(1997) 07 AP CK 0024

In the Andhra Pradesh High Court

Case No : AS No. 2769 of 1987

Special Deputy Collector LA Unit-II LMD, Karimnagar — APPELLANT

Vs

N. Laxmaiah — RESPONDENT

Date of Decision : 21-07-1997

Acts Referred:
Land Acquisition Act, 1894 — Section 24, 25, 4(1), 54

Citation : (1999) 2 ALD 171 : (1997) 5 ALT 214

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

Bench : Division Bench

Advocate : Government Pleader for LA, for the Appellant; Mr. B.T. Bheemsen, Adv ., for the Respondent

Judgement

P. Venkatarama Reddi, J.—A large extent of more than 1500 acres of wet and dry lands situate in Hasnapur village of Karimnagar District was acquired in the year 1977 as it was liable for sub-mersion while executing the Lower Manair Dam Reservoir Project. The notification u/s 4(1) of the Land Acquisition Act was published in A.P. Gazette on 24-3-1977. The Land Acquisition Officer passed an Award on 15-7-1978. He awarded compensation at Rs. 1320/- per acre of dry land and at Rs.2720/-per acre of wet land.

2. The respondent in this appeal filed by the State Government claimed 1/16th share over an extent of 31 acres of dry land and Ac.4-17 guntas of wet land situate in Sy.Nos.612, 625 etc., of Hasnapur. By the aforementioned Award, the Land Acquisition Officer granted him compensation as l/16th share-holder. The respondent sought for reference u/s 18 of the Act. In the reference application, he requested for determination of market value at Rs.4,000/-per acre of dry land and Rs.10,000/- per acre of single crop wet land. It is on that basis he claimed compensation. In the claim statement filed before the Subordinate Judge, Karimnagar in OP No.907 of 1982, out of which this appeal arises, he claimed the market value of the dry land at Rs. 10,000/-per acre and of single crop wet land at Rs. 15,000/- per acre. It may be mentioned at this stage that in the course of

evidence, the claimant as PW1 categorically stated that at the time of acquisition, the market value of the dry and wet lands was at Rs.4,000/- and Rs.12,000/- per acre respectively. The learned Subordinate Judge by the impugned judgment enhanced the compensation by fixing the market value at Rs.3500/- per acre of dry land and Rs.5,000/- per acre of single crop wet land. Aggrieved by this Award of the civil Court, the Special Deputy Collector, Land Acquisition, (LMD) has filed this appeal u/s 54 of the Act.

3. While so, the respondent-claimant on receipt of notice in appeal filed cross-objections on 7-8-1996 seeking determination of market value at Rs.25,000/- per acre. This has been done long after the respondent had notice of filing the appeal, obviously inspired by the judgment of the Supreme Court in K. Krishna Reddy and Others Vs. Special Deputy Collector, Land Acquisition Unit II, Lmd Karimnagar, Andhra Pradesh, .

4. Though there is some doubt on the point whether the receipt of notice by the Counsel by name Sri C Ramesh Sagar purporting to be the Advocate for the respondent in the lower Court is sufficient notice for the purpose of Order XLI, Rule 22, as the cross-objections were taken on file long back without objection by the Registry, we are not inclined to reject the cross-objections in limine on the ground of delay.

5. The learned Subordinate Judge relied mainly on Ex.A2 dated 31-3-1982 which is a xerox copy of the decree in OP No.l of 1982. The judgment in that OP also relates to the lands of Hasnapur acquired under the same notification. Under Ex.A2, the market value of wet and dry lands was fixed at Rs.6500/- and Rs.4500/- respectively. The fact that Hasnapur village is quite proximate in distance to Karimnagar town was also taken into account by the learned Judge. In view of this evidence, the learned Government Pleader could not make a serious endeavour to substantiate the ground in the appeal that the compensation awarded was excessive. Moreover, as referred to hereinafter, the Supreme Court as well as this Court granted compensation at the rate of Rs.25,000/- per acre irrespective of categorisation. We have therefore no hesitation in dismissing the appeal filed by the State.

6. What deserves more serious consideration is the cross-objections filed by the Respondent. The respondent claimed in the memorandum of cross-objections that the compensation at the rate of Rs.25000/- per acre should be granted to him. The sheet-anchor of this claim is the decision of the Supreme Court in K. Krishna Reddy''s case (supra). That was a case arising out of the same notification and Award relating to Hasnapur lands. The Supreme Court fixed the market value at the rate of Rs.25,000/-per acre regardless of categorisation "to meet the ends of justice". It is pointed out by the learned Counsel for the Cross-Objector that applying this judgment, the compensation at the rate of Rs.25,000/- was granted by the Division Benches of this Court in several cases, v/z., AS No.720 to 722 of 1994 and ASNo.804 of 1988.

7. Going by the evidence adduced in this case, there is absolutely no basis to determine the market value at Rs.25,000/-per acre which was arrived at on a rough and ready basis by their Lordships of the Supreme Court. Nevertheless, in view the fact that the judgment of the Supreme Court is in respect of the same notification and award and the lands in the same village, we would have thought of granting compensation by fixing the market value of Rs.25,000/- per care, thereby allowing the cross-objections in toto. But, there is, a formidable obstacle in the way of the claimant-cross-objector. As already noticed, the claim was made before the Land Acquisition Officer at Rs.4,000/-per acre for dry land and Rs. 10,000/- per acre for wet land. As per the unamended Section 25 which was in force at the time the judgment under appeal was rendered, there was a bar against the Court awarding more than what was claimed before the Land Acquisition Collector. But, the fetter on the power of the Court was removed by the amendment brought about by the L.A. (Amendment) Act (68 of 1984). The only limitation now placed by Section 25 on the power of the Court is to prohibit it from awarding anything less than what was awarded by the Collector u/s 11. The restrictions contained in the pre-amended provisions were deleted by the Amendment Act. It is true that at the time when the judgment under appeal was pronounced, Section 25 remained on the Statute Book in its unamended form. But it is laid down by this Court (K. Ramaswami, J.) in Spl. Dy. Collector (LA) v. K. Achamma, 1989 (3) ALT 440, that Section 25 being a procedural provision can be applied to pending actions in the civil Court or in the appellate Court inasmuch as the appeal is a continuation of the original proceeding. So holding, the market value was enhanced in appeal over and above what was claimed in the earlier proceedings. The aforementioned decision was approved and followed by two Division Benches of this Court vide judgment dated 27-11-1995 in LPA No.438 of 1989 and the judgment dated 10-4-1997 in AS No.1204 of 1987.

8. The learned Government Pleader adverted to the decision of Supreme Court in Gurdial Singh and Another Vs. State of Punjab, , in support of his contention that unamended Section 25 should be applied and the bar contained in sub-section (2) of Section 25 (as it then stood) is attracted to the instant case. We are unable to agree with this contention for the simple reason that in that case, the judgment of High Court in the appeal was rendered before the amendment. Hence, the Supreme Court (K. Ramaswamy A Hansaria, JJ.) found fault with the High Court in awarding compensation in excess of what was claimed before the Collector. But that is not the case here. In the light of interpretation placed on amended Section 25 in the aforementioned cases, we find no specific bar for awarding compensation at a rate, over and above what was claimed before the Collector by the claimant. However, the problem for the claimant will not end up here. Leaving apart the reference application, in the claim statement before the civil Court, the claim was made that the market value of the dry land should be fixed at Rs. 10,000/-per acre and that of single crop wet land at Rs. 15,000/- per acre. What is more, the claimant while deposing as PW1 maintained that at the time of acquisition, the market value of dry lands in the village was Rs.4000/-per

acre and of wet lands Rs.12,000/- per acre. We do not think that the respondent shall be allowed to put up an exaggerated claim for Rs.25,000/- disregarding what was claimed before the civil Court and what was reiterated in his evidence.

9. In this context, it is apposite to refer to the decision of Supreme Court in Ujjain Vikas Pradhikaran v. Tarachand, 1996 (6) Supreme 487. The Supreme Court while clarifying that the limitation on the exercise of the power of the Court was taken away by the amended Section 25, nevertheless, declined to grant compensation higher than what was claimed in the memorandum of appeal before the High Court. The following question was posed therein: "Whether the Court could grant compensation higher than that claimed by the party?"

It was answered in the following words:

"It would be obvious that when a party claims compensation at a particular rate he assesses the market value of the land at that particular rate and seeks compensation on that basis. Having assessed the compensation at that particular rate, the question emerges-whether the Court could grant higher compensation than was assessed by the party? We find the answer in the negative. This principle squarely applies to the facts in these cases."

10. Though it was a case of the landholder claiming higher compensation than what was claimed in the memorandum of appeal, the same principle should, in our opinion, apply with equal force to a case like the present one where the claim was put forward in the civil Court for a lesser sum than what is claimed in the Cross-objections here.

11. A person who made his claim in the reference Court for enhancement upto the level of Rs. 10,000/- per acre and adduced evidence cannot be heard to say in appeal that compensation should have been granted to him at Rs.25,000/-. Cross-objections in the appeal cannot be a source of wind-fall to the claimant. As already stated, there is no reliable and relevant material to enhance the market value even to the extent of the amount claimed in OP. Nevertheless, in view of the fact that several other claimants covered by the same notification and award have got much higher benefit by virtue of Supreme Court''s judgment, we are inclined to allow the cross-objections partly by enhancing the market value of the Respondent-Cross Objector''s land at Rs. 10,000/- per acre of dry and Rs. 15,000/- per acre of wet land.

12. Accordingly, the appeal filed by the State is dismissed and the cross-objection of the appellant is allowed partly as indicated above. The judgment and decree of the lower Court shall stand modified in the light of this judgment. The parties will bear their own costs.

