

(1997) 11 AP CK 0082

In the Andhra Pradesh High Court

Case No : A.S. No's. 2792 and 2793 of 1985

Special Deputy Collector (Land Acquisition Officer) Railways,
Nalgonda

APPELLANT

Vs

K. Ram Reddy and Others

RESPONDENT

Date of Decision : 30-11-1997

Acts Referred:

Evidence Act, 1872 — Section 51A

Land Acquisition Act, 1894 — Section 23, 4(1), 54, 6

Citation : (1998) 1 ALD 745

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : Government Pleader for Excise, for the Appellant; Mr. C. Ashok Reddy and Mr. R. Ramakrishna Reddy, for the Respondent

Judgement

1. The appellant in this appeal u/s 54 of the Land Acquisition Act (for short "the Act") is the Special Deputy Collector (Land Acquisition Officer), Railways, Nalgonda. The Judgment and decree of the Court of the Subordinate Judge, Nalgonda in O.P.No.114 of 1983 dated 30-4-1985 is challenged in A.S.No.2793 of 1985.

2. The grounds taken by the appellant in A. S.No. 2793/1985 are briefly as follows :

(1) That the enhancement of compensation to Rs.10/- per square yard from the rate of compensation awarded by the Land Acquisition Officer ranging from Rs. 1,850/- to Rs.2,775/- per acre was abnormal and unreasonable;

(2) Reliance placed on Exs.A2 to A4 which were brought into existence subsequent to Section 4(1) notification was not legal and proper;

(3) The lower Court ought to have seen that Exs. A2 to A4 beside being the got up documents were also not comparable sales having regard to the fact that the same were consisting of small extents of land;

(4) A grievance is also made in the appeal that the lower Court did not allow 1/3rd deduction of the area towards layout and other amenities while fixing the compensation;

(5) The judgment of the lower Court is also attacked on the ground that the lower Court erred in arriving at a conclusion that the land in question had considerable potentialities without any basis and without clarifying the nature of the alleged potentiality of the land in question;

(6) Ex.A3 sale transaction which was taken into consideration by the lower Court was situated far away from the acquired land and, therefore, no reliance could have been placed on the same;

(7) The lower Court should not have granted the same rate to the areas immediately adjacent to the road and to the areas situated on the rear side; and

(8) The granting of compensation yardwise ought not to have been resorted to by the lower Court in view of the fact that the lands in question were agricultural lands at the time of acquisition and there was no development.

3. The land owner/respondent has also filed Cross objections against the judgment and decree of the reference Court in O.P.No.114 of 1983. The grounds taken for cross objections are as follows :

(1) That the lower Court did not take into consideration the market value of the lands.

(2) The lower Court ought to have enhanced the compensation to Rs.20/-per square yard by taking Ex.A1 to Ex.A4 into account.

(3) The lower Court ought not to have disregarded the fact that the lands in question were situated within the municipal limits of Nalgonda town which was a very valuable piece of land; and

(4) That the lower Court ought to have accepted the factum value of the lands and ought to have awarded the compensation as claimed.

4. An extent of Ac.2-22 1/2 gts., forming part of Sy.Nos.1247,1251 and 1252/2 situated in Pangal village, Nalgonda district belonging to the claimants was acquired for the purpose of construction of new Broadguage Railway Line from Bibinagar to Nadikude. The notification under Sections 4(1) and 6 was published in the gazette on 25-8-1977 and before notification the possession of the land was taken on 19-8-77. The claimant-landowner claimed compensation at the rate of Rs.20/- per square yard. However, the compensation awarded was on the basis of Rs. 1,850/- per acre for dry land and Rs.2,775/- per acre for wet land. The claimant accepted the compensation under protest. The reference Court enhanced the compensation from Rs.1,850/- and Rs.2,775/- per acre to Rs.10/- per square yard. The solatium was allowed at 30% and interest at 6% p.a. from the date of taking possession till 29-4-1982 and from 30-4-1982 onwards at the rate of 9% per annum.

5. Having heard the learned Government Pleader for the appellant and the learned Counsel for the claimant/ respondent at length and having gone through the oral and documentary evidence on record, it becomes quite evident that Ex.A2 sale deed was executed on 6-8-1978, Ex. A3 sale deed was executed on 26-8-1977 and Ex.A4 sale deed was executed on 24-5-1978. Since Exs.A2 and A4 sale instances are relating to the date which was subsequent to Section 4(1) notification dated i.e., 25-8-1977, it need hardly be stated that the same cannot be considered for arriving at the current market value of the lands under acquisition. Such post notification sales if not admissible for arriving at the current market value, nothing contributing to higher value in such sales can be independently considered such as its nearness to the town, or the development of commercial and construction activity in that area, etc., because the same is already reflected in the sudden spurt of prices of land in that area immediately after Section 4(1) notification. The reference Court has erroneously indulged into such exercise of considering those facts independently, once having observed that post notification sales cannot be considered for enhancement. The learned Judge has also erred in describing those factors as the "potentiality" of the land under acquisition.

6. Ex.A7 which is an agreement of sale was executed on 25-12-1975 which was obviously executed about 20 months prior to the date of Section 4(1) notification and, therefore, even Ex.A7 would not render an illustration of comparable sale for arriving at the current market value of the lands under acquisition. An ideal illustration of comparable sale could be considered to be the one which has taken place within three months prior to the date on which Section 4(1) notification is issued. These are the submissions made by the learned Government Pleader, which cannot be disregarded and in that view of the matter, the compensation enhanced even to Rs.10/- per square yard by the reference Court cannot be upheld. It is also pertinent to note that PW1 is the father of the claimant, and therefore, his evidence cannot be taken at its face value unless the sale stands corroborated by any independent witness. But no such corroborative evidence has come on record.

7. The reference Court in Para 18 of its impugned order observed that the lands under acquisition had considerable potentialities which were not properly considered by the Land Acquisition Officer. According to PW1, the acquired land was situated within the municipal limit of Nalgonda municipality and it was abutting the PWD road. According to him, the market value on the date of acquisition was Rs.20/- per square yard; there were houses near the acquired land, but at the time of acquisition, there were no structures. PW1 also admitted in his Chief examination itself that there were no registered sale transactions except one or two relating to the year 1977 in which this land was acquired, PW1 also stated in his oral testimony that he had sold some lands out of the unacquired portion in Sy.Nos. 1 246 and 1247 at the rate of Rs. 15/-per square yard to Rs.45/- per square yard but the sale deeds were not registered. In his cross-examination he admitted that there were no structures standing on Sy.Nos.

1246 and 1247 at the relevant time when the acquisition took place.

8. We have already discussed how the documents referred to by PW1 in his oral testimony could not be taken into consideration for arriving at the current market value of the lands in question. The observation made by the learned Judge of the Reference Court that the lands under acquisition had considerable potentialities is devoid of any supporting evidence. The learned Judge has not taken pains to mention any particulars which made him make the observation that the lands under acquisition had considerable potentialities. It is not in fitness of things for the reference Court to make such observations which had no legs to stand on. While dealing with the oral testimony of PW2, the learned Judge observed that the land bearing Sy.No. 1247 was situated within the municipal limits of Nalgonda and out of the same 130 Sq.yards of land were sold by PW1 for house site at the rate of Rs.20/- per Sq.yard by sale deed Ex.A2, but the same was not eligible for consideration as already observed above.

9. The learned Judge of the reference Court further observed in his impugned judgment that PW2 in his cross-examination admitted that after the introduction of railway line only the rates of the lands in the near vicinity started increasing day by day. This phenomenon itself defeats the claimant's claim for enhancement. But unfortunately, the learned Judge has not chosen to make any observation resulting from such admission made by PW2 in his cross-examination.

10. As regards oral testimony of PW3, it is observed in the impugned judgment that PW2 was the attestor of the sale deed Ex. A4 in which the rate quoted was Rs.20/- per Sq.yard. This land according to PW3 was also situated within the municipal limits of Nalgonda municipality. However, this part of the oral testimony of PW3 renders no assistance to the claimant for the same reason that it was a post notification sale as already discussed above.

11. PW4 stated in his oral evidence that the acquired land was situated on the road side leading from Nalgonda to Kaltangoor and that the road side plots were sold at the rate of Rs.20/- per Sq.yard and the interior sites were sold at the rate of Rs.15/- per Sq.yard in the year 1975. The sale deed Ex.A3 was executed on 26-8-1977 but Section 4(1) notification was issued a day prior to the sale i.e., on 25-8-1977 and the possession was taken a week prior thereto. Since it falls into the realm of post notification sale, although by a very small margin, the same also cannot be taken into consideration. Keeping in view the observation made by the learned Judge of the reference Court that the possession of the acquired land was taken by the Railways with the consent of the land owner on 19-8-1977 Ex. A3 sale deed clearly falls into the circumscribed arena of a sale subsequent to the acquisition and that even according to Ex.A3, the value of the land sold on 26-8-1977 admeasuring 190 Sq.yards out of S.No.510 for the purpose of house site was Rs.1900/- which worked out to Rs. 10/-per Sq.yard. The learned Judge further observed that the subsequent sale deeds pertaining to the year 1978 in Exs. A2 and A4 revealed the trend of rise in prices and it had gone upto Rs.20/-

per Sq.yard which, according to the learned Judge, was evident from Ex.A2 and Ex.A4. Further, according to the learned Judge, the price rise was natural because PWs.1 to 3 admitted that in 1977 there were no houses in the neighbourhood of the acquired land, but the development activity of house construction was of subsequent origin and that was only on account of the laying of railway track and the construction of railway station, goods shed, quarters, rest house, etc. The learned Judge, therefore, concedes in the impugned judgment that the claimant was not entitled to claim the price quoted in 1978 in Ex.A2 and Ex.A4 but he ventured to take into consideration the price quoted in Ex. A3 dated 26-8-1977 as the same fell within the guideline for determining the market value of the acquired land which transaction took place only one week after the date on which the possession was taken. The learned Judge further observed that the Land Acquisition Officer was not prepared to accept Ex. A3 as a comparable instance of sale but he did not give any satisfactory reason except that the sale pertained to a small piece of land which could not be applied to the acquired land. However, according to the learned Judge of the reference Court, the Land Acquisition Officer correctly held that the acquired survey number was included in the municipal area of Nalgonda municipality and was situated near the town, but erred in awarding the lowest value of the acquired land at the rate of Rs.1850/- per acre for "A" group lands and at Rs.2775/- per acre for "B" group lands. The learned Judge further observed that according to the Land Acquisition Officer, the acquired survey No.1247 was categorised as dry land and Sy.Nos.1251 and 1252/2 were categorised as group "B" lands which were near the town and were included within the municipal limits. The learned Judge further observed that it was stated in the Award that the neighbouring lands situated within the municipal limit had already been sold for non-agricultural purposes and were demarcated into residential plots and sufficient material was available on record to show that the acquired land had good potentialities which were not properly considered by the Land Acquisition Officer and he had undervalued the market value for the acquired land. With these observations a finding is recorded by the learned Judge that Ex.A3 registered sale deed could safely be relied upon as a guideline for assessing the market value for the acquired land and on that basis the value of the acquired land was enhanced by him from Rs.1850/- and Rs.2275/- per acre to Rs.10/- per Sq.yard without making any allowance for small bits of land, as according to him, the acquired land itself was a small extent of Ac.2.22 1/2 gts.

12. The attitude shown by the learned Judge of the reference Court in arriving at the enhanced price of the land solely on the basis of Ex.A3 is that of grabbing a peg for hanging the hat. Post notification sale, irrespective of any close proximity or a distant illustration of sale does not leave any discretion to the Court to make a further distinction on the basis of proximity to arrive at a conclusion that on that basis even post notification sale could be treated as a good ground for arriving at the current market value of the land in question. If it is left to Judicial Officer to exercise such discretion or make distinction on the basis of proximity,

the question as to how long such proximity factor could be stretched would become a matter of subjective consideration rather than objective consideration, which is not permissible under law. In the instant case, the very fact that the prices showed rising trend immediately after possession was taken, confirms the theory that post notification sale howsoever soon cannot be taken into consideration for arriving at the prevailing market price of the land under acquisition. Barring this impermissible factor, if there was any evidence on the record which could give us a reason to believe that the current market value was Rs. 10/- per Sq.yard, we could have tested the veracity of the enhancement on the anvil of comparable instance of sale, but nothing came forward from the claimant's side which could render any assistance to the Court to uphold even the enhancement allowed by the reference Court, let alone the rate of Rs.20/- per square yard demanded by the claimant in the Cross-objections.

13. On the question of the applicability of the post notification sales, the Supreme Court of India held in the case of Special Land Acquisition Officer, Karnataka Housing Board and others Vs. P.M. Mallappa and others, that :

"Admittedly, the land is dry land and the Land Acquisition Officer had pointed out in his award that the converted lands for which he had awarded compensation at the rate of Rs.9,000/- and Rs.10,000/- per acre, bear different connotation to the actual dry land existing as on that date. The potential value shall be determined for the land existing as on the date of the notification and not after subsequent developments have taken place. The value of the developed land bears no relevance to further enhancement of the value."

14. The views expressed by this Court with regard to the inadmissibility of post notification sale meets with the approval of the Supreme Court by the views expressed in the above decision.

15. In the case of Special Deputy Collector v. G. Narusubai 1993 ALT Supp. (1) 489 a Division Bench of this High Court observed that if the document had to be marked, the concerned claimant had to be examined and the claimant also had to establish that the lands in the O.P., concerned and the lands covered by the OP were similar in all aspects and, therefore, he could claim similar compensation that had been granted by the lower Court. A judgment not inter parties is not admissible unless it is admissible under some provisions of the Evidence Act. In Paragraph 7 of the said Judgment, the Division Bench observed that in Natwarbhai Sakarabhai and Others Vs. Additional Special Land Acquisition Officer, , it was held that mere production of a map along with the judgment of the Civil Court in another group of Land Acquisition Cases would not by itself be sufficient to enable the Court to find out the comparable instances or to evaluate the land on a particular basis. An observation is thereafter made by the Division Bench of this High Court that a consistent view that had been taken was that in a case where the claimant or the Referring Officer wanted to rely upon a document, he had to prove that document on which he wanted to rely. It was for that reason that the Court had laid down the well settled position that mere

marking of the document was not sufficient. A note is also taken by the Division Bench that similar view had been expressed by the Supreme Court in *Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat*, and in *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, . Even though Section 51A had been introduced which provided that marking of certified copies also could be done, marking of the document itself was not sufficient. It is further observed that in a similar notification where different O.Ps. arose and some O.Ps., had already been disposed of, the parties whose O.Ps. had not yet been disposed of were not entitled to mark that judgment and request the Court to grant compensation without any proof or production of any witnesses to be examined.

16. The well settled principle of law that when large extents of land are acquired, the determination of compensation in terms of cent, square yard or square foot was wrong. The fixation had to be on acreage basis and in such cases the sale deeds in respect of small extents do not provide any reasonable basis for determination of market value. This principle had been reiterated in the case of *P. Rajan and Another Vs. Kerala State Electricity Board and Another*, .

17. In *Uttar Pradesh Government Vs. H.S. Gupta*, it is held by the Supreme Court that the construction stood upon a stray statement like the one in question should not have weighed with the Judges in reducing the price per square foot.

18. It is true, in the above decision the emphasis was more on a proposition of law that if the land had to be sold in one block consisting of a large area the rate per Sq. foot likely to be fetched would be smaller than the equal extent of land if parcelled out into smaller bits and sold to different purchasers. On the basis of the observations made by the Supreme Court in *UP Government's case (supra)*, it could not be gainsaid that the construction put upon a stray statement should not weigh with the Judges in determining the price per square foot.

19. Before concluding, let us have a look at the award passed by the Land Acquisition Officer dated 23-3-1981. The Land Acquisition Officer has considered most of the above questions and recorded his conclusions on those questions. On the proposition that the land under acquisition could have fetched much higher price in view of the fact that the same was situated within the municipal area, the Land Acquisition Officer has observed that keeping in view the developments due to formation of railway line, the nearer lands which were out of municipal area of either side of the railway track towards Marriguda village had been sold for non-agricultural purposes and had been demarcated into house plots, These lands, according to the Land Acquisition Officer, although less valuable lands than the lands in municipal area, bear more value than the lands for agricultural purposes situated in the village and, therefore, in addition to agricultural lands and lands within municipal area, another category of lands which were nearer to municipal area and likely to develop into house sites owing to demarcation of plots, had been formed. Thereafter, he has discussed in the Award four different categories in which the lands could be segregated viz., A, B, C and D.

20. The Land Acquisition Officer also obtained the sale statistics for the preceding three years from the date of notification from the Sub-Registrar's office, Nalgonda and considered forty one instances of sale as detailed in the Award on pages 6 and 7, and recorded the basis on which he arrived at the value payable in respect of the lands under acquisition. For "A" category land, the rate was fixed at Rs.1850/- per acre. Survey Nos.1251 and 1252 were classified as "B" category dry-cum-wet lands and fixed the rate for the same at Rs.2,775/- per acre.

21. The sale of land shown at SI.No.52 i.e., Sy.Nos.1458 and 1459 was quite similar and neared to the lands under acquisition. It was situated in between Nalgonda town and the lands under acquisition. An extent of Ac. 10-00 land was sold for Rs. 1,515-00 vide registered document No.923/77 dated 10-5-1977. The rate had been worked out to Rs.1,515-00 per acre as discussed at Pages 12 and 13 of the Award. The Land Acquisition Officer further observed that since the lands were agricultural lands in the village, no deduction towards layout was proposed.

22. For group "D" dry-cum-wet lands, four instances of sale were taken into consideration, by the Land Acquisition Officer in the Award. However, according to him, no sale particulars were available for dry cultivated wet lands under wells and, therefore, in the absence of the relevant sale deeds of the said category, the Land Acquisition Officer fixed 1 1/2 times the rate of the dry red chelka lands categorised in group "C". He further observed that the rate fixed for the land in group "C" was Rs.1500/-and 1 1/2 times the rate including time log of Rs.12.50 would come to Rs.2,262-50 per acre and, therefore, the rate fixed for the group "D" land was Rs.2,262-00 per acre.

23. As far as the impugned judgment of the reference Court is concerned, as discussed above, it appears that the reference Court has chiefly relied on Ex. A3 for arriving at the conclusions with regard to the current market value which could be awarded to the claimants. No other documentary evidence apparently has appealed to the reference Court. During the midst of the discussion on Ex.A3, the learned Judge records his finding that Exs. A2 and A4 could not be relied upon by the claimants because that was the price prevailing in 1978 and the learned Judge at once reverts to the sale price quoted in Ex.A3 which was executed on 26-8-1977 as the guideline for determining the market value of the acquired land. The reference Court also referred to the Award passed by the Land Acquisition Officer for the purpose of observing that the neighbouring lands situated within the municipal area had already been sold for non agricultural purposes and were demarcated into house sites, which according to the reference Court, rendered sufficient material to show that the acquired land had good potentialities, but the same were not properly considered by the Land Acquisition Officer and he had under-valued the market value for the acquired land.

24. I have already expressed my opinion earlier in this judgment that the term

"good potentialities" used by the reference Court was an abstract observation without any basis for treating the land as having good potentialities and Ex.A3, according to the reference Court, served as a good guideline for assessing the market value of the acquired land. However, we have already considered above how Ex.A3 did not render any assistance to the claimant for arriving at the conclusions which the reference Court indulged into. Even according to the reference Court, there was no other material on the record of the case which could enable the Court to arrive at the prevailing market rate at the relevant time and having regard to the fact that even Ex.A3 is not found to be a document which could be considered as the best evidence for arriving at the enhancement of the compensation on the ground that it was a post notification sale, there was no basis on which the reference Court could have allowed the enhancement of compensation. On the other hand, the Land Acquisition Officer has elaborately considered in his Award by referring to number of sale transactions which took place at the relevant time for the compensation to be awarded to the claimants. I am fully convinced that the compensation awarded by the Land Acquisition Officer was in no way unreasonable and the reference Court arrived at the enhancement in compensation without any basis.

25. In that view of the matter, therefore, both the appeals filed by the Land Acquisition Officer, in which common questions arise deserve to be allowed and the Cross Objections of the respondent in AS.No.2793/1995 deserve to be dismissed. Accordingly, the appeals being A.S.No.2793 of 1985 and AS.No.2792 of 1985 are allowed and the Cross Objections in A.S.No.2793 of 1985 are dismissed. The award passed by the Land Acquisition Officer in both the cases is confirmed.