
(1989) 02 AP CK 0010
In the Andhra Pradesh High Court
Case No : Appeal No. 1189 of 1982

M. Linga Murthy	Vs	APPELLANT
District Social Welfare Officer, Cuddapah		RESPONDENT

Date of Decision : 10-02-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 20
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 18, 18(1), 25, 4(1)

Citation : AIR 1990 AP 90

Hon'ble Judges : K. Ramaswamy, J

Bench : Single Bench

Advocate : S. Dasaratharami Reddy, for the Appellant; Govt. Pleader for Land Acquisition, for the Respondent

Judgement

1. The appellant is the claimant. Land in an extent of Ac. 2.52 cents of Jammalamadugu village was acquired by publishing a notification under S. 4(1) of the Land Acquisition Act, Act I of 1894 in the District Gazette dt. Feb. 17, 1976 for a public purpose, viz., providing house, sites to the poor. The Land Acquisition Officer determined the market value of the lands at the rate of Rs. 5,500/- per acre. The appellant claimed the market value at the rate of Rs. 1,00,000/- but restricted the same to Rs. 50,000/- later on. The civil Court refused to revise the market value on the ground that the appellant had not laid his claim pursuant to the notices under Ss. 9 and 10 of the Act. Therefore, it passed a "nil" award. Against this award, this appeal has been filed.

2. The contention of Sri Ashok, the learned counsel for the appellant is that the Land Acquisition Officer having made a reference under S. 18(1), is precluded from objecting that the appellant had not filed his claim statement before him pursuant to the notice under S. 9 and 10 and, therefore, he was disabled to lay the claim. On the other hand, Sri Rajanna, learned Government Pleader contended that the very reference is bad since the appellant received the compensation amount without protest and that, therefore, the civil Court is well-

justified in passing the "nil" award.

3. It is well-settled position of law that a claimant is entitled to receive the compensation amount awarded by the Land Acquisition Officer with or without protest. In case he receives the amount under protest, he is entitled under law to lay an application for reference under S. 18(1) to the civil Court within the limitation prescribed under the Act. In case he receives the amount without protest and makes an application for reference, then it is open to the Land Acquisition Officer either to make or refuse to make a reference. In a case where the Land Acquisition Officer refuses to make a reference, the appropriate remedy open to the claimant is to approach this Court under Art. 226 of the Constitution of India and then assail the legality of the order. In case the Land Acquisition Officer makes a reference to the civil Court, it would not be open to him subsequently to raise the plea that the reference itself is bad, provided the conditions precedent to make an application under S. 18(1) are fulfilled, i.e. (i) an application in writing; (ii) nature of the objection, and (iii) within the time. This legal position is settled by the Supreme Court in Mohammed Hasnuddin Vs. State of Maharashtra, . Therefore, the contention of Sri Rajanna, learned Government Pleader that the reference itself is bad and that the civil Court is justified in making the "nil" award is clearly not warranted. It does not lie in the mouth of the Land Acquisition Officer to take the stand that making a reference under S. 18(1) is bad.

4. Another facet of the argument is that since the Land Acquisition Officer made a reference under S. 18(1), he is prevented from raising the statutory defence open to him under S. 25 of the Act. No doubt, preceding the Amendment Act, 1984, an application to make a claim pursuant to notices under Ss. 9 and 10 is mandatory and after the amendment came into force, it is no longer a necessary condition and no longer is a formidable objection that stands in the way of the claimant. But preceding the amendment, this statutory defence was open to the Land Acquisition Officer to be raised. Therefore, it is always open to the Land Acquisition Officer to raise that defence. Therefore, Sri Ashok, the learned counsel for the appellant is not justified in contending that it is not open to the Land Acquisition Officer to raise the objection under S. 25 after making a reference under S. 18(1).

5. The question then is whether the lower Court is justified in holding that the claimant is not entitled to claim a higher amount than what was awarded by the Land Acquisition Officer. The main ground on which the attention was focussed was that the notice was admittedly served by substituted service, viz., affixture of the notice to the land of the claimant. He had, therefore, notice of the award inquiry, but he did not lay the claim before the Land Acquisition Officer. Therefore, he is precluded to claim more market value than was awarded by the Land Acquisition Officer. The contention of Sri Ashok in this regard is that admittedly the appellant was doing timber business in the very same site and that would show that the appellant was available : for personal service. No

reasons have been given by the Land Acquisition Officer when he examined as R.W. I in support of the grounds on the basis of which he resorted to substituted service by affixture. Unless the Land Acquisition Officer satisfies the Court that the claimant refused to receive the notice when it was attempted to be served, resort to substituted service cannot be had. Such is not the case here. The Court below committed a grievous error in putting the blame on the appellant. I find force in the contention of the learned counsel. It is common knowledge that the award enquiry would be conducted in the office of the Land Acquisition Officer but not at the site of the claimant. Therefore, the claimant will not be in a position to know when the award enquiry is conducted unless there is any notice given of the date of enquiry. He, therefore, absented himself having not received personally the notice. The evidence is not clear as to under what circumstances the Land Acquisition Officer resorted to substituted service. Therefore, I cannot give any definite finding in this regard. The best course that would be open is to give an opportunity to the parties to adduce evidence as to under what circumstances the substituted service was resorted to and whether any personal service was attempted to be effected and the appellant evaded receipt thereof. If it is held that there is no justification for resorting to substituted service when personal service was got to be effected, then it would be a case where the claimant has to be afforded an opportunity to put forward his claim. If it is held that there was sufficient opportunity for receiving the notice and the claimant refused to receive or attempted to evade the receipt thereof, then as a last resort substituted service could be effected. The claimant may not be justified in laying the claim having failed to put forth the claim pursuant to the notices under Ss. 9 and 10. This question would be angulated only if sufficient evidence is available on record. The order dt. Dec. 29, 1981 passed by the civil Court is set aside. The lower Court is directed to give an opportunity to both parties to adduce evidence in this regard as indicated above and consider the case afresh according to law. The lower Court is directed to dispose of the matter within six months from the date of receipt of this order. The office is directed to refund the court-fee paid by the appellant.

6. The appeal is accordingly allowed. In the circumstances", each party is directed to" bear its own costs.

7. Appeal allowed.