
(2005) 10 AP CK 0062

In the Andhra Pradesh High Court

Case No : AS No"s. 1288 and 1652 of 2002 and Cross-objections

Spl. Dy. Collector (Land Acquisition), Telugu Ganga Project
Unit-I

APPELLANT

Vs

Sannapu Reddy Pakeera Reddy

RESPONDENT

Date of Decision : 24-10-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 18, 23, 23(1)

Citation : (2006) 1 ALD 252

Hon'ble Judges : G. Yethirajulu, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; Y. Venkatasatyam and
Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B. Prakash Rao, J.—These two appeals are being taken up together having regard to the common points arising for consideration.

2. The appellant in these two appeals is the Land Acquisition Officer, namely, Special Deputy Collector, Land Acquisition, Telugu Ganga Project, Unit-I, Cuddapah, who seek to assail the judgment and decree in O.P.Nos. 438 of 2001 and 851 of 1999 both dated 25-2-2002 on the file of the District Judge, Cuddapah enhancing the compensation at the instance of the respondents/claimants u/s 18 of the Land Acquisition Act. The respondents/claimants have also filed their cross-objections seeking further enhancement at the rate of Rs. 40,000/- per acre for the land.

3. Heard the Government Pleader attached to the learned Advocate-General and Sri P. Venugopal, learned Senior Counsel appearing on behalf of the respondents-claimants.

4. Few facts, which are necessary for disposal of these two appeals are that in A.S.No. 1288 of 2002 arising out of O.P. No. 438 of 2001, an extent of Ac.2-92

cents in Survey No. 14/3A situated in Veerlapalli Village of Porumamilla Mandal, District Cuddapah was acquired by way of Notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") and the possession thereof was taken on 18-3-1988. The said acquisition was for Telugu Ganga project and an award was passed after enquiry on 10-11-1999, which is marked as Ex.A-1 fixing the market value at Rs. 1,170/- per acre and a sum of Rs. 1,47,375/- for the well. On a reference, the Court below enhanced the compensation to Rs. 20,000/-per acre and the market value of the well situated in the land of the claimant is enhanced to Rs. 7,51,550/-.

5. In A.S. No. 1652 of 2002, arising out of O.P. No. 851 of 1999, an extent of Ac.6-62 cents along with certain trees in Survey No. 13/2 of the same village was acquired for the purpose of excavation of B. Sagar Canal of Veerlapalli Village of Porumamilla Mandal, by way of Notification u/s 4(1) of the Act dated 28-4-1992. The Land Acquisition Officer passed Award No. 2/97 on 25-6-1997, which is marked as Ex.A-1 awarding compensation of Rs. 23,150/- for the land and Award No. 3/97 was passed on 20-9-1997, which is marked as Ex.A-3 awarding a compensation of Rs. 17,47,339/- for the trees. On a reference, the Court below confirmed the compensation for the land at Rs. 1,170/-per acre and in respect of the trees, the same was enhanced to Rs. 70,000/- for uddi and cross wall and Rs. 3,50,000/- for the compound wall and Rs. 7,50,000/- for the well and for each cheeni tree, it is fixed at Rs. 4,000/- and Tamarind tree at Rs. 20,000/-. Hence, these two appeals.

6. The learned Government Pleader appearing on behalf of the appellant, strenuously contended that the reference Court has totally failed to take note of the fact that the respondents/claimants have hopelessly failed to establish by any cogent evidence and material in support of their claim for enhancement and even the findings as arrived at in regard to the market value or value for the well or the trees is totally based on no evidence. Further, it was pointed out that in similar circumstances, where the Court below has determined the market value in the absence of any evidence and material, a Division Bench of this Court as per judgment dated 14-10-2004 in A.S.No. 1296 and batch, has remanded the matter for fresh enquiry and disposal.

7. Learned Senior Counsel Sri P. Venu Gopal appearing on behalf of the respondents-claimants appellant sought to support and sustain the finding inter alia on the ground that even by taking into account the evidence and material as available in the award proceedings and also as referred to therein, the enhancement made is folly supported and therefore, it does not call for any interference. The learned Counsel has taken us through the entire oral evidence and especially in depth and in detail, the contents of the award and the material as referred to therein while supporting the findings.

8. Having thus heard both the Counsel in detail and on perusal of the material, the main point, which arises for consideration is as to whether the enhancement made by the Court below on a reference u/s 18 of the Act is sustainable on the

facts and material available on record.

9. There is no dispute to the aforesaid basic facts of the case in regard to the acquisition made, in pursuance of the provisions of the Act by way of issuance of Notification therein and ultimately passing the award and whereby the claimants not being satisfied with the value as determined for the land, well and other trees, sought the reference.

10. During enquiry before the Court below, it is to be noticed that in O.P. No. 438 of 2001, claimants examined RWs.1 and 2 and marked Exs.B-1 and B-2. On behalf of the appellant herein, PW-1 was examined and the award was marked as Ex.A-1. Similarly, in other O.P. No. 851 of 1999, claimants examined RWs.1 to 5 and marked Exs.B-1 to B-9. On behalf of the appellant, the same witness was examined as PW-1 and marked Exs.A-1 and A-2 awards. RW-1 is the claimant in O.P. No. 438 of 2001 and RW-1 in other O.P. No. 851 of 1999 is the husband of the claimant. RW-2 in O.P. No. 438 of 2001 is a private civil engineer, who was examined in support of the estimation of the well and regarding the report prepared by him as Ex.B-2.

11. In other O.P. No. 851 of 1999, apart from said RW-1, the same private engineer was examined as RW-2. RW-3 is a retired Assistant Director of Horticulture and RW-4 is senior marketing Assistant Manager. RW-5 is one Lakshmi Reddy, who is a resident of Kasapuram Village and who has been examined to prove the value of each tree and the amount, which was received by him in an acquired land belonging to him.

12. Of the documents marked on behalf of the claimants in O.P. No. 438 of 2001, Ex.B-1 is requisition of claimant made to the Special Deputy Collector dated 19-9-1979. Ex.B-2 is the detailed abstract estimation with regard to the well received by the engineer. Similarly, in O.P. No. 851 of 1999, Ex.B-1 is the notice issued u/s 9(1) and 10 of the Act dated 28-6-1988. Ex.B-2 is the certified copy of the order in W.P. No. 4897 of 1996 dated 28-8-1996. Exs.B-4 to B-6 are specification reports in regard to Uddi, stone wall with plan and compound wall. Ex.B-7 is the certified copy of order in O.P. No. 343 of 1989 dated 16-1-1993. Ex.B-8 is the certified copy of the order in O.P. No. 1549 of 1998 dated 16-1-1993. Ex.B-9 is the certified copy of the order in O.P. No. 266 of 1989 and batch dated 16-1-1993.

13. Except the aforesaid ocular and documentary evidence as pointed out above, no other material or document has been produced on behalf of the respondents/claimants to substantiate or support the existing market value or other features as normally required for the purpose of determination of the amount entitled to towards compensation u/s 23 of the Act. None of these documents reflect or support any sale transaction or value of the land as on the date of notification.

14. Thus, the main submission made on behalf of the respondents while supporting the findings in regard to the rate as determined is that the Court below has granted the said amount basing upon the awards of the appellant and

the material contained therein. Further, it is pointed out that the balance extent left out of the acquisition, the value as determined apart from being far low, they are entitled to much more even on the very same reasoning as contained in the award. Supporting the said contention, the learned Counsel has taken us through the details and the contents of the award especially in regard to the estimates of the valuations made by the department and the proceedings in regard there to. Further, it was pointed out that the very award refers to existence of the well and nature of the well and the trees vis-a-vis the potentiality of the land. The entire exercise made at that juncture in estimation of the value for the land and etc., is sufficient enough to seek enhancement by the claimants and support their case.

15. This Court has gone through the oral evidence produced on behalf of the respondents as well as on behalf of the appellant. Even the said ocular evidence would not be of any assistance or have any bearing for the purpose of fixation of the market value of the acquired land especially as on the date of notification. Therefore, ultimately the Court is left with no material in support for such determination. Normally, such an enquiry calls for proof in regard to the sale transaction as on the date of notification of the acquired lands in respect of the lands in the vicinity. Mere ipsi dixit material referred to or forming part of any award enquiry cannot possibly be relied upon by either side.

16. Now, it is well established that the award is nothing but an offer and is not a conclusive as such. Both at the stage of ultimate award and during enquiry on a reference u/s 18 of the Act, either side has to establish their case in regard to the existing market value or rate by production of the sale transactions vis-à-vis other material in support. Therefore, much stress as sought to be laid by the learned Counsel appearing on behalf of the claimants could not be of any assistance to prove the market value, especially when it is now well established that the proceedings or material forming part of the award or award enquiry would not constitute any legal evidence for the purpose of placing reliance during enquiry before reference Court in a reference u/s 18 of the Act for a valid determination of the market value as per the principles laid down u/s 23 of the Act.

17. In Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi, , while considering Section 23(1) of the Act, it was held that award based on sale statistics simplicitor cannot be sustainable. In Land Acquisition Officer v. Venkata Rao 1991 (1) APLJ 99 , a Full Bench of this Court on a similar consideration has held that in a reference u/s 18 of the Land Acquisition Act, the parties cannot rely upon any sale transactions referred to in the award passed u/s 11 unless the sale deeds are filed and marked as exhibits. Even, it was stated that list of sale transactions mentioned in the award by the Land Acquisition Officer cannot be treated as evidence in civil Court. The same principle is reiterated by a Division Bench of this Court in Land Acquisition Officer, Sub-Collector Vs. Hindustan Commercial and Transport Co. (P) Ltd., and G.H. Ali Mohammed and Co. Vs. The Dist. Asst. Social Welfare Officer, (L.A.O.), .

18. In view of the aforesaid principles and the nature of enquiry as contemplated u/s 23 of the Act, we hold that the claimants cannot place reliance on any material or award proceedings. Even in regard to the exercise made by any of the concerned authorities in making estimates of the value of the land or any structures or trees as such for the purpose of proving the market value, necessarily, it follows that the claimants have to lead independent evidence on their own and prove every aspect in detail to support the existing market value on the date of notification either by way of sale transaction or otherwise. Therefore, on a perusal of the entire evidence both oral and documentary, we are constrained to observe that there is no positive or any cogent material or any legal evidence enabling this Court to come to a conclusion in regard to the market value.

19. In A.S. No. 1296 of 2002 and Batch, a Division Bench of this Court as per its judgment dated 14-10-2004, in similar circumstances in an enquiry before the reference Court, where no material is forthcoming on behalf of the parties and there being no due consideration in regard to the well laid principles u/s 23 of the Act, observing that the claimants could have produced the necessary evidence and record in support, it was held that the reference Court dealt with the matter in a totally unsatisfactory manner and the evidence made available by the parties is totally insufficient to decide and assess the market value; of the acquired land as well as the trees. Therefore, with a view to have appreciation of the evidence in a right prospective, the matter was remitted for fresh disposal.

20. On the facts and circumstances, in this case also, there being no such valid cogent material or any acceptable legal evidence, the matter requires fresh enquiry and reconsideration on the principles governing the determination of the market value. Accordingly, we allow both the appeals and dismiss the cross-objections and the matter is remitted to the Court below for fresh consideration and disposal on merits, in accordance with law after giving notice and opportunity to both sides. It is needless to mention that both the parties are entitled to lead evidence in support of their case afresh. No order as to costs. Both parties are entitled to refund of Court fee.