
(2003) 02 AP CK 0051
In the Andhra Pradesh High Court
Case No : AS No. 2693 of 1990

Spl. Dy. Collector, L.A. Railways	Vs	APPELLANT
Peddinti Ramanuja Chary and Another		RESPONDENT

Date of Decision : 27-02-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (2003) 3 ALD 572

Hon'ble Judges : B.S.A. Swamy, J;B. Seshasayana Reddy, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; S.T.P. Satyanarayana Chary, for the Respondent

Judgement

B.S.A. Swamy, J.—This Appeal arises out of an Award and Decree passed by the Senior Civil Judge, Nalgonda, on a reference made by the Land Acquisition Officer, u/s 18 of the Land Acquisition Act (hereinafter referred as "the Act").

2. The lands belonging to the respondents along with the lands belonging to others were acquired for laying new Broad guage Railway line from Bibinagar to Nadikude, by issuance of notification u/s 4(1) of the Act on 25-8-1977 and the possession of the lands was taken over on 9-8-1977. In the Award enquiry while some claimants claimed compensation at a rate of Rs. 48,000/- per acre, the respondents claimed Rs. 25,000/- per acre. Ultimately, the Land Acquisition Officer awarded compensation at Rs. 1,850/- for dry lands and Rs. 2,775/- for wet lands. At the instance of the land losers reference applications were filed before the Civil Court and they were disposed of separately. The Civil Court seemed to have disposed of O.P.No. 114 of 1983 and O.P.No. 104 of 1983 filed by one K. Ram Reddy on 30-4-1985 and awarded compensation at the rate of Rs. 10-00 per square yard with all the statutory benefits. Aggrieved by the said Award and Decree, the claimants seemed to have carried the matter in Appeal by filing A.S.No. 2792 and 2793 of 1985 on the file of this Court The learned Single Judge allowed the Appeals preferred by the State and set aside the Award of the

Civil Court by confirming the compensation awarded by the Land Acquisition Officer. The cross objections filed by the land losers were also dismissed. Against the said judgment and Decree Mr. K. Ram Reddy carried the matter in Appeal by filing L.P.A.Nos. 41 and 42 of 1998 and this Court by Judgment and Decree dated 12th November, 1999 fixed the compensation at the rate of Rs. 32,000/-per acre with other consequential benefits as per the Amendment Act of 1984.

3. As far as the O.P. No. 115 of 1983 filed by the land losers, the Court below awarded compensation at the rate of Rs. 24,200/- per acre as the Appeal preferred against the other Award is still pending before this Court. Aggrieved by the said Award, the State preferred the present Appeal.

4. Since the compensation awarded to other claimants, whose lands were acquired under the same notification became final under the Judgment and Decree of the L.P.A.Nos. 41 and 42 of 1998, there will be justification in dismissing the Appeal preferred by the State.

5. But in the peculiar circumstances of the case, the land loser without filing cross objections against the Award and Decree passed by the Civil Court, chose to file CMP 11621 of 2001 seeking modification of the Decree passed by the Court below under Order 41 Rule 33 of the Code of Civil Procedure, saying that the Appellate Court is competent to pass any Decree or Order, which ought to have been passed in the circumstances of the case. In support of his contention he placed reliance on a judgment of the Apex Court in Mahant Dhangir and Another Vs. Madan Mohan and Others, , wherein their Lordships categorically held as follows:

"15. But that does not mean, that the Math should be left, without remedy against the judgment of learned single Judge. If the cross-objection filed under Rule 22 of Order 41, CPC was not maintainable against the co-respondent, the Court could consider it under Rule 33 of Order 41, C.P.C. Rule 22 and Rule 33 are not mutually exclusive. They are closely related with each other. If objection cannot be urged under Rule 22 against co-respondent, Rule 33 could take over and come to the rescue of the objector. The appellate Court could exercise the power under Rule 33 even if the appeal is only against a part of the decree of the lower Court. The appellate Court could exercise that power in favour of all or any of the respondents although such respondent may not have filed any appeal or objection. The sweep of the power under Rule 33 is wide enough to determine any question not only between the appellant and respondent, but also between respondent and correspondents. The appellate Court could pass any decree or order which ought to have been passed in the circumstances of the case. The appellate Court could also pass such other decree or order as the case may require. The words "as the case may require" used in Rule 33 of Order 41 have been put in wide terms to enable the appellate Court to pass any order or decree to meet the ends of justice. What then should be the constraint ? We do not find many. We are not giving any liberal interpretation. The rule itself is liberal enough. The only constraints that we could see may be these : that the parties

before the lower Court should be there before the appellate Court. The question raised must properly arise out of judgment of the lower Court. If these two requirements are there, the appellate Court could consider any objection against any part of the judgment or decree of the lower Court. It may be urged by any party to the appeal. It is true that the power of the appellate Court under Rule 33 is discretionary. But it is a proper exercise of judicial discretion to determine all questions urged in order to render complete justice between the parties. The Court should not refuse to exercise that discretion on mere technicalities."

6. Since, the other judgments relied on by the Counsel are to the same affect, we are not referring to them. In fact, the Counsel for the Appellants could not convince us to take a different view from the one that has taken by the Apex Court. Since the law is well settled, we are left with no other alternative except to allow these applications and modify the Decree of the Court below and pass an Award limiting the compensation at the rate of Rs. 25,000/- as claimed by the Respondents herein with all statutory benefits including enhanced interest from the date of taking possession of the land under the Amendment Act 68 of 1984, since a Division Bench of this Court has given the enhanced interest from the date of taking possession of the land.

7. However we make it clear that the Respondent is not entitled to claim additional market value at the rate of 12% since the acquisition is prior to the amendment, and he is entitled to claim all other statutory benefits.

8. Accordingly, the Appeal is disposed of. The Land Acquisition Officer is directed to take steps to pay the difference in the compensation payable to the land losers, by virtue of this order, within three months from the date of receipt of a copy of this order.

9. The Court below is directed to collect the deficit Court Fee as per Section 48 of the A.P. Court Fees Act, on the enhanced compensation that will be received by the Respondent herein.