
(2004) 03 AP CK 0046

In the Andhra Pradesh High Court

Case No : AS No"s. 289 of 1995 and 1544 of 1997

Mukundlal Misra

APPELLANT

Vs

Special Deputy Collector, Land Acquisition Unit

RESPONDENT

Date of Decision : 12-03-2004

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 25, 9, 9(3)

Citation : (2004) 3 ALD 747 : (2004) 3 ALT 716

Hon'ble Judges : Ghulam Mohammed, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : P.V. Narayana Rao, in AS No. 289 of 1995 and Government Pleader for Land Acquisition in A.S. No. 1544 of 1997, for the Appellant; P.V. Narayana Rao in AS No. 1544 of 1997 and Government Pleader for Land Acquisition in A.S. No. 289 of 1995, for the Respondent

Judgement

B. Sudershan Reddy, J.—The claimant in O.P. No. 516 of 1992 on the file of the learned n Additional District Judge at Karimnagar is the appellant in this appeal preferred against the judgment and decree dated 28-10-1994 passed in the said O.P.

2. That an extent of Acs.15-12 guntas of land situated in Survey Nos.54, 55 and 51 of Chinthakunta Village, Karimnagar District, was acquired for a public purpose of excavation of G.S. main canal under Sreeram Sagar Project. The draft notification u/s 4(1) of the Land Acquisition Act (for short "the Act") was published in the A.P. Gazette on 11-9-1980. The possession of the land was taken over on 29-3-1978 even prior to the publication of the draft notification u/s 4(1) of the Act. The Land Acquisition Officer after following the prescribed procedure passed award dated 30-3-1982 awarding compensation @ Rs. 5,100/- per acre. Dissatisfied with the award, the appellant/claimant sought for a reference u/s 18 of the Act for determination of the true and correct market value of the acquired land and the said award had been accordingly referred and taken on file in O.P. No. 516 of 1992 on the file of the learned n Additional

District Judge, Karimnagar. The learned District Judge upon appreciation of both oral and documentary evidence came to the conclusion that the market value of the acquired land as on the date of acquisition was Rs. 17,000/- per acre. However, the learned Judge awarded compensation only @ Rs. 12,000/- per acre on the ground that the appellant/claimant claimed compensation @ Rs. 12,000/- per acre only in the claim statement filed in response to notice issued u/s 9(3) of the Act. The learned Judge held that compensation more than what has been claimed by the claimant in response to notice u/s 9(3) of the Act cannot be awarded in view of the mandate enshrined u/s 25(2) of the Act.

3. In this appeal Sri P.V. Narayana Rao, learned Counsel for the appellant/claimant, strenuously contended that the appellant is entitled to payment of compensation at least @ Rs. 17,000/- per acre as has been determined by the learned District Judge. The learned Counsel submitted that the view taken by the learned Judge in refusing to award compensation @ Rs. 17,000/- per acre and restricting the claim of the appellant herein to that of Rs. 12,000/- per acre is totally unsustainable in view of the fact that application filed by the appellant in I.A. No. 620 of 1989 seeking the amendment of the claim petition has been allowed by the Court vide its order dated 7-11-1989. The said order has become final and the amended claim petition was accordingly filed and the same would relate back to the date of filing of the claim petition. The learned Counsel placed reliance upon the judgment of the Supreme Court in *Harijana Hanumantharayappa Vs. State of A.P.*,

4. Sri M. Jagannath Sharma, learned Government Pleader for appeals, inter alia submitted that the judgment in Ghaziabad Development Authority's case (supra) is not applicable to the facts on hand. The learned Government Pleader placed reliance upon the Three-Judge Bench judgment of the Supreme Court in *The Land Acquisition Officer-cum-DSWO, Andhra Pradesh Vs. B.V. Reddy and Sons*, in support of his submission that the unambiguous and clear language of Sub-section (1) of Section 25 of the Act, as it stood, prior to the amendment makes it clear that if the claimant has made a claim pursuant to the notice u/s 9 of the Act, then it would be impermissible for the Court to award any amount exceeding the said claim.

5. In the instant case, there is no dispute whatsoever that in the claim petition submitted by the appellant in response to the notice u/s 9(2) of the Act, the appellant claimed the compensation @ Rs. 12,000/- per acre. It is not known as to what is the rate at which he claimed in the reference application filed by him before the Land Acquisition Officer requesting him to refer the award to the Civil Court u/s 18 of the Act. It is true that during the pendency of the reference, the appellant filed LA. No. 620 of 1989 under Order VI, Rule 17 of the CPC and obtained orders permitting him to amend the claim statement to claim Rs. 20,000/- per acre for the acquired land. The application was ordered and accordingly the amended claim statement was filed in the reference Court. The prayer itself was seeking permission to amend the claim statement filed by the

appellant in the reference Court, which was ordered by the reference Court. The amended claim statement filed by the appellant herein in the Court below would make it abundantly clear that what has been amended was the claim statement filed by the appellant in the reference Court.

6. Now the short question that falls for consideration is whether the judgment in Ghaziabad Development Authority (*supra*) supports the submission made by the learned Counsel for the appellant ?

7. We are required to notice the relevant facts leading to certain observations made by the Apex Court in the said judgment. That an extent of two bighas and 1 biswa equivalent to 6,021 square yards situated in the village of Jatwara Kalan of Ghaziabad District was acquired under the provisions of the Land Acquisition Act, starting with the publication of Notification u/s 4(1) on 18-8-1962. The declaration u/s 6 was made on 27th October, 1964, possession was taken on 22-12-1964 and the award was passed by the Land Acquisition Special Officer on 26-6-1967. The market value was fixed by him as low as Rs. 2 per square yard, evaluating it as agricultural land. That an application was filed by the appellant seeking reference u/s 18 of the Act. In that application (reference application) compensation was claimed (a). Rs. 20/- per square yard. The matter was accordingly referred to the District Judge, Ghaziabad. The claimants filed a petition for amendment of application dated 11-7-1967 (application seeking reference) seeking fixation of market value at Rs. 100/- per square yard instead of Rs. 20/- per square yard. The said application was allowed by the reference Court vide judgment dated 31-5-1984 determining the market value @ Rs. 40/- per square yard. The claimant preferred an appeal in the High Court praying for further enhancement of compensation. The Ghaziabad Development Authority also preferred an appeal questioning the enhancement of compensation to the Civil Court. The High Court by its judgment dated 5-12-1993 allowed the appeal of the claimants partly by enhancing the market value to Rs. 85/- per square yard. The Ghaziabad Development Authority preferred an appeal in the Supreme Court inter alia contending that whether the landholders could claim and get compensation under the Land Acquisition Act over and above what they claimed in an application seeking reference to Civil Court. The Supreme Court observed:

"That the award was passed by the Land Acquisition Officer and the reference Court earlier to the effective date of substitution of Section 25. Hence, the limitation on the power of the Court to award compensation as enjoined by the pre-amended Section would be attracted."

The Supreme Court further observed:

"However, there is a formidable impediment for the appellant to take shelter under the pre-existing Section 25. On a petition filed by the claimant, the application dated 11.7.1967 wherein compensation was claimed at Rs. 20/- per square yard was allowed to be amended by an order of the reference Court passed in the year 1983. It is to be noted that by virtue of Section 53 of the

Land Acquisition Act, the provisions of the CPC shall apply to all proceedings before the Court unless they are inconsistent with anything contained in the ActThe effect of allowing the amendment is to substitute the figure of Rs. 20/- by Rs. 100/- per square yard. When once this amendment is recognised and taken note of, it is obvious that the bar u/s 25 does not get attracted. Whether this amendment could have been permitted in the face of the unamended Section 25 has not been put in issue before the High Court in specific terms. Even in the SLP we found, in vain, any ground questioning the order allowing the amendment."

8. In our considered opinion, the observations made by the Supreme Court in Ghaziabad Development Authority's case (supra) in no manner would help the case of the appellant and the point urged by the learned Counsel for the appellant. In the case on hand, the appellant never sought for any amendment of either the claim petition filed by him in response to notice u/s 9(3) of the Act before the Land Acquisition Officer or the amendment to the reference application, if any, filed by him before the Land Acquisition Officer seeking reference of the award to the Court. On the other hand, the appellant sought for an amendment of the claim petition filed by him in the reference Court. No doubt, the application was ordered but the same is of no consequence. The unamended Section 25 of the Act, the applicability of which is not in doubt to the facts on hand mandates that when the applicant had made a claim to compensation pursuant to any notice given u/s 9 of the Act, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11. It is therefore obvious, what is relevant is application claiming compensation pursuant to any notice given u/s 9 of the Act. Section - 25 mandates that the Court shall not award any amount to any claimant exceeding the amount of compensation claimed by him in response to notice given u/s 9 of the Act.

9. The question is not res integra but squarely covered by an authoritative pronouncement rendered by a Three-Judge Bench of the Supreme Court in B.V. Reddy's case (supra). The facts in B.V. Reddy's case (supra) were the notification u/s 4(1) of the Act was published on 9-6-1976 proposing to acquire the land admeasuring Acs. 1-06 guntas. The Land Acquisition Officer determined the market value of the acquired land at Rs. 11,000/- per acre by award dated 31-2-1977. Before the Land Acquisition Officer, the landowners had claimed compensation @ Rs. 25,000/- to Rs. 30,000/- per acre. On a reference being made u/s 18 of the Act, the Civil Court determined the market value of the acquired land at Rs. 75,000/- per acre, but granted compensation @ Rs. 30,000/- per acre in view of Section 25 of the Act as it stood prior to its amendment in the year 1984 and as the owners had claimed compensation @ Rs. 30,000/- per acre. On an appeal, the learned Single Judge came to the conclusion that the market value of the land would be Rs. 75,000/- per acre but did not enhance the compensation in view of the unamended provision of Section 25 of the Act and in view of the fact that the owners had claimed only

Rs. 30,000/- per acre before the Land Acquisition Officer. On appeal, the Division Bench of this Court came to the conclusion that Section 25 being procedural in nature and the amendment having been made while the appeal was pending, the amended provisions of Section 25 of the Act would apply and since under the amended provisions, there is no bar for awarding compensation more than the amount claimed by the claimant and the only embargo being that the amount shall not be awarded less than the amount awarded by the Collector u/s 11, the Court would be justified in enhancing the compensation if the market value is determined at a higher rate. The Supreme Court while considering the question, whether the provisions of Section 25 of the Act will be construed to be procedural in nature or substantive observed:

"Section 18 entitles the person interested who has not accepted the award to make a written application to the Collector, requiring that the matter of determination of compensation be referred to a competent Court. Section 25 however, as it stood prior to its amendment by Act 68 of 1984, puts an embargo to the effect that if an applicant has made a claim to compensation pursuant to any notice given u/s 9, then the amount awarded to him by the Court shall not exceed the amount so claimed and shall not be less than the amount awarded by the Collector u/s 11." (Emphasis is of ours).

The aforesaid provisions contained in subsection (1) of Section - 25, thus limits the power of the reference Court on a reference being made u/s 18 to the quantum of compensation which could be awarded.....on a plain reading of the same, it is difficult for us to hold that it is procedural in nature. On the other hand, it unequivocally limits the power of the Court on a reference being made to award compensation.....The substantive right of a claimant who has made a claim to the compensation pursuant to a notice u/s 9, cannot be more than the amount claimed and under any circumstances, would not be less than the amount which the Land Acquisition Collector has awarded in Section 11, since that award of the Collector is the offer that is made to the claimant..... unambiguous and clear language of Sub-section (1) of Section 25, as it stood prior to the amendment, makes it explicitly clear that if the claimant has made a claim pursuant to a notice u/s 9, then the Court would be incompetent to award any amount exceeding the said claim.....we approve the said conclusion and hold that the provision of Section 25 of the Land Acquisition Act is substantive in nature."

10. It is thus clear that what is relevant in considering as to the applicability of Section 25 of the Act is the claim made by the claimant pursuant to a notice u/s 9 of the Act. If the claimant makes any claim pursuant to notice u/s 9, then the Court would be incompetent to award any amount exceeding the said claim. The claim statement filed by a claimant after reference of the award to the Civil Court u/s 18 of the Act, is of no consequence. The amount of compensation cannot be determined with reference to the claim statement filed by a claimant in the reference Court after the reference of the award by the Collector to the reference

Court u/s 18 of the Act.

11. In the instant case, as we have already noticed that the appellant did not seek for any amendment of the claim statement filed by him before the Land Acquisition Officer in response to the notice issued u/s 9 of the Act nor was there any application filed seeking the amendment of any application filed by him seeking reference of the award u/s 18 of the Act as was the case in Ghaziabad Development Authority (supra). In such view of the matter, we hold that the ratio of the decision in Ghaziabad Development Authority's case (supra) is not applicable to the facts on hand. The issue that arises for consideration before us is squarely covered by the authoritative pronouncement of the Supreme Court in B.V. Ready's case (supra).

12. We do not find any legal infirmity in the judgment under appeal. The learned Judge having relied upon the orders passed by this Court in Exs. A-16 and A-17 which were preferred against the award passed by the reference Court under Ex.A-9, fixed the market value of the acquired land at Rs. 17,000/- per acre. The learned Judge could not have awarded the said amount to the appellant herein for the reason that the appellant himself restricted his claim to that of Rs. 12,000/- per acre in his claim petition filed before the Land Acquisition Officer. The amendment of his claim statement in the reference Court is of no consequence, in view of the embargo contained in Section 25 of the Act. "The reference Court was not competent to award more than what has been claimed by the claimant in his claim statement before the Land Acquisition Officer. The reference Court rightly restricted the claim of the appellant herein and accordingly awarded the compensation @ Rs. 12,000/- per acre even after coming to the conclusion that the market value of the acquired land as on the date of notification was at Rs. 17,000/- per acre.

13. We do not find any merit in this appeal. We do not equally find any merit in the appeal being AS No. 1544 of 1997 preferred by the Land Acquisition Officer in view of our finding that the decision of the reference Court fixing the market value at Rs. 17,000/- per acre but awarding Rs. 12,000/- per acre is not vitiated by any reason, Thus, the appeal of the State is bound to be dismissed.

14. In the result, the appeal in A.S. No. 1544 of 1997 preferred by the State is dismissed and the appeal in A.S. No. 289 of 1995 preferred by the claimant is partly allowed directing payment of interest on 30% solatium.