
(1992) 02 AP CK 0006
In the Andhra Pradesh High Court
Case No : A.S. No. 2919 of 1985

Tahsildar (LA)

APPELLANT

Vs

Bommu Anjireddy

RESPONDENT

Date of Decision : 13-02-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24

Citation : (1992) 1 ALT 412

Hon'ble Judges : Radhakrishna Rao, J;Iyyapu Panduranga Rao, J

Bench : Division Bench

Advocate : The A.G. and The Govt. Pleader for Education, for the Appellant; The A.G., The Govt. Pleader in Cross-objections, T. Veerabhadrayya and V.S.R. Anjaneyulu, for the Respondent

Final Decision : Dismissed

Judgement

Radhakrishna Rao, J.—The Tahsildar (Land Acquisition), Mangalagiri, has filed this appeal against the order passed by the Principal Subordinate Judge, Guntur, dated 9-7-1985 in L.A.O.P.No. 19 of 1984 awarding a sum of Rs. 50,000/- per acre as compensation as against the amount of Rs. 19,350/- per acre granted by the Land Acquisition Officer. The claimant claimed Rs. 2,00,000/- per acre.

2. An extent of Ac.6-97 cents of agricultural wet land situate in S.Nos. 158/A, 158/B, 158/C2 and 160/A at Atmakur village in Mangalagiri Taluq belonging to the claimant-Cross Objector was acquired for the purpose of providing house sites to the weaker sections of the society, by means of a Notification u/s 4(1) of the Land Acquisition Act, 1894 ("the Act for brevity), which was published in the Gazette dated 15-5-1983. The possession of the land was taken on 25-11-1983. The Land Acquisition Officer after taking into account 5 sale transactions out of which the higher value was worked out at Rs. 20,700/- per acre and Rs. 18,000/- per acre fixed the compensation for the land acquired, treating it as agricultural land, at Rs. 19,350/- per acre. By the date of the Notification the land acquired some importance due to formation of a by-pass road and-establishment of a

convent school and also because of its proximity to Mangalagiri Municipality.

3. Before the learned Subordinate Judge, the claimant examined four witnesses including himself and marked 18 documents. Exs.X-1 to X-10 also were marked. On behalf of the Referring Officer, no witness was examined. On a consideration of the evidence the learned Subordinate Judge found that in view of the admitted value of Rs. 50,000/- by the claimant both in the claim petition as well as in his evidence as P.W.I and as it is an agricultural land, fixed the compensation at Rs. 50,000/- per acre and passed the award accordingly.

4. Aggrieved against the said award of Rs. 50,000/- per acre, the Land Acquisition Officer filed this appeal contending the market value fixed by the Court below is on the high side and it does not reflect the true value of the land as on the date of the Notification. The claimant filed the cross-objections claiming a sum of Rs. 2,00,000/- per acre in all on the ground that the lands in the vicinity were sold at Rs. 2,00,000/- per acre subsequent to the acquisition of his land and, therefore, he is also entitled the same rate at which those lands were sold.

5. In land acquisition cases, the burden is on the claimant to adduce the relevant material evidence to establish that the acquired lands are capable of fetching higher market value and the amount offered by the Land Acquisition Officer was inadequate by proceeding on a wrong premise or principle- If any further appeal is filed by the claimant, he has to establish that the basis of the appreciation of the evidence by the Civil Court or the consideration of the documents that have been filed is not correct. He can only succeed on the basis of the material that has been placed by him before the Court. Mere non-production of the documentary evidence or non-examination of any witnesses by the Land Acquisition Officer is not fatal to the proceedings. The lethargic or callous attitude adopted by the Land Acquisition Officer will not be of any help to the claimant to plead that since the Land Acquisition Officer failed to produce any evidence, he is entitled to higher compensation.

6. There is no dispute with regard to the fact that the land in question is an agricultural land and it was kept in use as an agricultural land before the initiation of the acquisition. The land acquired is not abutting the main road. It is on the sub-way. The claimant himself admitted that it is adjacent to Harijanawada and 4 or 5 lands intervene to the road Mangalagiri and Tenali and the land is at a distance of 1 K.M. to Guntur-Vijayawada Road. Since the land acquired is an agricultural land and the same is acquired for purpose of construction of houses to the weaker sections of the society, we have to consider the realised potentialities of the land also.

7. The leading case on this aspect is that of the Privy Council's case in AIR 1939 98 (Privy Council) wherein it was observed that where the owner is a person who could turn the potentiality of the land into account, it is immaterial that the utilisation of the same potentiality is also the purpose for which the land is

acquired. The same view has been followed by the Supreme Court in *The Collector, Raigarh Vs. Harisingh Thakur and Another*, . The Supreme Court observed that Clause five in Section 24 of the Act interdicts the Court from considering any prospective increase in value due to acquisition and the market Value of the land acquired has to be fixed with reference to the date of notification u/s 4(1) of the Act.

It was further observed:

"The underlying principle is that a speculative rise in price of land due to acquisition should not be an element which should enter into computation of compensation. Some times the prices shown in sale deeds executed" subsequent in point of time are not the actual prices paid. The sales may be unreal and may not reflect the true value of the land. There always elapses a certain interval between the time when the intention to acquire a certain land first becomes known and the actual notification u/s 4(1) is issued."

8. Now coming to the facts of this case, we have to consider as to what is the material placed by the claimant and what are the realised potentialities of the land.

9. The claimant has relied upon Exs.A-1 to A-12. These are all photostate copies of the Sale deeds. Similarly Exs.X-2, X-3, X-6, X-7 and X-9 are also photostat copies of the sale deeds. Except P.Ws.2, 3 and 4 who are examined to speak about the contents of Exs.X-2, X-3 and X-4, no other person, connected with the sales, is examined.

10. Sri T. Veerabhadrayya, the learned counsel for the claimant-Cross-objector relied upon a Full Bench judgment of this Court reported in *The Land Acquisition Officer, Vijayawade Thermal Station Vs. Nutalapati Venkata Rao*, for the proposition that since the documents have already been marked, the mere fact that persons connected therewith were not examined, does not mean that the Court cannot act upon its contents of those documents. In that case, the Full Bench opined that the rejection of the sale deeds on the ground that they were not admissible in evidence, as none connected with those sale deeds is examined is not correct and also ruled that any objection as to the mode of proof of a document has to be taken at the stage of marking of that document at the trial and if no objection is raised at that stage, it cannot be . permitted in the Court of Appeal. Further, it was observed that if the original sale deed or a certified copy thereof is marked as Exhibit, without objection, it cannot be contended that it cannot be looked into when none connected thereto is called into the witness box. Therefore, the Full Bench held, that the marking of secondary evidence., if not objected to at the trial, cannot be objected to latter, and the "contents" can also be looked into. Summarising the position, the Full Bench held:

".....we hold firstly that if "secondary evidence is allowed to be marked for one party without objection at the trial, no objection can be permitted to be raised by the opposite party at any later stage in the same Court or in appeal that

conditions for adducing secondary evidence have not been made out initially. Secondly, we hold that though ordinarily copies of copies are not to be treated as "secondary evidence" unless such copies are again compared with the original, the said principle does not apply to certified copies granted by the Sub-Registrar under the Registration Act. These certified copies are, under law, to be treated as secondary evidence and once they have acquired such a status, the marking of such documents at the trial without objection result in such documents and their contents being evidence in the case. No objection can be raised in the same suit or proceeding or in appeal later by the opposite party that before marking the certified copies, the necessary conditions for adducing secondary evidence have not initially been established."

11. On the other hand, the learned Advocate-General contended that mere marking of a document by itself is not sufficient but the contents of also have to be proved in land acquisition cases and in support of his contention he relied upon a judgment of the Supreme Court in *Mehta Ravindrari Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat*, wherein a document has been accepted and marked at the stage of trial, the Supreme Court observed that since any person having personal knowledge of that document was not examined, no reliance can be placed on such a document.

12. When there is a conflict of opinion between a Full Bench judgment and the judgment of the Supreme Court, the view expressed by the Supreme Court only will prevail. The judgment of the Supreme Court is not a case where a passing observation has been made but it is. a case where the evidentiary value of a sale deed marked as Exhibit 118 has been considered. Unfortunately, the judgment of the Supreme Court was earlier to the judgment of the Full Bench of this Court, was not brought to the notice of the Full Bench.

While referring to the facts, the Supreme Court observed:

"In the trial Court neither the vendor nor the purchaser nor any person conversant with the sale was examined. Not the original but only a certified copy of the sale deed was produced. After the remand the situation appears to be hardly any better. The State examined one Virbhadrasingh on whose behalf the land was purchased under the said sale deed. He was a minor at the time when the sale deed (Exhibit 118) was executed. Virbhadrasingh's father had purchased the land in Virbhadrasingh's name as Virbhadrasingh was a minor only about 12 years old at that time."

In those circumstances, the Supreme Court held:

The evidence of Virbhadrasingh has no evidentiary value as he has no personal information regarding the sale under Exhibit 118. One Ratilal who prepared the said document gave evidence in Court but he did not have any personal knowledge about the transaction either. Under these circumstances, no reliance can be placed on Exhibit 118."

In Raigarh Collector's case (2 supra) also the Supreme Court observed:

"Moreover the sale statement by itself without examining either the vendors or the vendees or the persons attesting the sale deeds is not admissible in evidence and cannot be relied upon."

13. In the case on hand, since none of the persons connected with the sale deeds has been examined and only xerox copies have been filed, the learned Judge was perfectly justified in not considering Exs.A-1 to A-12. When a party wants to rely upon the sale deeds, by producing either the originals or secondary evidence he has to examine the persons connected with the sale deeds i.e., either the vendor or vendee and also has to prove the consideration mentioned therein. If any person connected to that document is produced and examined in Court, the other side will be in a position to cross-examine him with reference to the consideration mentioned therein. Mere admission of a document either original or certified copy by consent is not sufficient to prove that the consideration mentioned therein also has been duly proved. The mere production of the copies of the sale deeds without examining any person connected thereto is not sufficient proof of that document and such a document cannot be looked into and no reliance can be placed on such a document. Similar is the case with regard to sale statistics produced on behalf of the Land Acquisition Officer. Without producing any witness to prove those sale statistics, no reliance can be placed on those documents.

14. The other evidence that has been relied upon is Exs.A-13 to A-18. Ex.A-13 is an agreement of sale dated 27-1-1983. Exs.A-17 and A-18 are the registered notices issued by the advocates dated 17-5-1983 and 12-12-1983. The recitals in them show that Section (4) notification is on 15-5-1983. The Notification resulted on a representation made by some Harijans for allotment of house sites. The Thasildar, Land Acquisition has also inspected the land prior to the issue of the Notification and after a preliminary survey and after ascertaining the facts, Section 4(1) Notification has been issued. During this period if any agreement of sale is brought into existence by the owners whose lands are under acquisition, it can easily be presumed without any hesitation that the document has been created only with a view to claim more compensation and such a document will not be given any weight and such document need not be taken into consideration to assess the market value of the land acquired as on the date of notification.

15. Sri T. Veerabhadrayya, the learned counsel appearing on behalf of the claimant, relied upon the evidence of P.Ws.2, 3 and 4 and the subsequent sale deeds Exs.X-2, X-3, X-6, X-7 and X-9 and the proceedings of the District Registrar, Ex.X-4. The rate that is worked out in those sale deeds were small bits of land were sold is at Rs. 80,000/- to Rs. 1,00,000/- per acre. Only small extents ranging from 2 cents to 10 cents were sold under these sale deeds. Under Ex.X-4, it appears the District Registrar issued proceedings revising the value mentioned in the document and asking the parties to pay stamp duty at the rate of Rs. 2 lakhs. These sales are subsequent to the Notification and the

sites are in an approved lay-out. It is well settled that sales of genuine transactions alone can be taken into consideration for the purpose of finding out the real value of the land acquired as on the date of the notification. Sometimes, the post-Notification sales also can be taken into consideration as they throw some light about the value of the land. But it does not mean that all the post-Notification sales can be taken into consideration where small extents were sold for higher consideration i.e., three times or some times at four times than the rate that was prevailing at that time. In cases where the agricultural land is converted into non-agricultural land for purpose of construction of house, the seller has to obtain the permission of the local authority for doing so and with a detailed lay-out plan. To test the truth of otherwise of the sale with regard to small bits of lands, the Court has to ascertain whether there is any lay-out, whether the vendee is a genuine person and whether the consideration mentioned therein is real or not. To ascertain whether the consideration is real or not, we have to find out the rate mentioned therein with reference to the sale transactions that took place atleast within one year prior to the sale transaction. If the amount mentioned in the said sale is abnormally high than that was prevailing prior to the notification, then that sale transaction can be ignored without giving any weight as it does not throw any light to come to a reasonable assessment.

16. Generally, in the sale deeds lesser consideration will be mentioned to avoid stamp duty. When such documents were pressed into service by the claimant the value that has to be taken into consideration is as on the date of the notification as per Section 23 (1) of the Act. The Court also has to take into consideration whether there is any uptrend in prices or not or whether the prices are stable.

17. In this case, P.W.2 is connected with Ex.X-6. He purchased 0.03 cents of land in D.No. 151/2 and 152 at Rs. 2,000/- per a cent on 7-12-1983. He is aged only 20 years and is residing at Brodipet, Guntur and also at Atmakur. He has no other lands. He could not say the boundaries of the land purchased by him. He says that he did not observe whether any completed houses are there near his land or not. He denied the suggestion that the sale deed Ex.X-6 was taken with higher price to claim higher price. This evidence cannot be believed and it can be said that this sale deed was brought into existence with a view to claim higher compensation. P.W.13 stated that the land under Ex.X-7 was sold at Rs. 2,00,000/- per acre but in the document the amount was shown at Rs. 1,10,000/-. Ex.X-8 is the proceedings of the Registrar, fixing the rate at Rs. 2,00,000/-. It is clear from his evidence that he is in the habit of purchasing lands at a lower rate and selling the same at a higher rate. He has not purchased the land under Ex.X-7 to make any construction. Therefore, his evidence also cannot be considered. P.W.4 is a witness to speak about the 10 cents of land in D.No. 160/D purchased by him on 23-12-1983 under Ex.X-2. Though he purchased the land in 1976 he got it registered only in 1983. In 1976 he purchased the land at Rs. 25,00/- per acre. These sale deeds can be rejected as the suggestion that has been given by the authorities is that with a view to boost

up the rates, these amounts were] shown, in the documents appears to be correct. If we reject these documents, the remaining evidence is that of the claimant himself who is examined as P.W.I. He has not produced any evidence to show that the value of the lands in that area is at a higher rate. The land in question is an agricultural land. The Land Acquisition Officer also is not diligent enough to produce the sale deeds that have been mentioned in the award proceedings wherein higher value of the lands is shown as Rs. 20,000/-. Even assuming for a moment that the value will be Rs. 50,000/- per acre, but people may not come forward to purchase the lands by the side of Harijanawada as generally these lands situate far away from the residential localities. If we take into consideration the sale transactions as spoken to by P.Ws.2 to 4, the consideration mentioned therein is only ranging between Rs. 80,000/- to Rs. 1,00,000/- for small extents. If we deduct 40% from it for purpose of laying roads and repairs following the view expressed by the Supreme Court in Administrator General of West Bengal Vs. Collector, Varanasi, it will come to Rs. 60,000/- per acre. Even if we take into consideration the value at Rs. 50,000/- per acre, for the realised potentialities of this agricultural wet land it will come to Rs. 60,000/- per acre. In case where a wet land has been acquired for purpose of construction of houses, it is the duty of the claimant to adduce such evidence to prove as to whether the land can be used as it is or whether any amount has to be spent for purpose of levelling the land etc. But no such evidence is available in this regard. Therefore, on a scrutiny of the order of the Court below and on a consideration of the evidence on record, this Court feels that the market value of can at best be fixed at Rs. 60,000/-per acre.

18. The learned counsel for the claimant-cross-objector contends that major portion of his land was acquired and the remaining extent is Only Ac.3-00 and therefore he is entitled to compensation of Rs. 50,000/- for loss of severance and he relied on Clauses 3 and 4 of Section 23(1) of the Act. Clauses 3 and 5 read as follows:

"23. Matters to be considered in determining compensation: (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration,

first, xx xx

secondly, xx xx

thridly, 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, xx xx

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..."

19. The claim made by the claimant will come under clause "five". The claimant as P.W.I stated that after the acquisition of the land, the remaining land is not sufficient for their livelihood and so they have changed their resident to some other place for maintenance.

20. The total land possessed by him is Ac.9-20 cents. The land acquired is Ac.6-20 cents. Even according to him, under Ex.A-13 he purchased the land for selling the same after converting it into house plots. When his intention was so and, he can as well sell the remaining land of Ac.3-00 by converting it into house plots and he may get more price. As regards the change of residence, he is not residing in the land acquired and he is residing at some other place. If he is actually residing in the same land, and if that land is acquired, he can certainly claim compensation for change of residence he is residing in the very same village even at the time of giving evidence and he never bothered to produce evidence to the effect that he sustained loss on account of the land being taken away by the, Government under the provisions of the Act and he is an agriculturist by profession and agricultural lands were sold at Rs. 20,000/- at the time of the enquiry, but on account of the non-production of the documents by the Land Acquisition Officer, this Court was constrained to award higher amount offered by him though he is not entitled for any amount under the head loss of severance or change of residence or change of vocation or profession.

21. In the result, the appeal is dismissed and the cross-objections are allowed in part. No costs.