(2004) 07 AP CK 0028

In the Andhra Pradesh High Court

Case No : Appeal No''s. 2210 of 1999 and Cross Objections

Special Deputy Collector (LA) SRBC	APPELLANT
Vs	
Medam Venkata Guruvaiah	RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 51A

Citation : (2005) 1 ALD 724 : (2005) 1 ALT 725

Hon'ble Judges : Devinder Gupta, C.J;G. Rohini, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; C.V. Mohan Reddy, for B.D. Maheswar Reddy, for the Respondent

Judgement

Devinder Gupta, C.J.—This batch of appeals filed u/s 54 of the Land Acquisition Act 1894 (hereinafter referred to as ''the Act'') and the Cross-Objections in the respective appeals arise out of a Common Award dated 19-4-1999 passed in LA.OP.165 of 1997 and Batch by the Senior Civil Judge, Atmakur answering the reference petitions filed u/s 18 of the Act against Award No. 1/91-92 dated 13-11-1991 passed by the Special Deputy Collector, (LA), SRBC, Nandyal, determining the amount of compensation payable to various claimants for the acquired land situated in Cherlopalli Village in the Revenue Mandal of Owk, Kurnool District.

2. On 9-2-1990 a requisition was sent by the Executive Engineer, Srisailam Right Bank Canal Division No. 3, Owk to acquire land "For burrow area for formation of embankment for improvements to Thimmaraju Tank Bund. On 2-5-1990 requisitioned lands were measured and subdivision record was prepared. Notification u/s 4(1) of the Act was published on 3-12-1990 expressing the intention to acquire Ac.135.85 cts. of land situated in Cherolopalli Village, Owk Mandal, Kurnool District. While the process of making the award by the Special Deputy Collector (LA) was in progress, possession of the land was taken over on 31-3-1991. The LAO made his Award No. 1/91-92 on 13-11-1991 offering

compensation to claimants. He classified the lands as (i) Dry lands, (ii) Irrigable dry lands and (iii) Wet lands and accordingly offered compensation at the rate of Rs. 8,000/-, Rs. 12,000/- and Rs. 16,000/- per acre respectively. Dissatisfied with the amount of compensation offered, claimants sought references for determination of the amount of compensation. Reference Court by the impugned award enhanced the amount of compensation holding the claimants to be entitled to compensation at the rate of Rs. 16, 000/-, Rs. 24,000/- and Rs. 32,000/- per acre respectively for the three categories of lands. Feeling aggrieved by the impugned awards passed by the Reference Court, the present appeals have been preferred by the Government on the ground that the award of the Reference Court is excessive. In some of the appeals, claimants have filed Cross-Objections seeking further enhancement in the amount of compensation.

3. The Reference Court treated OP No. 163 of 1997 as the lead case. Claimants examined three witnesses and placed reliance upon two sale transactions proved and marked as Exs.A1 and A.2 Land Acquisition Officer appeared as R.W. 1 to support his award and also proved three awards viz., Award Nos. 1/91-92, 4/1997-98 and 13/92-93 as Exs.B.1, B.2 and B.3 dated 13-11-1991, 26-3-1998 and 6-3-1993 respectively. The Reference Court discarded the evidence relied upon by the LAO and placed reliance upon the two sale transactions Exs.A.1 and A.2 relied upon by the claimants and thus enhanced the amount of compensation.

4. On behalf of the State-appellants it was urged by the learned Government Pleader that the Reference Court was not justified in relying upon Ex.A.1 sale deed dated 25-7-1990 since the said transaction was brought about after requisition had been sent by the Executive Engineer, Srisailam to acquire land in the village for the project work and the public had already become aware of the intended acquisition at least on 2-5-1990, when the lands to be acquired were measured and Sub-division record was prepared. Moreover, PW.2 and his brother who are Claimant Nos. 16 and 17 in the acquisition proceedings are the vendees of the sale transaction Ex.A.1. Vendor of the sale transaction was not examined. Learned Counsel further contended that genuineness and bona fide of the sale transaction was not proved for which burden lay upon the respondents. Claimants being in the position of plaintiffs were bound to lead cogent and reliable evidence about the market value of the acquired land as on the date of notification. Having failed to do so, it was vehemently submitted that the Reference Court was not justified in increasing the amount of compensation merely on the basis of sale transaction, which was brought about with a view to boost up the market value of the land. Learned Government Pleader further submitted that reliance upon the other sale deed Ex.A.2 is also not justified since there was hardly any cogent evidence adduced to compare the acquired lands with the land, which is the subject-matter of sale transaction Ex.A.2. In that case also, learned Counsel submitted that the genuineness of the sale deed was not proved. Land was located faraway from the acquired lands. In the absence of cogent and reliable evidence adduced about the comparison of the acquired land with the land covered by the sale transaction, it is not safe to fix the market

value of the land based on a solitary sale transaction. Thus there was no material available with the Reference Court on the basis of which enhancement could have been ordered.

5. On behalf of the claimants learned Senior Advocate submitted that the claimants led evidence in consonance with the provisions of the Act. Reliance was placed on Section 51A of the Act urging that it was sufficient for the claimants to have tendered certified copies of the sale transactions. While tendering copies of the documents, vendees of the two sale transactions Exs.A.1 and A.2 appeared in the witness box and stated about the comparability of the land purchased by them with that of the land acquired. Hardly any evidence was adduced by the Collector to rebut the said evidence or to prove that the sale transactions were bogus or not bona fide. Mere allegation that Ex.A.1 sale transaction was brought about after requisition had been sent and lands had been measured will not be sufficient to discard the sale transaction. The sale transaction is definitely prior to issuance of the notification u/s 4(1) of the Act, and in the absence of any evidence adduced on record to show that it was a bogus transaction or was brought into existence merely to boost up the market value of the land, Reference Court was justified in placing reliance on the sale transaction Ex.A.1. It was also contended that there was no justification for the Reference Court in making any deduction from the market value proved by the claimants on the ground that the area acquired was large. Claimants were numerous and their holdings were smaller in extent. In some cases, holdings were less than one acre of land and in most of the cases it was approximately one acre. Only in a few cases, the area acquired was more than one acre. Therefore, when sale transaction was with respect to smaller extents of land, the market value proved should have been treated as fair market value in respect of each claim without making any deduction. Reference Court ought not to have been swayed by the fact that combined area of the claimants put together was large; therefore, it was necessary to make some deduction out of the proved market value.

6. Learned Counsel for the parties relied upon various decisions of the Supreme Court on the settled proposition of law as regards determination of the amount of compensation payable to claimants for their land compulsorily acquired. A Division Bench of this Court in AS Nos. 1898 of 1991 and Batch decided on 5-7-2004 has noticed those principles with which we fully agree and for that we need not repeat the same principles here or separately discuss those decisions except by applying those settled principles.

7. The LOA in his award did take into consideration 54 sale transactions from 8.6.1988 to 17.12.1990 including the sale transactions Exs.A.1 and A.2 relied upon by the claimants. After rejecting number of sale transactions on the ground that the lands covered by the said transactions are faraway from the alignment of the acquired land, LAO concentrated on 14 sale transactions, which also included the sale transaction covered by Ex.A.1. He has also inspected the topography of the village and observed that it is situated on the side of the road

leading from Owk to Tadipatri Village in Anantapur District and main irrigation source to the wet as well as irrigated dry lands was "Buggamala" and that the classification given to register wet and irrigated dry lands are one and the same. He mentioned that he had verified the nature of the clay of the land covered by the acquisition and further observed that normally dry lands will not be sold at a higher rate than the irrigated dry and wet lands unless dry land has got potentiality of development into residential or industrial area. No evidence was led by the claimants to establish that the land had any potentiality for being developed into residential or industrial area. LAO has also observed that there was no proper sales in the vicinity which can be relied upon to fix the market value of the land under acquisition since they were either registered for very low or higher amount for various reasons. He, however, placed reliance upon the sale transaction dated 5-6-1989 by which an extent of one acre of land was sold for Rs. 10,000/-. Taking the said amount to be representing the correct market value of the land and also taking into account the time gap from the date of the said sale transaction till the date of acquisition, LAO proceeded to value the irrigated dry land at Rs. 12,000/- per acre, wet land at Rs. 16,000/- per acre and dry land at Rs. 8,000/- per acre. No other sale transaction was proved before the reference Court by the LAO.

8. Thus the only evidence adduced before the Reference Court are the two sale transactions relied upon by the claimants. In view of the fact that sale transaction Ex.A.1 was brought about after requisition had been sent and lands had been measured in the village; a doubt is cast on its genuineness. No doubt in view of Section 51A of the Act, it was permissible for the claimants to have merely tendered certified copy of the sale deed without the necessity of examining the vendor and vendee but the value to be attached to such a sale transaction is still within the Court''s jurisdiction. As regard the scope of Section 51A of the Act, in T.T. Devasthanams, represented by its Executive Officer, Tirupati v. M. Munikrishna Reddy and others, (supra), this Court held:

The position, which thus emerges on an analysis of various decisions of the Supreme Court, is that Section 51A of the Act now permits the Courts to accept as evidence certified copy of a document duly registered under Registration Act, as reliable evidence, without examining the parties to the document and without insisting upon production of the original document. But mere acceptance of such certified copy as evidence does not preclude the Court from examining the evidentiary value of the transaction reflected therein. It is open to the Court to treat such certified copies as evidence but mere accepting such certified copies as evidence does not mean that Court is bound to treat them as reliable evidence reflecting the market value. What is sought to be achieved by Section 51A of the Act is that the transactions reflected in the documents may be treated as evidence just like any other evidence and it is always open for the Court to weigh all the pros and cons to decide whether such transaction can be relied on in determining the real price of the land concerned. Circumstances on record may be such by which Court may form its opinion that such sale transactions were entered into only for the purpose of inflating the market value, in anticipation of acquisition proceedings. Therefore, when circumstances on record are such, the burden will lie upon the claimants to prove the genuineness of the transaction by examining the vendor and vendee that market value reflected in the document was fixed bona fide and was not an inflated market value projected in anticipation of acquisition proceedings. In nutshell, the Court has always to weigh all the pros and cons including circumstances available on record and then proceed to determine the market value on admissible material.

9. Circumstances in this case are such that it would not be safe for us to consider the sale transaction relied upon by the claimants in order to determine the market value of the acquired land. The vendees being claimants in the acquisition proceedings, it was necessary for them to have at least adduced evidence on record to show that the rate at which they purchased the land was the fair market rate prevalent in and around the vicinity, that the market value was fixed bona fide uninfluenced by any extraneous considerations. Part of the land covered by Ex.A.1 is also subject-matter of acquisition. We are thus left with no option but to discard the said sale transaction Ex.A.1.

10. As regards the other sale transaction Ex.A.2 relied upon by the claimants, no cogent evidence was led as regards its genuineness, but there is also no evidence led by the LAO to challenge its validity. Being solitary sale transaction of one acre of land, it will neither be safe for us to solely rely on the said instance to assess market value of the acquired land nor this can be treated as relevant piece of evidence to arrive at fair market value of the land. Evidence on record would suggest that this sale pertains to dry land. There is material on record to suggest that dry lands having the potentiality of developing into commercial sites would definitely fetch higher market value. We can definitely rely upon the observations made in the award of the LAO that number of sale deeds were executed from 1988 onwards till 17th December, 1990. None of the sale transactions either in dry category or wet category fetched such an exorbitant amount as is reflected in the sale transaction Ex.A.2 relied upon by the claimants.

11. Determination of the amount of compensation is dependant on various factors. But when evidence led by both sides is scanty, the Court cannot raise its hands in despair but has to make some guess work. Having regard to the facts and circumstances, we are of the view that it will be but fair in this case to apply the thumb rule. On appeals being filed by the Government one half of the enhanced amount of compensation was ordered to be deposited and paid to the claimants without furnishing any security. Sale transaction Ex.A.1 has already been discarded by us. The other sale transaction relates to smaller extent of land wherein one acre of land was sold for Rs. 25,000/-.

12. Today in a batch of judgment rendered by this Bench in A.S. No. 2348 of 1999 and batch (The Special Deputy Collector (LAO), SRBC, Special Deputy Collector, (LAO), SRBC Vs. P. Chinna Pullaiah,), the above aspects were duly discussed. In the said case also, there was only one sale transaction relied upon

by the LAO and we had applied thumb rule in fixing the market value. While doing so, the Bench has also taken note of the fact that stay of execution of the awards of the Reference Courts was granted subject to deposit of one half of the enhanced amount of compensation and the same was directed to be released to the claimants without furnishing security and accordingly fixed the market value of the land approximately to the extent to which the additional amount of compensation has been released to the claimants. In the said case, the Reference Court had enhanced the compensation from Rs. 13,000/- to Rs. 26,000/- per acre and we have fixed market value at Rs. 19,000/- per acre. In the present cases, the Reference Court enhanced the amount of compensation for dry lands from Rs. 8,000/- to Rs. 16,000/-; for irrigable dry lands from Rs. 12,000/- to Rs. 24,000/- and for wet lands from Rs. 16,000/- to Rs. 32,000/-. Applying the same principle and also having due regard to the fact that in these cases also stay of execution of the awards of the Reference Courts was granted subject to deposit of one half of the enhanced amount of compensation and the same was directed to be released to the claimants without furnishing security, we are of the view that interest of justice would be fairly met by fixing the market value of the land as on the date of the notification as follows:

Dry lands : Rs. 12,000/- per acre Irrigable dry lands: Rs. 16,000/- per acre Wet lands: Rs. 24,000/- per acre

13. Accordingly, the appeals are partly allowed. The Cross-Objections are dismissed. The claimants are held entitled to compensation aforementioned besides other statutory benefits. On the enhanced amount of compensation (market value and solatium) in case interest has not been worked out and paid, the same will be paid to the claimants. Parties are directed to bear their respective costs.