
(1965) 10 AP CK 0005
In the Andhra Pradesh High Court
Case No : Appeal No. 414 of 1961

The Sub-Collector, Ongole

APPELLANT

Vs

Yerra Anumanchamma

RESPONDENT

Date of Decision : 18-10-1965

Acts Referred:

Evidence Act, 1872 — Section 101, 104, 35

Land Acquisition Act, 1894 — Section 11, 12, 18, 23

Citation : AIR 1967 AP 230

Hon'ble Judges : Narasimham, J

Bench : Single Bench

Advocate : M.V. Naga Ramaiah, for the Appellant; N. Rajeswara Rao, for the Respondent

Judgement

(1) This is an appeal against the judgment of the Subordinate Judge of Bapatla in O. P. No. 50 of 1958. The Sub-Collector, Ongole is the appellant.

(2) O. P. No. 50 of 1958 arose on a reference by the Land Acquisition Officer under section, 18 of the Land Acquisition Act (I of 1894), hereinafter to be referred to as "the Act", in respect of an extent of ac. 1-85 cents of wet land bearing Survey No. 24/2 of Kankatapalam village. The said land was acquired for the purpose of digging channels to provide irrigation facilities in Kankatapalam village. The notification in respect thereof was made u/s 4(1) of the Act on 14-2-1957. The subject-matter of the acquisition is agricultural land. 89 links wide and about 25 chains long.

(3) The Sub Collector, Ongole, who gave the award (No. 5 of 1958), Exhibit A-2, granted compensation, determining the market value at Rs. 1,600 per acre. He awarded 15 per cent solatium and interest, in all aggregating to Rs. 3704-68 nP. The owner sought a reference to Court claiming enhanced compensation at the rate of Rs. 5,000 per acre. On a reference, the Subordinate Judge, Bapatla, sitting as a Land Acquisition Court, awarded enhanced compensation at Rs. 4,500 per acre plus 15 per cent thereon as solatium and interest from the date of

taking possession till the date of deposit.

(4) Aggrieved by the order of the Land Acquisition Court, the Sub Collector, Ongole has preferred this appeal.

(5) The learned Government Pleader has contended in support of this appeal that the Land Acquisition Court erred in ignoring the comparable sales, Exhibit A-10 dated 29-5-1955, Exhibit A-6 dated 14-2-1956 and Exhibit A-7 dated 14-2-1956, and granting enhanced compensation to the claimant. Thus, the point which arises for determination is whether the Land Acquisition Court has erred in awarding enhanced compensation.

(6) It is now settled law that one of the methods of arriving at the market value of the subject-matter of acquisition is the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. That is so, as it is the function of the Court, in awarding compensation under the Act, to ascertain the market value of the land at the date of the notification u/s 4(1) of the Act. Vide The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, . Both the Land Acquisition Officer, who passed the award, and the Court had recourse to this method.

(7) The sales with reference to which arguments were addressed to me are as under.

(8) From the analysis of the sale deeds set forth supra, it is manifest that Exhibits A-6, A-7 and A-10 mention about Rs. 1500/- or thereabouts per acre, whereas Exhibits B-1, B-2 and B-2 show a very much higher price.

(9) Having regard to the observations of the Supreme Court in the case cited, two questions would arise, and they are: whether the transactions were bona fide transactions; and whether the lands, which were the subject-matter of those sales, possessed similar advantages as the acquired land, i.e. survey No. 24/2. The claimant, I. e. the owner, adduced evidence with reference to those sale deeds. I shall presently consider the evidence led by the claimant-owner as the onus lay on her to make out a case for enhancement of compensation.

(10) R. W. 1 gave evidence with reference to Exhibit B-1. He said that he sold 99 cents under Exhibit B-1 for Rs. 4500/-. Be it noted that under Exhibit B-1, the extent sold was 10 cents in Survey No. 23/1 and 89 cents in Survey No. 21. The witness deposed that the land that was sold under Exhibit B-1 was to the west of the suit lands and that the suit land was better than his lands and was worth about Rs. 7000/- per acre. The suit land adjoins the village with better water facilities and it is useful for house sites. In cross-examination, it was elicited that his vendee's husband had lands on all sides of these lands. He denied the suggestion that it was inconvenient for his vendee if others purchased the lands and that she paid more price.

(11) R. W. 4 deposed with reference to Exhibit B-2. He is the vendee of the land

covered by Exhibit B-2 (10 cents of Survey No. 29/2). That land was 100 yards from the suit land. There were houses within 50 yards of the suit land for the past 10 years. The suit land was worth Rs. 5000/- or Rs. 6000/-. He had purchased 10 cents under Exhibit B-2 for constructing a house. The village proper is 200 to 300 yards from the suit site.

(12) R. Ws. 5 and 6 deposed with reference to Exhibit B-3. R. W. 5 was one of the vendors under Exhibit B-3. His undivided father was also a party to Exhibit B-3. He deposed that his land was 100 yards from the suit land on its east, and that he purchased that land for house site and sold it for house site. According to him, the suit land was worth Rs. 10,000/- per acre. There were houses 100 yards away from the suit site.

(13) R. W. 6 is the vendee under Exhibit B-3. He purchased the site for constructing a house. He purchased 12 cents for Rs. 2000/- as it is house site.

(14) R. W. 7 is the husband of the owner. According to him, the suit land is 100 yards from the village, it is useful for house sites and is worth Rs. 10,000/- per acre now.

(15) R. W. 2 is the President, Panchayat Board, Kankatapalam. According to him, the suit site is fit for house site. The village houses were 200 yards from there,

(16) R. W. 3 said that there were houses at a distance of 50 yards from the suit land. He had purchased the land covered by Exhibit B-9 dated 20-2-1950 (31 cents) for Rs. 2000/- for the Rice Mill.

(17) That, in the main, is the substance of the evidence, led by the claimant. Broadly stated, R. Ws. 2, 3 and 7 have stated about the potential value of the suit land for house sites and its proximity to the village proper which is expanding. R. W. 1 was connected with Exhibit B-1, R. W. 4 with Exhibit B-2, R. Ws. 5 and 6 with Exhibit B-3 and R. W. 3 with Exhibit B-9. Exhibit B-5 is the sketch showing the location of the village, the land in question and the lands village, the land in question and the lands referred to the relevant sale deeds listed supra.

(18) As against the evidence led by the claimant on whom, it may be recalled, the onus lay to make out a case for enhancement, the evidence on behalf of the Referring Officer was that of P. W. 1. P. W. 1 was the Special Deputy Tahsildar for land acquisition in 1956. He stated that he inspected the suit land and Exhibit A-9 is his notes of inspection. His Revenue Inspector gathered the statistics. He fixed the value at Rs. 1600/- per acre. The reasons were given in Exhibit A-9. He referred to Exhibit A-10 in his notes of inspection. At the time he deposed, he was working as the Inspector of Controlled Commodities. In cross-examination, he said that Exhibit A-10 was referred to in paragraph 5 of Exhibit A-9 and that the Village Officers had produced the documents and he verified them. Those sale deeds were not shown to him on the day he deposed. He had no idea whether the documents he saw were registered or unregistered. The village

officer was one K. Gourinatham, who has since died. He had not seen that sale deed himself but recorded a statement from him. He did not get the levels taken. That was all the evidence led in support of the award.

(19) In this context it is appropriate that I indicate that the Officer who passed the award was the Sub Collector of Ongole (Sri V.P. Rama Rao, Land Acquisition Officer and Sub Collector) and he had not chosen to give evidence. The relevant part of his award (Exhibit A-2) may be usefully perused here:

"4. Market Value: (a) My predecessor Sri G.R. Rai, I.A.S. has inspected all the lands on 16-6-1957 for fixation of Market value. It is only its regard to S. No. 24/2, a different value has to be fixed as it is more fertile and at an uniform rate of Market value. In the P.V. Statement A.M.V. of Rs. 4500/- per acre for S. No. 24/2 was proposed taking into consideration the sale of 0-99 cents in S. Nos. 23/1 and 21 for Rs. 4500/- on 19-11-1953. There are no recent sales in the vicinity. The sale in 1953 is a transaction between a debtor and creditor. In the lands recovered by this sale, an extent of 0-10 cents in S. No. 23/1 is surrounded on three sides by the lands of the husband of the purchaser. An extent of 0-89 cents in S. No. 21 is surrounded on two sides by the lands of the husband of the purchaser. No land of any other riyot adjoins the above two items. It is impossible not to think that the purchaser must have given a fancy price to obtain this land. The motive is very obvious if we understand the fact that any other purchaser would have made him uncomfortable. So this sale is rejected. That is a sale in S. No. 29/2 and 25 on 2-12-1953 when an extent of 0-60 cents was sold for Rs. 1200/-. These are partition deeds and transaction between father and son. Hence this is also rejected. But there is a sale of 2-51 cents in S. No. 25/5 and 29/2 for Rs. 4175/- on 8-11-1953, according to which the rate per acre comes to Rs. 1670/-. These two S. Nos. are quite near the village and of equal fertility as S. No. 24/2. Hence I think it is quite reasonable to take this sale into consideration in fixing the M.V. for S. No. 24/2. Since there has been a decrease in the trend of prices since 1953, I fixed Rs. 1600/- per acre as M.V. for S. No. 24/2 as against Rs. 4500/- per acre proposed in the M.V. Statement in view of the facts stated above and considering its nearness to the village."

(20) From what is stated in paragraph 4(a) of the award, it is manifest the officer, who passed the award, did not inspect the lands. He has referred to sales of certain extents in S. No. 29/2, 29/5 and 25/5. But those sale deeds have not been placed before the Court. The Sub Collector purported to rely on a sale deed of certain extents in S. Nos. 25/5 and 29/2 dated 8-11-1953 for fixing the value of Survey No. 24/2. It is not explained why even this sale deed, which is the basis of the award, was not produced.

(21) The learned Government Pleader tried to argue that the award has to be read as evidence and the sale deeds referred to therein need not be placed before the Court. For this contention, he sought to rely on Section 12 of the Act and a Bench decision of the Madras High Court *P. Arunachala Aiyar and Others Vs.*

Collector of Tanjore, It seems to me that neither the section referred to nor the decision would support the learned Government Pleader.

(22) Section 12 reads thus:-

"(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and value of the land, and the appointment of the compensation among the persons interested."

(23) The words "except as hereinafter provided," refer to the right of the person who is dissatisfied with the Collector's award to object and apply for reference to the Court u/s 18 and within the time specified therein. If the claimant does not avail himself of the provisions of Section 18, only then the award made u/s 11 becomes final and conclusive. Inasmuch as the award has not been accepted and there is a reference, the award has to be supported. It may be recalled that the sale deed relied on by the Officer who passed the award was never placed before the Court; and further more, it may be recalled that that Officer had not inspected the lands but purported to pass the award on his predecessor's inspection notes. The unsatisfactory way in which this has been treated is further seen from the fact that paragraph 4(a) of the award appears to be by scrutiny a mere paraphrase of the inspection report of P.W. 1 who gave evidence. It is this award which is the main plank on which the learned Government Pleader relies.

(24) The decision relied on, *P. Arunachala Aiyar and Others Vs. Collector of Tanjore*, , does not support the proposition that the sale deeds referred to in the award need not be placed before the Court. It would appear from the judgment that sale deeds mentioned in the award were produced before the Court for its scrutiny.

(25) So, it emerges that P.W. 1's evidence hardly supports the award. P.W. 1 was not the person who passed the award; the award was passed by an officer who never inspected the land and the sale deeds which were relied on in the award were not placed before the Court. It is in this regrettable state of affairs that the learned Government Pleader now seeks to say that the Land Acquisition Court was wrong in not accepting Exhibits A-6, A-7 and A-10.

(26) The details with regard to the sale deeds are shown in the list above. It is seen from the sketch, Exhibit B-5, that the lands covered by Exhibits A-6 and A-7 are far away, i.e. more than a mile away from the suit land. Further, there is not a whisper in the evidence that they related to lands comparable in advantages with the suit land. Exhibit A-10 refers to the land in S. Nos. 185/2 and 3, which is also far away from the suit land. There is no evidence that the said land is comparable in advantages with the suit land.

(27) The learned Government Pleader argued that Exhibit A-9, i.e., the inspection notes of P.W. 1, could be read as evidence. I am doubtful if what all is

recorded in the inspection notes could be deemed to have been proved by P.W. 1 by a reference to Exhibit A-9. I am not persuaded that Section 35 of the Indian Evidence Act warrants the reading of the inspection notes as evidence. Even otherwise, the inspection notes do not speak to the fertility of the and covered by Exhibit A-10. In this context, it is relevant to note that the Supreme Court, in the ruling aforesaid, emphasized the consideration of bona fide transaction of purchase of lands acquired or the lands adjacent to the lands acquired and possessing similar advantages. By implication, the said observations excluded lands more remote and whose advantages were not in evidence. The Court below did not therefore commit any error in not accepting Exhibits A-6, A-7 and A-10 in preference to Exhibits B-1, B-2 and B-3.

(28) The learned Government Pleader further argued that from what the learned Sub-ordinate Judge stated in paragraph 13 of the judgment, he had not accepted the value in Exhibits B-2 and B-3. Paragraph 13 may be perused here:

"The documents filed on the respondent's side are more acceptable in this case. The petitioner's documents have to be rejected for the reasons stated above. The respondents seem to claim that this land has got potential value useful for building houses and therefore he must get something like Rs. 20,000/- as could be seen from Exs. B-3 and B-2. But this claim cannot be accepted. No doubt, the site has got potential value. But being in small village it has got its own defects."

This paragraph cannot be read out of context. It is only a part of the judgment, and when the relevant parts are read it cannot be said that he had not accepted Exhibits B-1, B-2 and B-3. He has discussed about the sale deeds in paragraph 8. It would appear that he had expressed himself as accepting these sale deeds. The learned Government Pleader argued that as between Exhibit B-1 and Exhibit A-10, Exhibit A-10 is of later date and has to be preferred. But the snag about Exhibit A-10 is that even the officer, who passed the award, had not considered that as relevant in awarding the market value for Survey No. 24/2, which is the land in question. Exhibits B-2 and B-3 are of the year 1956 and more proximate to the date which is the material date u/s 23(1) of the Act. The lands covered by the sale deeds are also proximate in situation to land in question. The claimant has adduced evidence of persons connected with these sales, and there is nothing suspicious about these sale deeds. The Court below has evidently considered Exhibits B-1, B-2 and B-3 and accepted the lesser value as shown under Exhibits B-1 and B-2.

(29) The learned counsel for the respondent has argued that in every case of acquisition, although the land is agricultural land, still its potentialities have to be taken into account in fixing the market value. His contention finds support from the observations of the Privy Council in AIR 1939 98 (Privy Council) In the instant case, the sale deeds represented the market values of agricultural lands fit for house sites and so they are comparable sales. The question of awarding additional compensation for potential value would not therefore arise.

(30) For the said reasons, I find that no case has been made out for interference with the enhanced market value adjudged by the Land Acquisition Court.

(31) No other point was argued before me.

(32) The appeal therefore fails and is dismissed with costs.

(33) EJ/DRR

(34) Appeal dismissed.