the agricultural land itself. The estimated construction costs of irrigation wells of agricultural lands cannot form the basis for awarding compensation for such irrigation wells independently of the compensation awardable for the agricultural lands for the benefit of which such well existed."

6. Thus, no separate compensation can be awarded for the wells, pipe-lines and other arrangements made for drawing water from the well as the existence of irrigation well has been duly taken into account by us while enhancing the market value of the land. This is not to say that the amount already awarded by the Land Acquisition Collector towards the cost of well and syphon system should be set at naught, obviously because it is not open to the State to challenge the award of the Land Acquisition Collector in an appeal u/s 54 of the Act. That means the compensation of Rs. 21,873/- awarded by the Land Acquisition Collector for the well and syphon system will stand and the enhanced

compensation awarded by the civil Court is hereby disallowed.

7. In the result, the appeal and cross-objections are disposed of in the following terms:

(1) The land value is determined at Rs. 12,000/- per acre instead of Rs. 10,000/- per acre fixed by the Subordinate Judge.

(2) The enhancement of compensation for the well and syphon system is set aside.

8. The judgment and the decree of the lower Court will stand modified accordingly. The statutory benefits of solatium and interest as per the amendment Act of 1984 will be worked out accordingly. No costs.