(1993) 03 AP CK 0021

In the Andhra Pradesh High Court

Case No : A.S. No. 1895 of 1985

Tahsildar (Land Acquisition Officer) APPELLANT

Vs

V. Venkatappa Rao and Others RESPONDENT

Date of Decision : 26-03-1993

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 4(1)

Citation : (1993) 1 ALT 652

Hon'ble Judges : G.V.L. Narasimha Rao, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : Govt. Pleader, for the Appellant; E. Manohar, for M. Rajamalla Reddy, for the Respondent

Final Decision : Allowed

Judgement

G. Radhakrishna Rao, J.—This is an appeal directed, at the instance of the State, against the judgment and decree of the Subordinate Judge, Suryapet dated 13th February, 1985, passed in O.P. 86 of 1984, on his file, enhancing the rate of compensation from Rs. 13,000/- per acre to Rs. 50,000/- per acre.

2. In the year 1981 the Harijans of Ramapuram, hamlet of Neredcherla village have applied to the Block Development Officer, Huzurnagar for allotment of house sites on the ground that the present Harijan chery is congested one and it is unhygenic. As per the guidelines communicated by the Collector (S.W), Nalgonda, the list of beneficiaries has been prepared after conducting door to door enquiry in Neredcherla village. The total number of beneficiaries finally selected are 77 Scheduled Castes and 30 Backward community members, making a total of 107. According to the list of beneficiaries, the total extent of land required for house sites is worked out at Ac. 8-22 guntas or Ac. 8-55 cents. Accordingly steps have been taken for acquisition of Ac. 8-22 guntas of land situate in Survey Nos. 358/Aa (Telugu letter) and 358/Yi (Telugu letter) A draft notification u/s 4(1) of the Land Acquisition Act was published in the Official Gazette on 9-7-1981. The substance of the notification was also got published on

18-8-1981 in a public place and also announcement was done by beat of tom-tom and the possession of the land was taken over on 27-8-1981 .The Land Acquisition Officer awarded compensation calculated at the rate of Rs. 13,000/- per acre, by his award dated 21-5-1983. On a reference made by the dissatisfied claimants, the learned Subordinate Judge, Suryapeta took the matter on file as O.P. No. 86 of 1984 on his file. Seven witnesses were examined on behalf of the claimants and Exs.A-1 to A-3 were marked in support of their case for enhancement of the compensation. On behalf of the referring officer Exs. B-l and B-2 were marked. After considering the respective contentions and the evidence adduced on both sides and after following the principles laid down in Bangaru Narasingha Rao Naidu and Others Vs. Revenue Divisional Officer, Vizianagaram, ., the learned Subordinate Judge came to the conclusion that the claimants are entitled to compensation calculated at the rate of Rs. 50,000/- per acre. The learned Subordinate Judge granted the entire amount claimed by the claimants before the Land Acquisition Officer, without making any deduction in the total compensation. Having been aggrieved by the said judgment of the learned Subordinate Judge, the present appeal has been preferred by the State.

3. It is contended by the learned Government Pleader appearing on behalf of the appellant that Exs. A.1 and A.2 sale deeds relate to very small extents of land, viz., in respect of Ac. 0-04 guntas or Ac. 0-05 guntas and that they could never form basis for fixing compensation for larger extents of land. According to the learned Government Pleader, the Land Acquisition Officer took into account the sale extracts produced before him and the potentiality of the land and fixed the rate of compensation at Rs. 13,000/- per acre which is just and reasonable.

4. On the other hand, Sri E. Manohar, learned counsel appearing on behalf of the claimants-respondents contended that Exs. A- I and A.2 can be taken into consideration for assessing the value of the land as they are in respect of lands in the vicinity and that the lower court was perfectly justified in granting the enhanced compensation. The learned counsel, Sri E. Manohar has further submitted that the Land Acquisition Officer has awarded compensation at the rate of Rs. 40,000/- in another case and so the enhancement granted by the learned Subordinate Judge in this case is reasonable and does not warrant interference.

5. The law with regard to the aspect of adopting values of small extents of land for larger extents is well settled. When large extents of land are acquired, the transactions in respect of small properties do not offer a proper guide line. Generally the persons who are purchasing small extents of land may pay more amount. At the same time it also depends upon the circumstances under which the small bits of land were sold and the purpose for which they were sold. The neighbouring land owners generally will pay more amounts for purchase of small bits of land abutting to his land. Various factors have to be investigated into to determine the value of the land. Simply because small bits of land were sold for higher amounts, it cannot be said that the same rate should be adopted in cases

of the large extents of land. In Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, ., in similar circumstances the Supreme Court observed as follows:

"When large tracts are acquired, the transactions in respect of small properties do not offer a proper guide line. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property........."

In Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, ., the Supreme Court held as follows:-

"In determining the market value of the land, the price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the date to assess the market value.

Where there were bona fide and genuine sale transactions inrespect of the same land under acquisition wherein the claimant who was vendee had sold at Rs. 5/- per sq.yard, the High Court would not be justified in excluding such transactions and placing reliance on award of some other land for awarding compensation at the rate of Rs. 10 per sq. yard, within a time lag of nine months from the bona fide transaction by seller."

It was further held by the Supreme Court in the above cited decision as follows:-

"In building Regulations, setting apart the lands for development of roads, drainage and other amenities like electricity etc., are conditions precedent to approve lay out for building colonies. Therefore, based upon the situation of the land and the need for development the deduction from market value while determining compensation for acquired land shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc., then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections deduction 2/4 may be justified.

Where the land is acquired for housing scheme it was held that 1 /3 rd of the market value should be deducted for development of lands."

In Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, . the Supreme Court observed as follows:-

"In awarding compensation in acquisition proceedings, the court has necessarily to determine the market value of the land as on the date of the relevant Notification. It is useful to consider the value paid for similar land at the material time under genuine transactions. The market value envisages the price which a willing purchaser may pay under bona fide transfer to a willing seller. The land value can differ depending upon the extent and nature of the land sold. A fully developed small plot in an important locality may fetch a higher value than a larger area in an undeveloped condition and situated in a remote locality. By comparing the price shown in the transactions all variables have to be taken into consideration. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger tracts of property. In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc., then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land because of advantageous position is capable of being used for the purpose for which he smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted."

The sum and substance of the above decisions of the Supreme Court is that when a large extent of agricultural land, for example Ac. 8-55 cents as in the present case, has been acquired for construction of houses to Scheduled Castes and Backward Castes (sic. Classes) and when there are no exceptional given circumstances, the courts should not rely upon the sale transactions of small bits of land.

6. The courts should not also rely upon the sale transactions for small bits of lands with higher considerations than the one that was prevailing for the previous three years, which were brought about just before the proposals for acquisition initiated by the acquisition authorities. On coming to know of the proposed acquisition of the lands, the land owners may create certain sale deeds for smaller extents of land for higher amounts with a view to claim higher compensation for the lands acquired by the Government. So sale deeds for smaller extents of lands brought into existence within a short span of time or during the time of the process of acquisition cannot normally be taken into account as there will be some possibility of reflecting exaggerated consideration

in such sale deeds.

7. Bearing in mind the above general principle on the subject, particularly the guide lines enunciated by the Supreme court in the above cited decisions, let us examine the material on record and see how far the learned Subordinate Judge is justified in enhancing the compensation.

8. The claimants mainly relied upon the sale deeds Exs. A.1 and A.2 to justify the enhancement of the compensation. Ex. A.1 is a certified extract of the sale deed dated 16-9-1980 in respect of Ac. 0-04 guntas of dry land, situate at Nereducharla village. For this small bit of land, on the three sides, i.e., on south, west and north vendor''s land is there and on the east there is Jona Pahadi road. This sale deed is for a sum of Rs. 10,000/-. It is recited in this sale deed that the vendor sold the land to the vendee for a sum of Rs. 10,000/- and that the vendee paid the entire sale consideration of Rs. 10,000/- in cash at the time of the sale of the land. A perusal of this document shows that no consideration appears to have been paid before the Sub-Registrar at the time of registration of the document. Likewise, Ex. A.2 is registration extract of another sale deed dated 18-9-1981 in respect of Ac. 0-05 guntas of dry land situate at Nereducharla village for Rs. 9,000/-. The boundaries for this bit of land are on the east and north there is public road, on the south there is the land belonging to one Neela Lakshminarayana Govinda Reddy etc., and on the west there is N.S.P. Canal. In this sale deed also it is recited that the entire sale consideration of Rs. 9,000/- was paid in cash even prior to the execution of the sale deed and no amount appears to have been paid before the Sub-Registrar at the time of registration of the document. Thus, the small bits of land covered by the above two sale deeds are situate abutting the road in the village of Nereducherla whereas the land under acqusition in the present case is situate in the village of Ramapuram, hamlet of Nereducherla and the extent of land in the present case (sic)s Ac. 8-55 cents whereas the above two sale deeds relate to only Ac. 0-04 guntas and Ac. 0-05 guntas respectively. While considering the sale deeds, the sale deeds for the lands situate in the vicinity with similar potentiality and for fairly large extents have to be considered. Now coming to the evidence of P.W. 4, Maram Susheelamma, who is alleged to have purchased Ac. 0-04 guntas of land under Ex. A.1, she deposed that she is a resident of Nereducherla village and maintains a coffee hotel in that village, that she purchased Ac. 0-04 guntas of dry land situate in S.No. 264 from Vallamsetla Janaki Ramaiah for a sum of Rs. 12,000/- about four years prior to her giving evidence in court, that she got a registered document for the same for Rs. 9,000/-, that this land is at a distance of one furlong to the centre of Nereducherla village and that on either sides of Exs A.1 land the land of her vendor is situate. In the cross-examination she stated that she paid the consideration in the morning. She has also stated that she did not get the sale deed for Rs. 12,000/- in order to avoid stamp duty. She has denied the suggestion that she did not purchase the land and that she got Ex.A.l fabricated in order to boost up the value. Whatever value that has been mentioned in the document especially in the registered documents, that value

alone has to be taken into consideration to determine the value of that particular transacion is concerned and any amount of oral evidence let in that they paid higher consideration than the one mentioned in the sale deed cannot be given due weight. P.W.5 Vallamsetla Koteswaa Rao is a vendor under the sale deed, original of Ex.A-2. He deposed that he got Ac. 30-00 of land, that he sold Ac.0-05 guntas of land situate in S.No. 264 to one Rachakonda Krishna Murty for a sum of Rs. 15,000/- that he executed the sale deed, original of Ex. A-2, for Rs. 10,000/-, and that at the reques of his vendee the registration was done for Rs. 10,000/- in order to reduce the stamp duty. He has stated in his cross-examination that he also sold some other lands in addition to this Ex. A-2 land for higher value in common sale deeds, that he got Ac. 25-00 more in addition to the said sales and he denied the suggestion that it is not true to say that no sale was made by him and that he fabricated Ex.A.2 document in order to boost up the market value. Though he is having more than 30 acres of land, it is not known why he has sold only Ac. 0-05 guntas of land under Ex.A-2 sale deed. He has also admitted that the original sale consideration under Ex.A-2 is Rs. 15,000/- but at the request of the vendee, in order to avoid stamp duty, the sale deed was executed for Rs. 10,000/-. The evidence of these two witnesses does not inspire confidence. Further, in view of the principles laid down by the Supreme Court, as there are no special circumstances the sale transactions under Ex. A- 1 and A-2 cannot be given due weight to determine the compensation amount payable for the land in this case.

9. P.W. 6 is Rachakonda Seetharama Narasaiah, who is a resident of Nereducherla village. He deposed that the Government has acquired his land situate in S.No. 198 measuring Ac. 1-13 cents for construction of house sites, that the said land is situate under the boundary of Dirshincherla village but the said land is nearer to his village at a distance of one kilometre, that the Government granted him compensation for the said land at the rate of Rs. 40,000/- per acre, and mat he claimed compensation at the rate of Rs. 5000/- per gunta and also filed a reference application before the L. A.O and the said matter was forwarded to the sub-court. He further deposed that his son sold Ac. 0-01 gunta of land each to two persons at the rate of Rs. 3,000/- per gunta and the same was registered in the year 1977. He has further deposed that his land is more far off than the acquired land to the centre of Nereducherla village and the acquired land is situate on road leading to Penchikaldinne village. He further deposed that the common sales are taken place for the lands in the village at the rate of Rs. 20,000/- per gunta, especially the plots situate by the side of the road have got more value. Though this witness has stated that the Government has granted compensation at the rate of Rs. 40,000/- per acre for his lands, no document is filed in support of that claim. No credence can be given to such oral statements. P.W. 7 V. Krishna Rao is claimant No. 3 and he deposed that the acquired land is situate three furlongs from Nereducherla centre, that the prevailing market rate for the acquired land is Rs. 70,000/- per acre and that the acquired land is useful for house sites at the rate of Rs. 10,000/- per gunta. He

denied the suggestion that Ex.A-3 rough sketch map is fabricated and that the lands in their village would not exceed Rs. 13,000/-. His evidence is only self-serving and interested one which cannot bring out the case for enhancement of the compensation. P.W. 1 is Vallamchetti Appa Rao, who is a resident of Nereducherla village . He deposed that the Government acquired his land situate in S.No. 358, for the purpose of house sites, that the total extent of land acquired is Ac. 8-55 cents which belongs to himself and other claimants, that he claimed compensation at the rate of Rs. 50,000/- but the Land Acquisition Officer granted compensation at the rate of Rs. 13,000/- per acre, and that Nereducherla is a town having a major gram Panchayat. According to P.W.I, at present the market value of the agricultural lands in Nereducherla is @ Rs. 70,000/- per acre. He also deposed that the acquired land was taken for the purpose of construction of Harijan quarters for the people of Ramapuram and that Ramapuram is situated at a distance of 6 furlongs from Nereducherla village, that the acquired land situate at a distance of 6 furlongs from the road leading to Kodad from his village. According to him the value of house plot in Nereducherla village to the side of the main road is at Rs. 3,000/- per gunta. He also deposed that recently the Government also acquired land belonging to one Rachakonda Seetharama Narasaiah for the purpose of Harijans house colony and the Land Acquisition Officer himself awarded Rs. 40,000/- per acre. In his cross-examination he has stated that his father has shown before the Land Acquisition Officer the value of land per acre in the registered documents on 25-11-1980 for S.Nos. 352 and 353 at the rate of Rs. 9,620/- and Rs. 9,803/- per acre. He denied the suggestion that the value of the lands in Nereducherla village is not more than Rs. 13,000/- per acre. The version given by this witness is not consistent. He has referred to different rates in his evidence. He has also admitted in his cross-examination that in the sale deeds shown by his father on 25-11-1980 the value per acre is shown as Rs. 9,620/- and Rs. 9,803/-. So his evidence is not of any help to arrive at a correct valuation of the land in question.

10. P.W. 2 M. Jana Reddy is also one of the claimants in this case. He has also deposed that the value prevailed at the time of acquisition was Rs. 50,000/- to Rs. 60,000/- per acre. He has stated that the rate prevailing prior to4981 is at Rs. 2,000/- or Rs. 3,000/- per gunta. He denied the suggestion that the value of the acquired land prior to acquisition is not prevailed at Rs. 2,000/- or Rs. 3,000/- per gunta.

11. P.W. 3 M. Shambireddy is also one of the claimants. He also deposed on the same lines on which P.Ws. 1 and 2 have deposed. According to him also, by the date of acquisition the market rate prevailing in Nereducherla village is stated to be Rs. 50,000/- per acre and even for house sites also the market value for the acquired land prior to acquisition is at the rate of Rs. 3,000/- per gunta. He has stated in his cross-examination that ten persons purchased the land in his village at the rate of Rs. 50,000/- per acre and that 10 to 15 persons purchased in acre-wise at the rate of Rs. 50,000/- per acre. He denied the suggestion that the compensation awarded by the L.A.O is proper and correct.

12. None of these witnesses or claimants has filed any document evidencing the rate of land per acre. They did not file any document in respect of more than even one acre of land. The sale deeds filed are only in respect of 4 or 5 guntas. P.W. 1 stated that there are persons who purchased lands in larger extents in acres. The rates given by the witnesses do not reflect true position as the witnesses have given in their evidence varying figures. As already stated above, the documents Exs. A-l and A-2 are only for small bits of lands which cannot be taken into consideration for assessing the value of large extent of land. The law is well settled that the value that was prevailing on the date of Section 4(1) notification has to be taken into consideration to fix the compensation. Ex. B-2 the award dated 21-5-1983 the Land Acquisition Officer took into consideration the sale statistics of all the lands in and around the land under acquisition. P.W. 1 has admitted in his cross-examination that his father has shown before the Land Acquisition Officer the registered sale deeds dated 25-11-1980 in respect of S.Nos. 352 and 353 and the value per acre is shown at Rs. 9,620/- and Rs. 9,803/-. When P.W.I himself admitted in his cross-examination mat his father brought to the notice of the Land Acquisition Officer that the lands covered by the sale deeds dated 25-11-1980 were sold at the rate of Rs. 9,620/- and Rs. 9,803/- per acre in November 1980, he cannot expect more rate for the lands acquired by the Government in the very next year 1981. As already stated above and as stated by the Supreme Court and also by this court time and again, the rate adopted in respect of small bits of land, as in the present case, cannot be adopted in respect of vast agricultural land like Ac. 8-55 cents acquired for the purpose of construction of houses for Scheduled Castes and Backward Castes (sic. Classes).

13. It is contended that there are several claimants in this case whose land has been acquired for house sites and if the land is divided, each claimant''s land will be small extent. It is the total area under acquisition that has to be considered for the purpose of fixing up the compensation taking into account the comparable sales. Merely because the claimants are large in number it does not mean that the comparable sales that have to be considered will be for one gunta or two guntas. (40 Guntas is one acre).

14. The learned Subordinate Judge while dealing with cases of this nature must have taken into consideration the comparable sales of similar extents but not with vast difference like the one in this case. The learned Judge ought to have seen that the acquisition is for construction of houses for Harijans and Backward class people and ought not to have granted the entire compensation daimed by them even without deduction when the facts of the case available as on the date of Section 4(1) notification i.e., 9-7-1981 do not warrant such a rate. As per the award, there are many documents available for fixing the reasonable compensation duly taking into account the date of Section 4(1) notification. As usual in this case also as was being done in Land Acquisition Cases, the Referring Officer exhibited supine indifference in exhibiting the documents mentioned in the award. The court is not expected to look into them to consider the

documents mentioned in the award as they were not duly marked and proved.

15. On a careful consideration of the entire material on record, we hold that the enhancement granted by the learned Subordinate Judge is on high side and does not reflect the real market value. Even according to the admission made by P.W.I about his father bringing to the notice of the Land Acquisition Officer two sales in S.Nos. 352 and 353 in the year 1980 was less than Rs. 10,000/- per acre. Even if we adopt double of this amount the market value would come nearer to Rs. 20,000/- per acre. In the alternative if we take the case in another way, i.e., trend of prices increasing from day to day the compensation payable to the claimants would not be more than Rs. 20,000/- per acre during the relevant period. The Land Acquisition Officer granted compensation at the rate of Rs.l3,000/-peracre. Even if we adopt double of this amount and deduct one- third for the lay-out and roads etc., as the acquisition is for construction of houses, the resultant amount would be Rs. 19,000/- and odd. In either way the reasonable and just compensation that can be adopted in this case will not be more than Rs. 20,000/- per acre and we hold that the claimants are entitled to compensation at the rate of Rs. 20,000/- per acre with 30% solatium and 12% p.a. interest from 9-7-1981 to 27-7-1981 and at the rate of 9% p.a. from 28-74981 to 28-7-1982 and also at the rate of 15% p.a. from 29-7-1982 till the date of realisation i.e., till the date of deposit in the Court. The appeal is accordingly allowed. No costs.