(1993) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : Appeal Suit No''s. 2030 and 2597 of 1992

The Land Acquisition Officer-cum-M.R.O. APPELLANT

Vs

Gouramma RESPONDENT

Date of Decision : 08-09-1993

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

Citation : (1993) 3 ALT 193 : (1994) 1 APLJ 138

Hon'ble Judges : P. Ramakrishnam Raju, J;G. Radhakrishna Rao, J

Bench : Division Bench

Advocate : Advocate General in AS 2030/92 and Vijaya Kumar Heroor, in AS 2597/92, for the Appellant; Vijaya Kumar Heroor in AS 2030/92 and A.G. in AS 2597/92, for the Respondent

Judgement

G. Radhakrishna Rao, J.—An extent of Ac.1-35 guntas with a well covered by Survey No. 24/2 in Pargi Town, Rangareddy District, was sought to be acquired by the Government for providing house sites to the Weaker Sections. Notification u/s 4(1) of the Land Acquisition Act was made on August 28, 1989 i.e., subsequently after filing of the writ petition. Award of the Land Acquisition Officer was passed on May 25, 1990. In this case, possession of the land was taken on June 5, 1986. The Land Acquisition Officer fixed compensation of the land at Rs. 7,500/- per acre and for the well, the compensation was fixed at Rs. 5,000/-. The claimant sought enhancement of compensation at the rate of Rs. 350/- per square yard for the land and for well at Rs. 50,000/-. The Land Acquisition Officer taking into account the statastics collected or furnished before him, fixed compensation at Rs. 7,500/- per acre and the well at Rs. 5,000/-. Dissatisfied with the above compensation, both for the land as well as the well, the claimant sought to refer the matter to Civil Court u/s 18 of the Act.

2. In support of his claim for enhanced compensation, the claimant examined P.Ws.1 to 4 and got marked Exs.A-1 to A-7. On behalf of the Land Acquisition Officer, a Senior Assistant working in the Mandal Revenue Office, Pargi was

examined as R.W.1. Through R.W.1, award proceeding was marked as Ex.B-1. The learned Subordinate Judge after taking into consideration the awards which have become final by means of High Court Judgments and the oral evidence, came to the conclusion that awarding compensation at the rate of Rs. 36/-per square yard (net) would be there as reasonable compensation and for the well at Rs. 18,000/-. Dissatisfied with the amount of compensation awarded by the Civil Court, the State Government preferred Appeal Suit No. 2030 of 1992. The claimant has also filed Appeal Suit No. 2597 of 1992 claiming compensation at the rate of Rs. 45/- per square yard.

3. The question for consideration in both the Appeals is, whether the quantum of compensation awarded by the Civil Court is on the high side, or the claimant is entitled to claim compensation at the rate of Rs. 45/- per square yard?

4. The main question - whether the compensation awarded by the Lower Court is correct or not, has to be ascertained only on the documents that are available on record.

5. Before dealing with that aspect, the first document that has been relied upon by the claimant is Ex.A-4, a certified copy of Judgment in O.P. No. 252 of 1985 dated June 28,1980 on the file of the Subordinate Judge''s Court, Vikarabad. In that case, Section 4(1) notification was issued in the year 1982 and compensation was fixed at Rs. 32/-per square yard by the Land Acquisition Officer. As against the value fixed by the Land Acquisition Officer, the Subordinate Judge''s Court on a reference, fixed the land value at Rs. 59/- per square yard. It is the contention of the claimant that the land covered under Ex.A-4 and the present acquisition is similar in nature and the same is at a distance of two furlongs away from that land. He relied upon Ex.A-1, rough sketch. On a perusal of Ex.A-2, it is evident that the land covered under Ex.A-4 is only 7 guntas (847 square yards). The said land was acquired for purpose of construction of a Telephone Exchange building. Of course that land is abutting the main road, situated in a Tri-junction. When a small extent of land which is in a strategic position and abutting the main road is valued at Rs. 59/- per square yard, it cannot be taken as a comparable sale for the determination of the land which is situated at a far away place and that too bifurcated by not only one road, but also another road. So, that cannot be a comparable sale for determination of the value of the land in question.

6. Next comes Exs.A-6 and A-7. According to the claimant, the land value is fixed at Rs. 100/- per square yard and the claim made by him is Rs. 45/- per square yard which is not on the higher side. Ex. A-6 is dated October 14, 1985, whereas the sale transaction covered under Ex. A-7 is dated November 24,1986. The land purchased under these two sale deeds is 45 square yards and 42 square yards respectively. It is a well established principle that the sale deeds for small extents which are less than Ac.0.01 cents of land, cannot be taken into consideration for purpose of arriving at the compensation payable for vast extents of land. In this case, no one connected with Exs.A-6 and A-7 was

examined. So, since no person connected with the above documents was examined to prove the sale transactions covered under Exs.A-6 and A-7, we find that these documents have not been properly proved. Even if they are proved, this Court feels that those sales will not form the basis for determining the compensation of the land in question.

7. Coming to the next document on which the claimant based his claim is Ex.A-5. Under Ex.A-5 a total extent of Ac.2.50 cents was acquired by the Land Acquisition Officer under a notification dated April 29, 1976. The Land Acquisition Officer fixed the compensation at Rs. 1.31/- per square yard; on a reference, the Civil Court fixed the land value at Rs. 6/- (net) and on appeal, the value fixed by the High Court is Rs. 11/- per square yard. For purpose of locating the land, Ex.A-1 sketch has to be perused. On a perusal of Ex.A-1, it is clear that this land is situated on the road side connected by so many roads within the village and it is very near to the village side. Besides that, there is already a Market yard having so many shops in that junction. When already developed area is there within the zone of a Major Gram Panchayat with so much commercial activity, naturally the acquired land will have more potentialities, since the availability of land in that area will be very less. So, the price that is being paid to the land which is very near to the shopping complex, will be very high and that price cannot be taken as a basis for determining the market value for a piece of land which had been acquired for purpose of extension and for providing house sites to weaker sections where houses have already been constructed for that section of people in other areas towards the village side. So, Ex.A-5 will not afford any basis for determining the compensation payable to the land in question.

8. The remaining documents that are available for our consideration are Exs.A-2 and A-3. As has been pointed out by the Supreme Court, the Awards which have become final by means of the Judgments of High Court can be taken into consideration, provided the land has got similar facilities, advantages etc. In this case Exs.A-2 and A-3 are the judgments of the High Court, where under the awards that have been passed covering those two documents have become final.

9. Ex.A-3 relates to a piece of land acquired by means of a notification dated November 20, 1980 for purpose of construction of houses by A.P. Housing Board. The total area acquired is Ac.11-20 guntas. Originally, the value that has been fixed was Rs. 8/- per square yard. On a reference, the Civil Court fixed the value at Rs. 15-40 ps per square yard and the land value fixed by the High Court is Rs. 20/- per square yard. When comes to the location of the land covered under Ex.A-3, it is separated by a small bit of land from the main road and if one enters from the main road into the village, the major strip of land is facing towards the road. So, a major portion of the entire area has been acquired for purpose of providing house sites which is very near to the main road. On a perusal of the judgment under Ex.A-3, we find that small extents with higher compensation have been taken into consideration for fixing the value of the land under acquisition. The settled law is that small extents cannot be taken into

consideration for purpose of determination of the land value when acquisition of large extents of land is involved. The value that has been arrived at on account of relying upon small extents of land cannot form a basis for this Court to ascertain the real market value of the land in question. If the basis on which the enhancement has been made is on the said position of law, we are bound by it, whereas the judgment rendered under Ex.A-3 is of a single Judge and the learned Judge has taken into consideration the sale deeds of small extents of land with higher compensation and so, they cannot be of any use for this Court to determine the market rate of the land in question. The land covered under Ex.A-3 and this land is separated by two survey numbers and a person has to pass through the main road and then goes to the chowrastha, where already acquired land is there and then, one has to proceed along with the road side which leads to the end of the village. The land that has been acquired under Ex.A-3 which has become final also will not be of any help in determining the value of the land covered by the award in question.

10. Finally, the document that has been taken into consideration is Ex.A-2. Under Ex.A-2, a total extent of Ac.12-34 guntas was acquired. The land value fixed by the Land Acquisition Officer is Rs. 3.33 per square yard and the Civil Court fixed the value at Rs. 22/- per square yard with a deduction of 50% and the same was confirmed by the High Court on February 21, 1989. So, this land is abutting the land in question. The said land has got more advantages as the same has been divided into two plots, one a major plot and another a small plot and those two plots are also abutting Chowrastha, that means the land is situated at the four roads corner. Therefore, that land''s potentiality is much more than one that is now under consideration. The land under Ex.A-2 is situated in an affluent area and got good potentiality, where streets are more and the land that is being acquired for providing house sites to weaker sections will be either situated near Harijanwada or some other sections of society and the land prices will be generally on the low side. After acquisition of the land covered under Ex.A-2 which is made for providing house sites, the potentiality of that land for purpose of construction of houses by the affluent people of the Society has diminished and it is only acquired for purpose of extension of the scheme for providing house sites to weaker sections. So, that land value can be taken into consideration for purpose of determining the market value. In that case, the Court has confirmed the compensation awarded at Rs. l1/- per square yard (net) with 50% deduction and the same has been confirmed by the judgment of Justice Ramaswamy marked under Ex.A-2. If we take into account that value of the land with more advantages than the land under acquisition, the price will be Rs. l1 /- per square yard (net). If we take that value into consideration, we have to take the entire basis for arriving at that figure. In the land acquisition cases, the rate of deduction will normally be ranging from 20 to 50 per cent and it will depend upon the facts and circumstances of each case.

11. Under Ex.A-2, the Subordinate Judge taking into consideration the value at Rs. 22/- per square yard and after deducting 50 per cent, awarded Rs. 11/- per

square yard (net). The same principle that has been adopted by the lower Court has been confirmed by the High Court. So with regard to the deduction and the rate that has been fixed, both must be taken into account, but not the rate fixed for the land only. In this case, we have to differ with the percentage because we are not in complete agreement with the reasoning and conclusions arrived at which formed the basis for awarding the compensation. So, Rs. 11/- per square yard (net) is the value that has been arrived at. Taking into consideration the value of the land that was prevalent as on the date of Section 4(1) notification i.e., on April 30, 1979 and if we adopt the same, we have to see what will be the rate of increase. We are not having any sale deeds showing the increase in land value. Generally, Courts have to take judicial notice of the fact that the prices are on the increasing side. But, that increase in prices varies from village to village, town to town and city to city. Even in the Cities also at one corner the value of land or site may be on the increasing side because of more potentiality than the other corner. The potentiality of the land and the increase in price also depends on the lie of the land, situation of the land and demand for land in that particular area. Generally as the inflation is on the high side and particularly when the rupee is losing its value, the Courts in the absence of any guidelines for increase, are taking into account 5 to 10 per cent increase every year. Even that 5 to 10 percentage, as we take into consideration, is the discretion left to the Court taking into account the potentiality of the land, increasing value of that particular land, strategic position of the land and the increase in prices of the land covered by other sale deeds or other statastics that have been brought to the notice of the Courts concerned. So, in this case, if we take the maximum rate that the Government can pay for this acquisition for providing house sites and the increase even if we calculate at the rate of 10 per cent increase every year for 10 years period as the notification is dated August 28, 1989 at best, we feel reasonable that the increase should be 10 x 10 i.e., 100 per cent, and accordingly, we are granting that 100% than the value that has been fixed by the Court under Ex.A-2. Therefore, Rs. 11/-plus Rs. 11/- which comes to Rs. 22/-per square yard will be the land value at best that can be fixed in the case on hand. In case of this increase also, the same has to be calculated throughout the period, but not every year calculation and the increase of that land on yearly basis. This increase is also a guess work in this case and there cannot be any binding principle. Taking into consideration all these circumstances, we feel it reasonable to set 5 to 10 per cent margin which has to be given with regard to the increase in the land value. Even in the case on hand also, we want to make it clear that the award which has become final on account of the judgment of the Court, but still either the Land Acquisition Officer or the claimant can prove the rate of increase or decrease basing on the sale deeds that are available and where no other document is available, these final judgments can be taken into consideration When the other sale deeds are available those sale deeds also can be taken into consideration, but the value fixed in these cases can be settled as the variance will be either on the increase or on the decrease. If some comparable sale deeds are available, basing on the values only, the market value has to be determined and it is completely left open to the discretion of the Officer to decide the reasonable compensation basing on the documents and the awards that have been passed by this Court. There is no appeal as against the value fixed for the well.

12. In the result, we find that the claimant is entitled to the compensation at the rate of Rs. 22/- per square yard together with the other statutory benefits. Accordingly, Appeal Suit No. 2030 of 1992 is allowed and Appeal Suit No. 2597 of 1992 is dismissed. No costs.

