
(1990) 07 AP CK 0018
In the Andhra Pradesh High Court
Case No : Review C.M.P. No. 7379/90

The A.P. Paper Mills Ltd.

APPELLANT

Vs

Edala Bhaskar Rao and Others

RESPONDENT

Date of Decision : 09-07-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Land Acquisition Act, 1894 — Section 23(1A)

Citation : (1991) 2 ALT 160

Hon'ble Judges : K. Amareswari, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : N.V. Suryanarayana Murthy, for the Appellant; M.S.K. Sastry and M. Mallikharjuna Sastry and A.G. and Government Pleader for Revenue, for the Respondent

Final Decision : Dismissed

Judgement

K. Amareswari, J.—The petitioners seek for a review of the judgment of this Court in A.S. Nos. 2143, 2145 to 2159 of 1987.

2. The proceedings arise under the Land Acquisition Act. An extent of 44 acres of land was acquired under 4 notifications for laying a pipeline and for storage of raw-materials for the Andhra Paper Mills Ltd. The Land Acquisition Officer passed 4 separate awards determining the market value of the lands at Rs. 11,000/- per acre under Award No. 1, Rs. 11,000/- per acre for some lands and Rs. 10,000/- per acre for some lands in Award No. 2, Rs. 11,000/- per acre Under Award No. 7 and Rs. 15,000/- per acre under Award No. 16.

3. On a reference u/s 18 of the Land Acquisition Act, the Civil Court awarded compensation at the rate of Rs. 20/- per square yard which comes to Rs. 96,800/- per acre. Aggrieved thereby, appeals were preferred by the petitioners herein.

4. The only contention raised in the appeals was that the market value fixed by

the Court below is unreasonable and excessive and the land do not cost more than Rs. 10/- per square yard. On a consideration of the entire material on record and particularly the award passed in O.P. No. 32 of 1982 in which Rs. 20/- per square yard was awarded by the trial Court, but was modified to Rs. 15/- per square yard by the High Court in A.S. No. 2353 of 1984 for nearby lands, this Court reduced the amount from Rs. 20/- to Rs. 15/- per square yard and allowed the appeals in part. No other point was argued.

5. Now the petitioners seek a review of the judgment contending that the award of Rs. 15/- per square yards is on the high side. In support of this contention, they filed extracts of two registered sale deeds dt. 16-2-1974 under which land in R.S. No. 99 was sold at Rs. 13/- per square yard. They submit that the value should be refixed on the basis of the two registered sale deeds by receiving them as additional evidence. We are afraid we cannot accede to this contention. The petitioners are seeking a review under Order 47 Rule 1 C.P.C. We are not sitting in appeal. Even while exercising the appellate powers, there are constraints on receiving documents as additional evidence. The sale deeds in question are of the year 1974. They were not filed in the lower Court. They were also not filed either at the time of filing of the appeals or during the pendency of the appeals. The appeals were preferred in 1987. On the basis of the available material, we have disposed of the appeals. It is not permissible to review a judgment on the basis of material which was not there before this Court. The admission of additional evidence cannot be done as a matter of course. Even during the pendency of the appeals additional evidence can be admitted only if inspite of due diligence the said documents cannot be filed earlier or that the documents relate to a subsequent period or if the Court feels that they are necessary to meet the ends of justice. These provisions would apply with greater force when the appeals are also disposed of. A review is permissible only in case of an error of law apparent on the face of the record or discovery of new and important evidence after exercise of due diligence which was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made or for any other sufficient reason. The sale deeds now produced are registered sale deeds of the year 1974. It is the petitioner's case that these sales were referred to by the Land Acquisition Officer in his award. So it is not as if they are of these sale transactions. They were aware of these documents. No reasons were given why these documents were not produced either before the trial Court or before the Appellate Court. There was no error apparent on the face of the record much less an error of law. On the basis of the available material particularly the award in O.P. No. 32 of 1984 in which Rs. 15/- per square yard was given by the High Court in respect of the neighbouring lands, the impugned order was passed by allowing the appeals in part. If a review is to be permitted on receiving some documents as additional evidence which could have been produced earlier, it would lead to uncertainty and lack of finality. We have, therefore, no hesitation in rejecting this contention. For the same reasons, the petitions filed for receiving the documents as additional evidence are also

dismissed.

6. The other submission made on behalf of the petitioners is that the lower Court was wrong in awarding an amount equivalent to 12% u/s 23(1-A) of the Land Acquisition Act for the period from the date of the notification till the date of taking possession.

7. In support of this contention, they invited our attention to a decision of the Supreme Court in *Union of India v. Filip Tiago Degama*, 1990(1) SCC Page 277. This is not a point which was taken either in the grounds of appeal or at the time of hearing. No other point excepting the value relating to the land was urged and we have accepted the appeals in part.

8. The learned Counsel for the respondents submitted that even the provisions of Section 23(1-A) are attracted inasmuch as the Civil Court passed the award on 30-4-1987 i.e., subsequent to 30-4-1982, though the Land Acquisition Amendment Act 68/84 came into force in 1984. Section 23(2) relating to solatium and Sections 28 and 34 providing for interest were given retrospective operation with effect from 30-4-1982. Similarly Section 23(1-A) also must be applied to cases where awards were passed subsequent to 30-4-1982. There is no legal basis for making a distinction in the case of Section 20(sic)(1-A) alone. The provisions of the Amending Act are beneficial to the land owners and there is no reason why Section 23(1-A) should not be made applicable to cases where awards were passed subsequent to 30-4-82. They also contended that even if Section 23(1-A) is not applicable, this Court had granted interest at the rate of 12% from the date of notification till the date of taking Possession and the order could be supported on that ground.

9. We think that we would not be justified in entertaining and allowing a review petition on a ground which was not taken either in the Memo- randum of grounds of appeal or at the time of hearing. No other point was taken and argued in the appeal except regarding the market value of the land.

10. Whether the award of 12% amount as contemplated u/s 23(1-A) is justified or whether the said award can be supported on other grounds cannot be considered in a review petition, if such a course is permitted, there would not be any finality to the matters. No review can be allowed on the ground that the judgment is wrong. It is open to the parties to canvass the matter in appeal, if it is provided for.

11. In fact, the explanation to Order 47 Rule 1 C.P.C. supports this view. The explanation says that the fact that the decision on a question of law on which the judgment of the Court is based had been reversed or modified by a subsequent decision of the superior Court in any other case shall not be a ground for review of such judgment. This principle applies with greater force in a case where a point was neither raised nor argued in the appeal.

12. In *Mottai Goundan v. Ramaswami*, AIR 1933, Mad. Page 290 it was held that

discovery of a new argument which might have been raised at the time of hearing is not a ground for review.

13. In *Garabini Kamarin v. S. Narain Singh*, AIR 1994 Pat. Page 250 the Patna High Court took the view that if the subsequent decision takes a different view, it is a wrong exposition of law and therefore, it is not a ground for review.

14. In *Soosai Anthony D"Costa Nicholas D"Costa Vs. Francis Roche Anthony Kurush Roche (Died) and Others*, it was held that no review is permissible of the point was not raised.

15. In *Venkayya v. Suryanarayana*, AIR 1940 Mad. it was ruled that a ground which was not raised cannot be raised for the first time in review and if such a course is permitted, there will be no finality to the litigation and no end to the legal proceedings.

16. The learned Counsel for the petitioners relied upon *Y. Venkanna Chowdary v. Special Deputy Collector, Land Acquisition (General), Hyderabad District*, AIR 1981 AP and contended that if important provision of law was not brought to the notice of the Court, it would be an error apparent on the face of the record, But that has no application in the present case. In deciding a point if a provision of law was not noticed, that may be a ground for review, but not on a point which was not raised.

17. The learned Counsel for the petitioners then relied upon *Thunga-bhadra Industries Ltd. v. Government of A.P.*, AIR 1964 SC in which it is held that where on elaborate argument one could say that there is a substantial point of law and there could be no two opinions entertained about it. That is not the position in the present case.

18. Similarly the decision reported in *Northern India Caterers v. Lt. Governor, Delhi*,⁸ has no application.

19. As mentioned supra, there are claims and counter claims and elaborate arguments have to be considered on merits whether the amount can be justified even otherwise is there is delay in passing the award.

20. For all the above reasons, we do not see any reason to admit or allow the Review Petitions. They are accordingly dismissed. No costs. Leave refused.