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In the Andhra Pradesh High Court

Case No : Rev. Civil Miscellaneous Petition No. 9619 of 2002 and A.S. No. 3392 of 1992

Revenue Divisional Officer and Another — APPELLANT

Vs

M. Bapaya Reddy and Others — RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Land Acquisition Act, 1894 — Section 18, 23, 4(1), 6(1)

Citation : (2003) 6 ALT 672

Hon'ble Judges : G. Yethirajulu, J;B.S.A. Swamy, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; K.V. Ramana Rao, A. Chaya Devi, J. Narayana Swamy, K. Suresh Reddy, P.L. Deepaja, T. Pradyumma Kumar and P. Veera Reddy, for the Respondent

Judgement

G. Yethirajulu, J.—These review petitions are filed by the Land Acquisition Officer (Revenue Divisional Officer), Anantapur (LAO) praying to review the common order of a Division Bench of this Court dt. 27-10-1998 delivered in A.S.No. 3392 of 1992 preferred against the order of the Principal Sub-Court, Anantapur in O.P.No. 407 of 1987 dated 27-3-1992 on a reference made by the LAO u/s 18 of the Land Acquisition Act ("the Act" for brevity) at the request of the owners of the lands having regard to the acquisition of an extent of Ac.95-13 cents land vide Award No. 1/86 dated 31-1-1986 passed by him.

2. The LAO acquired the land, which is situated in Anantapur Municipality, for construction of houses for lower and middle-income group people by the A.P. Housing Board. The land belongs to 427 owners. The District Collector, Anantapur issued Section 4(1) notification on 12-3-1980 and Section 6(1) notification was published on 21-3-1980. The LAO in his award dated 31-1-1986 fixed the market value of the land @ Rs. 900/- per cent with consequential benefits like additional market value, solatium, interest on the amount etc. On protest made by the owners of the lands, in the year 1987 the LAO referred the matters to the

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Principal Sub-Court, Anantapur u/s 18 of the Act. The reference court decided some matters by enhancing the compensation from Rs. 900/- to Rs. 1500/- per cent. The remaining matters were settled in Lok Adalat by mutual consent and in the year 1995 the owners of the lands received consolidated compensation of Rs. 1850/- per cent.

3. The LAO preferred the appeals before this High Court against the order of the reference court and a Division Bench of this Court in its judgment dated 27-10-1998 disposed of 76 out of 106 appeals reducing the market value from Rs. 1500/- to Rs. 1400/- per cent. The LAO now filed these review petitions with the following contentions:

(i) There is error apparent on the face of the judgment of the Division Bench since the Bench did not give any deduction towards developmental charges by making deduction at least 50% of the market value towards developmental activity, though the Hon''ble Bench gave deductions for developmental charges in other cases.

(ii) The Bench erred in relying on sales of small extents of lands as comparable sales for arriving at the market value of a huge extent of land acquired under the above proceedings.

(iii) The review petitioner could not bring to the notice of the Division Bench about the respondents receiving a sum of Rs. 1850/- per cent as per the Lok Adalat, in addition to Rs. 1641/-, which was already granted under the Award and that re-fixing the market value @ Rs. 1400/- per cent is unjust and excessive.

(iv) Though the Division Bench worked out the total compensation at Rs. 1,35,150/- per acre, it committed error in rounding off the compensation amount to Rs. 1,40,000/- per acre by adding Rs. 4,850/- without any basis on the simple reason of rounding off the compensation amount.

4. The learned counsel for the respondents contended that since the land was acquired on acreage basis, the question of deduction of any amount from the compensation, particularly 50% towards development charges does not arise. There is no error apparent on the face of the record. The review petitions are not maintainable as the petitioners failed to file review petitions in some of the appeals. The rounding off the compensation amount at Rs. 1,40,000/- from Rs. 1,35,150/- per acre has been done by the Court finding it just and reasonable, therefore, it cannot be disturbed. The review petitions cannot be entertained; therefore, they shall be dismissed in limine as devoid of merits.

5. In the light of the contentions of the parties, the following are the points taken up for consideration:

(1) Whether fixing of compensation at Rs. 1,40,000/- per acre amounts to error apparent on the face of the record particularly when the Division Bench worked out the compensation payable at Rs. 1,35,150/- per acre?

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(2) Whether the review petition cannot be maintained on the ground that the petitioner failed to file review petitions in respect of some more appeals?

(3) Whether non-deduction of amount towards developmental charges makes the judgment bad and whether it amounts to error apparent on the face of the record?

(4) Whether the review petitions can be maintained on the basis of the grounds pleaded by the review petitioner?

Point No. 1:

6. In the appeals the Division Bench fixed compensation at Rs. 1275/- per cent i.e., Rs. 1,27,500/- per acre by taking the market value of the land of the year 1977. The Division Bench granted 2% of the market value towards price escalation for a period of three years i.e., up to 1980, the year in which Section 4(1) notification was issued, and worked out the total compensation at Rs. 1,35,150/- per acre. After working out the said amount the Division Bench might have felt that the ends of justice would be met if the compensation amount awarded is rounded off to Rs. 1,40,000/- per acre. Accordingly it was done.

7. The learned Government Pleader Sri J. Prabhakar submitted that by rounding off the amount to Rs. 1,40,000/- the Division Bench added a substantial amount of Rs. 4,850/- per acre and therefore it committed an error apparent on the face of the record and the same has to be reviewed.

8. After carefully going through the judgment of the Division Bench we are of the view that the Division Bench after making up its mind fixed the compensation at Rs. 1,40,000/- per acre from Rs. 1,35,150/-. This is not an act of inadvertence or mistake in any arithmetical calculation. It also cannot be treated as a clerical or typographical error unless the review petitioner makes out a point on any of the grounds mentioned in Order 47 Rule 1 C.P.C.

9. In Lily Thomas etc. etc. v. Union of India, 2000 (3) Sup 601 the Supreme Court while considering the provisions of Order 47, Rule 1 CPC held as follows:

The power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated as an appeal in disguise. .... The error contemplated under the rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. If must be an error of inadvertence. The words ''any other sufficient reason appearing in Order 47, Rule 1 CPC" must mean "a reason sufficient or grounds at least analogous to those specified in the rule. Error apparent on the face of the proceedings is an error which is based on clear ignorance or disregard of the provisions of law.

10. In Rajender Kumar and Ors. v. Rambhai and Ors.2002 (4) CCC 105 (SC) the Supreme Court held that unless orders sought to be reviewed suffers from the

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error apparent on the face of the order, permitting such order to stand will lead to failure of justice and, no interference could be made in review jurisdiction.

11. In the light of the principles laid down by the Supreme Court and after considering the factual position, we are of the view that the action of the Division Bench in rounding off the compensation amount of Rs. 1,35,150/- per acre to Rs. 1,40,000/- cannot be termed as an error apparent on the face of the record. Therefore, we are not inclined to review the impugned order dated 27-10-1998 regarding the quantum of compensation fixed by the Division Bench at Rs. 1,40,000/- per acre. This point is accordingly answered against the review petitioner and in favour of the respondents.

Point No. 2:

12. The LAO filed the review petitions in the batch of many appeals, but the learned counsel for the respondents -- claimants pointed out that the LAO failed to file review applications against the judgment and decree in A.S.Nos. 3748 of 1992, 2054, 2746, 2588 of 1993 and 1092 of 2001 and submitted that unless the LAO files review petitions in respect of all the appeals against the common order passed by the Division Bench, filing review petitions against the judgment and decree in some of the appeals leads to conflict of decrees against the common order, therefore, the review petitions filed against the decrees in some of the appeals cannot be maintained. The learned counsel in support of his contention relied on a judgment of the Supreme Court in The State of Punjab v. Nathu Ram, (1962) 2 SCR 637 wherein the Supreme Court held that when there was a joint decree in favour of the respondents and when there was death of one of the respondents in the appeal, which resulted in abatement of the appeal against the deceased-respondent, the abatement of an appeal against the deceased-respondent means not only that the decree between the appellant and the deceased-respondent has become final, but also as a necessary corollary that the appellate court in any way modify that decree directly or indirectly. The Supreme Court further held therein that when the decree in favour of the respondents is joint and indivisible, the appeal against the respondents other than the deceased-respondent cannot be proceeded in the appeal against the deceased-respondent as abated.

13. The principle laid down by the Supreme Court in the above decision is applicable in cases where the review petitioner failed to file review petitions in respect of some of the appeals. But, on physical verification of the records, it was reported by the Registry that in all the appeals review petitions have been filed and the appeal numbers furnished by the respondents relate to some other matters. This point is accordingly answered in favour of the review petitioner and against the respondents.

Point No. 3:

14. It is an undisputed fact that the LAO acquired an extent of Ac.95-13 cents of land in Anantapur Municipality and passed Award No. 1/86 dated 31-1-1986

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fixing the market value at Rs. 900/- per cent i.e., Rs. 90,000/- per acre. We have carefully gone through the award of the LAO. The award reveals that there are hundreds of claimants owning small extents of 5 to 10 Cents and there are few claimants who were owning more extent of land. The LAO after taking into consideration the prevailing market value, the locality and the purpose for which the land was acquired fixed the market value of the acquired land at Rs. 900/- per cent. He nowhere mentioned in the award whether any extent of land or compensation amount is liable to be deducted towards development charges. The award is silent about deduction of any land or compensation amount towards development charges. The order passed by the principal Sub-Judge, Anantpur, in Section 18 reference also do not disclose any plea taken by the LAO for deduction of compensation amount towards development charges. In the grounds mentioned in the Memorandum of Appeal in all the above appeals also there is no ground pleaded by the LAO for deduction of any compensation amount towards development charges. The LAO for the first time in these review petitions raised the plea of deduction of compensation amount towards development charges. After careful perusal of the entire record it is definitely indicating that the LAO was conscious that as the compensation amount was fixed on acreage basis, the question of deduction of any amount from the market value for development charges does not arise. The LAO therefore did not make any provision for deduction in his award and did not raise such plea either before the reference court or before this court in the appeals.

15. The learned counsel for the review petitioner (LAO), however, relied on certain decisions regarding the determination of compensation after deducting development charges. In Basant Kumar and Others Vs. Union of India (UOI) and Others, the Supreme Court while dealing with Section 23 of the Act regarding the points to be taken into consideration while fixing the market value and deduction of development charges held as follows:

7. If the land is already developed then what has to be seen is the nature of development and money expanded by the developer and as to what was the market value prevailing on that basis as on the date of notification, and what was the situation of the acquired land on that date; all these and the relevant facts have to be taken into consideration and then market value should be determined. Merely because a land is developed or developing land, it would not be that some compensation is to be adopted to determine the market value for the entire land as a developed land. If it is to be developed, it is a settled legal position that at least 1/3rd of the compensation has to be deducted towards providing amenities, like roads, parks, electricity, sewage, water facilities etc.

16. In Peesapati Venkataramana Bhasyakacharyulu Vs. The Land Acquisition Officer, a Division Bench of this High Court held that the sale deeds of small extents of land cannot be taken into consideration for assessing the value of larger extents of land in a case where Ac.4-13 cents of land was acquired for providing house sites.

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17. In Land Acquisition Officer, Hyderabad and Others Vs. Male Pullamma and Others, the Supreme Court while considering Section 23 of the Act held that in the case of acquisition of agricultural lands, when part of land was used for poultry purposes and when there was no development in the area or in the neighbourhood of the acquired land as on the date of notification, the High Court was not justified in determining the value treating the acquired land as possessing potentiality and the question of deduction would arise only when the lands are found to have potential value and there is evidence of development in the neighbourhood.

18. There is no dispute regarding the principles laid down by the Supreme Court and a Division Bench of this Court in the above judgments. We have already observed that as the LAO did not make any proposal for deduction of any amount towards development charges, as there was no plea of deduction at any point of time, till it was raised in the review petitions, as the acquired land is a vast extent of agricultural land and as the compensation was fixed on acreage basis, the question of deduction of any amount towards development charges from the compensation does not arise.

19. Since the LAO did not fix the compensation on square yard basis, by taking into consideration the provisions to be met for roads, parks and other common purposes etc., it amounts to error if the Court fails to deduct a certain percentage of the compensation amount from the total compensation awarded by the LAO fixed the compensation on acreage basis without taking into consideration the provisions for common purposes to be made, the question of deducting any amount from the total compensation towards development charges does not arise. Therefore, this cannot be treated as an error apparent on the face of the record.

Point No. 4:

20. In the light of the findings under Point Nos. 1 to 3, we hold that the review petitions cannot be maintained. Hence, all the review petitions are dismissed, but under the circumstances without costs.

21. The petitions filed by the review petitioner in some of the review petitions to condone the delay in filing the review petitions, and to dispense with the certified copy of the judgment in appeal, if not already ordered, are hereby ordered accordingly.

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