
(2001) 08 AP CK 0053

In the Andhra Pradesh High Court

Case No : A.S. No. 562 of 1997 and Cross-Objections

Sub-Collector and Land Acquisition Officer, Gudur

APPELLANT

Vs

Venkata Kumaraswamy

RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Constitution of India, 1950 — Article 300
Land Acquisition (Amendment) Act, 1984 — Section 30(2)
Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1), 4

Citation : (2001) 6 ALD 231 : (2001) 6 ALT 748

Hon'ble Judges : Motilal B. Naik, J;G. Rohini, J

Bench : Division Bench

Advocate : Special Government Pleader and V. Sudhakar Reddy, for the Appellant;

Judgement

Motilal B. Naik, J.—This appeal and cross-objections arise out of an award passed by the Additional Subordinate Judge, Guntur (Civil Court) in O.P.No. 14 of 1979 dated 3-6-1996. Land Acquisition Officer is the appellant in A.S.No. 562 of 19.97 which is filed assailing the grant of enhanced compensation by the Civil Court over and above the compensation awarded by the Land Acquisition Officer. The Cross-objections are filed by the claimant dissatisfied with the award passed by the Civil Court granting lesser compensation. Since the appeal and cross-objections arise out of the award passed by the Civil Court in O.P.No. 14 of 1979, we propose to dispose of the same by this order.

2. Before we set out to decide the contentions raised in this appeal and cross-objections, few relevant facts are traced as under:

3. On 19-7-2001, after hearing the Government Pleader for the appellant in A.S. No. 562 of 1997 and Sri B. Sudhakar Reddy, counsel for the claimant/Cross-objector, we dictated the judgment in Open Court dismissing A.S. No. 562 of 1997 filed by the Land Acquisition Officer and partly allowing the cross-objections filed by the claimant holding that the claimant shall be entitled for a

compensation at the rate of Rs.12/- per square yard for the acquired lands, without any deduction.

4. After typing, the judgment was circulated to us for corrections and signatures. However, counsel appearing on behalf of the cross-objector brought to our notice about the decision of the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , a Full Bench decision of the Kamataka High Court in The Special Land Acquisition Officer (NHW) Dharwad Vs. Kallangouda and others etc., and a decision of the Division Bench of this Court in V. JAYASHANKER v. STATE, 1997 (4) ALD 116. While bringing to our notice the above decisions, learned counsel for the claimant/Cross-objector stated that in view of the law laid down by the Full Bench of the Kamataka High Court in the decision (2) cited supra which is followed by a Division Bench of this Court in the decision (2) cited supra, though the claimant in this case has restricted his claim at Rs.12/- per square yard before the Land Acquisition Officer, on account of the amendment brought to Section 25 of the Land Acquisition Act in the year 1984, there is no embargo on the Civil Court to award just and reasonable compensation without regard to the restricted claim made by the claimant on the basis of evidence adduced by the claimant. Since these decisions were not brought to our notice on the earlier occasion when we dictated the judgment, we desired to rehear the appeal and cross-objections and directed the matter to be posted under the caption "for being mentioned" duly informing the learned Government Pleader who appeared on behalf of the Land Acquisition Officer in A.S. No. 562 of 1997. Thus, the matter has appeared before us today i.e., 02-08-2001 and we proceed to dispose of the matter by this order.

5. An extent of Ac.0.50 cents of land situated in Survey No. 85/3B of Yerrapalein village, belonging to the claimant apart from other lands, was acquired for laying road from GNT road to Sriharikota. Notification u/s 4(1) of the Land Acquisition Act was published on 11-11-1976. The Land Acquisition Officer by award dated 13-5-1977 offered compensation at Rs.12000/-- per acre for the acquired land apart from granting other benefits according to law. The claimant, dissatisfied with the award passed by the Land Acquisition Officer, sought reference u/s 18 of the Land Acquisition Act to the Civil Court, seeking enhancement of the compensation. The Civil Court in O.P. No. 14 of 1979 initially dismissed the claim of the claimant for enhanced compensation by an order dated 4-8-1980. Aggrieved by the said dismissal, the claimant moved this Court in A.S. No. 1136 of 1981. This Court by an order dated 3-10-1988 remanded the matter to the Civil Court for fresh disposal according to law after giving opportunity to the claimant to adduce further evidence in support of his claim for enhanced compensation. This, O.P. No. 14 of 79 was again taken up by the Civil Court for fresh consideration.

6. Before the Civil Court, the claimant, in support of his claim for enhanced compensation examined himself as P.W.1 and also examined P.Ws.2 and 3 and

got marked Exs.A.1 to A.10. On behalf of the Referring Officer-respondent, R.Ws.1 to 4 were examined and Exs.B.1 to B.3 were marked. On a consideration of the oral and documentary evidence, the Civil Court though placed reliance on Ex.A.1 through which document an extent of 55 ankanams (equivalent to 0.9 cents) of land was sold at Rs.8,800/-, which works out to around Rs.98,000/- per acre but, however, restricted the market value of the acquired land at Rs.12/- per square yard. On this basis, the Civil Court awarded compensation of Rs.28,800/- for Ac.0.50 cents of land acquired from the claimant. From out of the said amount of Rs.28,800/-, the Civil Court also made 1/3rd deduction towards developmental charges and awarded compensation of Rs.19,200/- by award dated 30-6-1996. It is this award of the Civil Court which is challenged before us in this appeal and Cross-objections.

7. Learned Government Pleader appearing on behalf of the appellant in A.S. No. 562 of 1997 submitted that the Civil Court was not justified in fixing the compensation at Rs.28,800/- for Ac.0.50 cents of land though the compensation payable to the claimant is determined at Rs.19,200/- after making 1/3rd deduction towards developmental charges. According to the learned Government Pleader, the Land Acquisition Officer, taking into account the relevant sale statistics had rightly fixed the compensation at Rs. 12,000/- per acre as against the claim of Rs. 12/- per square yard claimed by the claimant and that the Civil Court was not justified in awarding the compensation of Rs. 19,200/- and therefore, seeks to set aside the impugned award of the Civil Court.

8. On the contrary, counsel appearing on behalf of the cross-objector submitted that though the claimant marked Exs.A.1 to A.10 and examined P.Ws.1 to 3 in support of his claim for enhanced compensation, the Civil Court discarded Ex.A.2 dated 31-1-1975 without assigning any reasons. Counsel also stated that though the Civil Court accepted the sale transactions reflected under Ex.A. 1 through which document an extent of Ac.0.9 cents of land was sold for a consideration of Rs.8,800/- which comes to Rs.98,000/- per acre, the Civil Court strangely restricted the compensation at Rs.12/- per square yard only on the premise that the claimant had laid a claim for Rs.12/- per square yard before the Land Acquisition Officer. Counsel for the cross-objector stated, this view of the Civil Court restricting the claim at Rs.12/- per square yard for the acquired land, though the claimant has produced sufficient evidence justifying his claim for more compensation, is contrary to the ratio laid down in the decisions (1) to (3) cited supra. According to the counsel, prior to the amendment to Section 300-A of the Land Acquisition Act, there was an embargo on the Civil Court from awarding more compensation than claimed by the claimants even though sufficient evidence is adduced on behalf of the claimants seeking enhanced compensation, but, however, after amendment to Section 300-A of the Land Acquisition Act in the year 1984, the fetters placed on the Civil Court have been removed and the Civil Courts are entitled to fix reasonable compensation on the basis of the material available before it irrespective of the claim made before the Land Acquisition Officer.

9. In the wake of the above submissions, the point that arises for consideration is whether the Civil Court was Justified in restricting the compensation at Rs. 12/- per square yard for the acquired lands though the Civil Court placed reliance of Ex.A.1 under which the market value of one acre of land works out to Rs.98,000/-?

10. Under the Scheme of the Land Acquisition Act, 1894 the Land Acquisition Officer shall pass an award as provided u/s 11 of the Act after conducting due enquiry make an award determining the true area of the land and also the compensation which in his opinion should be allowed for the land and the appointment of the said compensation among the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

11. Section 23 of the Act requires several aspects to be considered for determining the compensation, viz.,

Firstly, the market value of the land at the date of the publication of the notification u/s 4(1), Sub-section 1.

Secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof.

Thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land by reason of severing such land from his other land;

Fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings;

Fifthly, if in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land.

12. Apart from determining the compensation, the Civil Court u/s 23(1-A) of the Act shall also award, in addition to the market value of the land, an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of publication of the notification u/s 4, Sub-section (1) in respect of such land to the date of the award of the Collector or the date of taking possession of the land whichever is earlier.

13. Section 300-A of the Act, on reference, empowers the Civil Court to award compensation which shall not be less than the amount awarded by the Collector

u/s 11 of the Act. The provision u/s 300-A of the Act as it stood prior to amendment in the year 1984, there was an embargo on the Civil Court not to award compensation more than what was claimed by the claimant before the Collector and shall not be less than what was awarded by the Collector u/s 11, of the Act. However, subsequent to the amendment brought to Section 300-A of the Act in the year 1984, there is no embargo on the reference Court to award compensation to the claimant more than what he claimed before the Collector. For the purpose of understanding the implication arising out of the amendment to Section 300-A of the Act, the provision enumerated thereunder as it stood prior to amendment and after amendment are traced hereunder:

PRIOR TO AMENDMENT: SECTION 300-A:

25. Rules as to amount of compensation:

(1) When the appellant has made a claim to compensation, pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed-by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

AFTER AMENDMENT

25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector: The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector u/s 11.

A Full Bench of the Karnataka High Court in SPFCIAL LAND ACQUISITION OFFICER (NHW) DHARWAD v. KALLANGOUDA (2 supra) while considering the implication arising out of the amendment made to Section 300-A of the Act held thus :

"..... Thus, we find Section 300-A as it now stands totally liberates the claimant from the restraints that held him in check earlier from making a claim before Court for the first time even where he had not made any claim before the Collector and even if he had made some claim the Section in its new orientation gives him full liberty to hike his claim before Court without furnishing any reasons or affording an explanation for making a lower claim before the Collector."

14. Following the view taken by the Full Bench of the Karnataka High Court in the above decision, a Division Bench of this Court in V. JAYASHANKER's case (3 supra) while examining a similar issue of seeking more compensation than what

was claimed by the claimant before the Land Acquisition Officer, in the light of the amendment brought to Section 300-A of the Act, held thus:

"From the reading of the above, the position is so clear that prior to the amendment there was an embargo on the reference Court not to award compensation more than what was claimed by the claimant before the Collector and less than what was awarded by the Collector u/s 11 of the Act and subsequent to the amendment, there is no embargo on the reference Court to award compensation to the claimant more than what he claimed before the Collector."

15. In the light of the elaborate discussion made by the Full Bench of Karnataka High Court in the decision cited (2) supra and a Division Bench of this Court in the decision (3) supra on the competency of the Civil Court granting compensation on the basis of the evidence adduced before it by the claimants without regard to the claim made before the Land Acquisition Officer, in the light of the amendment brought to Section 300-A of the Land Acquisition Act, we do not wish to add more than what is decided in the two decisions. We agree with the view taken by the Full Bench of the Karnataka High Court and the Division Bench of this Court in the decisions cited (2) and (3) supra.

16. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, while the Supreme Court considering the object of the Land Acquisition Act and the just compensation to be awarded by a Civil Court in reference u/s 18 of the Act, at para-4 of the judgment held thus:

"The following factors must be etched on the mental screen:

1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition officer in his Award unless the same material is produced and proved before the Court.

2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilized by him for making his valuation cannot be utilized by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course, the materials placed and proved by the other

side can also be taken into account for this purpose.

5) Xxxx

6) Xxxx

7) Xxxx

8) Xxxx

17. From a reading of the decision of the Supreme Court cited (4) supra, it would appear that the award passed by the Land Acquisition Officer is only an offer and that on a reference u/s 18 of the Land Acquisition Act, the Civil Court shall be entitled to award compensation on the basis of the material placed by the claimant as well as the Referring Officer. In other words, it could be said that the claimant is in the position of the plaintiff who shall be entitled to place all relevant material before the Court and the Court shall award the market value on the basis of the material placed before it taking into account the various factors enumerated u/s 23 of the Act for determining the true market value of the acquired lands.

18. In Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , the Supreme Court while interpreting Section 30, Sub-section (2) of the Land Acquisition (Amendment) Act, 1984, at para-3 of its judgment held thus.

it must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellant against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired...."

The Supreme Court further held thus..

"..... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

19. In the light of the authoritative pronouncements of the Supreme Court in the decisions 4 and 5 cited supra, it is apparent that on purely technical grounds viz., either not paying the necessary Court fee for the compensation by the claimant; or restricted claim made before the Land Acquisition Officer, the claimant cannot be denied the just market value that has to be determined by the Civil Court on the basis of the material available before it especially so, when the claimant occupies the position of the plaintiff and is entitled to place all evidence before

the Reference Court for grant of just market value for his acquired lands.

20. Article 300-A of the Constitution of India recognizes right, to property of a citizen. It provides that no person shall be deprived of his property save by authority of law. Though this right is no longer a fundamental right but it is still a constitutional right, as held by the Supreme Court in *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, . The implication arising out of Article 300-A would mean if property, is sought to be taken possession of, necessary procedure has to be followed according to law for taking such possession, which shall also be preceded by payment of market value to the owner of the land. For instance, if landed property is to be acquired by the State for any purpose not only acquisition proceedings under Sections 4(1) and 6 of the Land Acquisition Act or any other relevant provisions under the Acquisition and Requisition Act are to be issued but also pay the fair market value after due enquiry to the owner of such land. Unless the fair market value of the acquired land is paid to the owner of such land, the mandate provided under Article 300-A of the Constitution remains unfulfilled and such possession would amount to depriving of the owner of the property, without authority of law.

21. Coming to the facts of this case, as stated earlier, the Civil Court in the second round of litigation, has only fixed the market value to the acquired land at Rs.12/- per square yard on the basis that the claimant himself has restricted his claim for the said amount before the Land Acquisition Officer.

22. In the foregoing paragraphs, we have discussed few decisions of the Supreme Court, as well as a Full Bench decision of the Karnataka High Court and a decision of the Division Bench of this Court. In the light of the principles laid down in the said decisions, we hold that the claimant in this case shall also be entitled for just and reasonable compensation on the basis of the material placed by him before the Civil Court, without regard to his restricted claim of Rs.12/- per square yard made before the Land Acquisition Officer. Before the Civil Court, the claimant, apart from marking several documents, has also examined three witnesses who have spoken to with regard to the documents marked by him. The Civil Court, though discarded other documents filed by the claimant on various grounds, but, however, accepted Ex.A.1 dated 10-3-1976 through which an extent of 55 ankanams (equivalent to Ac.0.9 cents of land), which is nearer to the acquired land, was sold for Rs.8,800/- which works out to Rs.98,000/-per acre. In this case, the 4(1) notification was issued on 11-11-1976. The transaction covered under Ex.A.1 took place about eight months prior to the issuance of 4(1) notification. Though the claimant examined P.W.3 to prove Ex.A.2, the Civil Court discarded the said document on the ground that the name of P.W.3 does not find a place in Ex.A.2. The Civil Court also refused to place reliance on Ex.A.4 which is the valuation certificate for S.No. 85/3-A relating to the year 1977. Ex.A.8 which is the certified copy of the sale deed dated 12-2-1975, the Civil Court rejected the same on the ground that no person connected with Ex.A-8 was examined. We are of the view, the rejection of A.8 by

the Civil Court on the ground that none connected with this document was examined by the claimant, seems to be improper inasmuch as when the genuineness of the registered sale deed filed as Ex.A.8 is not disputed, the Civil Court could not have rejected the same only on the ground that nobody connected with it was examined.

23. Section 51A of the Land Acquisition Act has been incorporated specifically for obviating the insistence for examination of anyone connected with the transaction mentioned in sale deeds relating to similar lands situated in the vicinity of the acquired land. In the absence of any dispute raised by the other side, with regard to such documents, the certified copies of the sale deeds can be considered without examining anyone connected with the transaction mentioned therein. This position is clear from a decision of the Supreme Court in LAND ACQUISITION OFFICER v. V. NARASIAH, 2001 AIR SCW 867.

24. The claimant has satisfactorily proved Ex.A.1 which has been accepted by the Civil Court, though no justifying reasons were shown by the Civil Court while rejecting Exs.A.2 and A.8. However, since the Civil Court accepted Ex.A.1 dated 10-3-1976, without looking to the values as reflected under Exs.A.2 and A.8, we are inclined to hold that the market value as reflected under Ex.A.1 could be taken as basis for awarding just compensation to the claimant/Cross-objector. Since the market value as reflected from Ex.A.1 is Rs.98,000/-per acre, the claimant cannot be denied the same compensation at the rate of Rs.98,000/- per acre for the acquired land. Accordingly, we declare that the claimant shall be entitled to the compensation of Rs.49,000/- for Ac.0.50 cents of land, i.e., at the rate of Rs.98,000/- per acre.

25. It is noticed by us, the Civil Court apart from restricting the compensation at Rs.12/- per square yard for the acquired land, also made 1/3rd deduction towards developmental charges for the acquired land. However, in this case as the land is acquired for the purpose of laying roads, there cannot be any deduction for developmental charges. Therefore, we hold that no developmental charges be deducted from the compensation awarded to the claimant whose lands are acquired for laying roads. In the light of the above discussion, the submission made by the Government Pleader appearing on behalf of the appellant in A.S. No. 562 of 1997 has no force to stand and we accordingly reject the same,

26. For the foregoing reasons, we dismiss A.S. No. 562 of 1997 filed by the Land Acquisition Officer and allow the Cross-objections filed by the claimant. The impugned award made by the Civil Court in O.P. No. 14 of 1979 dated 3-6-1996 shall stand modified to the extent indicated above. The claimant is also entitled for all other statutory benefits as awarded by the Civil Court. No costs.