(2004) 07 AP CK 0088

In the Andhra Pradesh High Court

Case No : Appeal No. 2348 of 1999

Special Deputy Collector, (LAO), SRBC — APPELLANT

Vs

P. Chinna Pullaiah — RESPONDENT

Date of Decision : 06-07-2004

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

Citation : (2004) 5 ALD 385 : (2004) 5 ALT 465 : (2004) 2 APLJ 460

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

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; B.D. Maheswara Reddy in Appeal Nos. 2348, 2357, 2359, 2360 and 2370 of 1999, 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 ''Act'') arise out of a Common Award dated 12.3.1999 passed in L.A.O.P. the 660 of 1989 and batch by the Senior Civil Judge, Atmakur answering reference petitions filed u/s 18 of the Act against Award No. 8/1985 dated 30.8.1985 passed by the Special Deputy Collector, (LA), S.R.B.C, Nandyal, determining the amount of compensation payable to various claimants for the acquired land situated in Bhanumukkala Village, Pamulapadu Mandal, Kurnool District.

2. On 9.2.1984 a requisition was sent by the Executive Engineer, Srisailam Right Bank Canal Division No. 1, Atmakur to acquire land for excavation of main canal of S.R.B.C. for construction of Banakacherla Regulator. Draft notification was approved by the Government on 2.8.1984 and notification u/s 4(1) was published on 10.10.1984 expressing the intention of the Government to acquire Ac.7.61 cts. of land situated in Bhanumukkala Village, Pamulapadu Mandal, Kurnool District, for construction of Bhanakacherla Regulator at KM 16.938. Possession of the land was taken on 3.1.1985. The Special Deputy Collector (LA) made his award on 25.3.1992 offering compensation to claimants at Rs. 13,095/- per acre. The LAO in his award has referred to numerous sale

transactions by which lands nearer to the acquired land are sold, but he rejected the same on the ground that they are classified as dry lands or they are bit sales or not normal transactions. He relied upon sale transaction covered by Document No. 25 dated 6.1.1982 by which Ac.0.42 cts. of land was sold for Rs. 5,500/- reflecting market value of Rs. 13,095/- per acre observing that the land covered by the said sale transaction is classified as localised single wet like the acquired land and both are having similar cropping pattern. The LAO accordingly fixed the market value of the acquired land at Rs. 13,095/- per acre. The Reference Court by the impugned award dated 12.3.1999 enhanced the amount and assessed market value at Rs. 26,000/- per acre. Feeling aggrieved, the present appeals have been preferred by the Government on the ground that the award of the Reference Court is excessive.

3. The Reference Court treated O.P. No. 660 of 1989 as the lead case. Claimants examined two witnesses and placed reliance upon the sale transaction Ex.A.1 dated 4.8.1986 which is a post-notification sale by which an extent of Ac.1.00 of land was purchased by P.W.2 for Rs. 30,000/-, who deposed that the land purchased by him is similar in all respects to the land which was acquired and was located one furlong from the acquired land. The LAO examined himself as RW1 but no documentary evidence was adduced by him except tendering copy of the impugned award marked as Ex.B.1. P.W.1 is the claimant. He deposed that the acquired lands are wet lands being irrigated with the waters of K.C. Canal and he used to raise two crops every year. Reference Court relied upon Ex.A.1 sale transaction and the evidence of P.W.1 and P.W.2 and remarked that Ex.A.1 sale transaction cannot be adopted in toto, but it can be taken into consideration in arriving at the market value of the land and accordingly enhanced the market value of the land to Rs. 26,000/- per acre.

4. We have duly considered the submissions made at the Bar by learned Counsel for the parties.

5. The Reference Court enhanced the amount of compensation relying upon the sale transaction dated 4.8.1986, which is a post-notification sale. Notification u/s 4(1) was published on 10.10.1984. Possession of the land was taken on 3.1.1985. Therefore, the said sale instance could not have been made the sole basis for further enhancement in the amount of compensation.

6. We simultaneously heard arguments in number of appeals arising out of the decision of the Reference Court relatable to the land, which was acquired for the purpose of Srisailam Project. In all most all cases, the Reference Courts have proceeded to place reliance upon only one sale instance which is either post-notification sale or subsequent to the date after requisition was sent to acquired land and the area was surveyed. Obviously, in an anxiety to inflate the prices, sale transactions must have been entered into which aspect was totally ignored by the Reference Courts while taking note of such sale instances.

7. We have also noticed that while admitting the appeals, stay of execution of the

impugned awards of the Reference Courts was granted subject to deposit of one half of the enhanced amount of compensation and to release the same to the claimants without furnishing security.

8. In almost all the cases the Reference Court has doubled the compensation awarded by the LAO. We have also noticed that the LAO while making his award had taken note of number of sale transactions but discarded the same for one reason or the other. All sale transactions, which were subsequent to the date of requisition sent by the Executive Engineer, were discarded on the ground that prices were inflated. Therefore, it was but necessary for the claimants to have led evidence before the Reference Court about the bona fide nature of the sale transactions that the market value as disclosed in the sale transactions was the fair market value prevalent as on the date of the transaction. But, no effort has been made by the claimants to prove the bona fide nature of the sale instance. May be that after introduction of Section 51A into the Act, mere production of certified copy is sufficient. But the value to be attached to such sale transaction is still left to the discretion of the Court. When the circumstances on the record are such that a doubt is raised as to the bona fide nature of a sale transaction, it is for the claimants to remove the doubt by adducing cogent evidence about the genuineness and bona fide nature of the fixation of the price in the sale deed. A Division Bench of this Court in a batch of judgment in A.S. Nos. 1898 of 1991 and Batch dated 5-7-2004 (T.T. Devasthanams, represented by its Executive Officer, Tirupati v. M. Munikrishna Reddy and Ors.) has considered the scope of Section 51A of the Act, wherein it has been 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. Therefore, discarding the sale deed relied upon by the Reference Court, we feel that the interest of justice would be met if we ourselves fix the market value of the land by taking into the facts and circumstances of the case and 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 it would be harsh now to recover the said one half of the, enhanced amount of compensation directed to be released to them by this Court. Accordingly we fix the market value of the acquired land at Rs. 19,000/- per acre, which, in our view, having regard to the facts and circumstances of the case, is just and fair market value of the land as on the date of the notification.

10. In the impugned order, the Reference Court has allowed additional market value on the amount of compensation u/s 23(1-A) from the date of notification u/s 4(1) of the Act to the date of award. Date of award is subsequent to the date of taking over possession of the land. u/s 23(1-A) of the Act, additional market value on the compensation at the rate of 12% per annum can be allowed from the date of the publication of the notification u/s 4(1) up to the date of the award of the Collector or the date of taking possession of the land whichever is earlier. In the present cases, as already noticed, possession of the land was taken on 3.1.1985 and the award was passed on 30.8.1985. Therefore, Reference Court was not justified in directing additional amount to be paid upto the date of award. It should have been directed to be paid only up to the date of taking over possession of the land i.e., 3.1.1985.

11. In the result, the appeals are partly allowed and the order of the Reference Court is modified holding that the claimants are entitled to compensation at the rate of Rs. 19,000/- per acre besides other statutory benefits. The claimants are also held entitled to additional market value at 12% per annum from the date of notification u/s 4(1) of the Act till the date of taking over possession of the land. In case interest on solatium on the enhanced compensation has not been paid, the same will also be paid to the claimants. Parties are directed to bear their respective costs.