THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

L.A.A.S.Nos.15 & 78 of 2007

COMMON JUDGMENT: *(Per Hon'ble Sri Justice M.Seetharama Murti)*

LAAS 15 of 2007 is preferred by the Special Deputy Collector-cum-Land Acquisition Officer, Hyderabad. LAAS 78 of 2007 is preferred by the 2nd claimant, since the 1st claimant had died. During the pendency of these appeals, the 2nd claimant had also died. Therefore, his legal representatives were brought on record in both these appeals. Both these appeals were preferred assailing the common orders dated 08.08.2006 of the learned Senior Civil Judge, City Civil Court, Hyderabad passed in O.P.Nos.47 of 1999 and 8 of 2003. Therefore, both these appeals were heard together and are being disposed of by this common judgment. In these appeals, the parties shall hereinafter be referred to as 'the claimants' and 'the Land Acquisition Officer' for convenience and clarity.

2. We have heard the submissions of the learned Government Pleader for Appeals and the learned counsel for the claimants. We have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The property of an extent of 28.70 square yards bearing premises No.3-4-705, Ward No.63, Block H, TS No.31/1/2, Nampally village, which belonged to the 2nd claimant was acquired by the Government for the purpose of widening of 80 feet road from Durga temple, Himayathnagar to Lingamapally Cross Roads of Narayanaguda, Hyderabad. A draft notification under Section 4 (1) of the Land Acquisition Act, 1894 ('the Act', for brevity) was published in A. P. Gazette No.124 dated 09.04.1999. The award enquiry was conducted by the LAO and an award dated 30.10.1999 was passed fixing the market value of the acquired property @ Rs.2,906/- per square yard; and compensation in a sum of Rs.62,019/- was also fixed in respect of the structures in the acquired property. However, according to the LAO there was a discrepancy in regard to the title to the property for the reason that one Lakshmi Bai i.e., the 1st claimant (since died) was shown in the records as the occupier of the property while the 2nd claimant, who is now being represented by his legal representatives, was shown to be having possession of the acquired property at the relevant time. Therefore, a reference was made under Section 30 of the Act to the civil court and the compensation amount awarded was deposited to the credit of O.P.No.47 of 1999, which was taken on file on such reference. While so, not having been satisfied with the compensation awarded, the 2nd claimant had also filed an application under Section 18 of the Act seeking a reference to the civil court for fixation of just and fair compensation. The said reference under Section 18 of the Act was taken on file as O.P.No.8 of 2003 on the file of the learned Senior Civil Judge. Both the OPs were tried together. Before the reference court, the 2nd claimant was examined as PW1 and exhibits A1 to A20 were marked on the side of the claimants. No oral and documentary evidence was adduced on the side of the LAO. On merits, the civil court had held that the 2nd claimant is entitled to receive compensation and had further determined the compensation at Rs.4,500/- per square yard instead of Rs.2,906/- as fixed in the award by the LAO. The compensation that was awarded towards the value of the structures was confirmed. The reference court had also held that the 2nd claimant will be entitled to all the statutory benefits. On one hand the LAO is aggrieved of the orders of the reference court enhancing the compensation. On the other, the 2nd claimant is not satisfied with the compensation determined by the reference court. Therefore, these two appeals were preferred before this court by the LAO and the 2nd claimant respectively. As already noted, the legal representatives of the 2nd claimant were brought on record as the 2nd claimant died during the pendency of these appeals. Be it noted that the Government is not disputing now the entitlement of the present claimants/respondents to receive the compensation awarded. There is also no dispute about the facts narrated supra.

4. The learned Government Pleader for Appeals had contended that the order of the reference court is erroneous and contrary to the evidence and that the reference court had erroneously discarded exhibits A6 and A15 and that none of the documents filed by the parties were relied upon by the reference court and that the reference court without assigning any reasons had determined a random figure of Rs.4,500/- as compensation per square yard and enhanced the compensation from Rs.2,906/- per square yard and that such enhancement granted by the reference court without any evidence on record and on mere assumptions is contrary to law and cannot be sustained under facts and in law.

5. On the other hand, the learned counsel for the claimants would contend as follows: 'The land was acquired for widening of the road, where construction of a fly over bridge was undertaken. The acquired property is a mulgi on the main road and is a commercial property. The said fact would indicate that the acquired property is abutting a main road and is located in an important commercial locality in the city of Hyderabad. The extent of the acquired property was 366 square feet, which is equivalent to 40 square yards. The property originally stood in the name of the 2nd claimant's mother Lakshmi Bai, i.e., the deceased 1st claimant. She had died in the year 1980. The 2nd claimant-Dharampal is her only son. He had received a notice from the referring officer and had claimed the compensation. However, a reference was erroneously made under Section 30 to the civil court. The 2nd claimant claimed compensation @ Rs.20,000/- per square yard by producing relevant documents. The property would have fetched the consideration at that rate had it been sold in open market at that relevant time. The reference court had erroneously fixed a low compensation of Rs.4,500/- per square yard without properly appreciating the evidence brought on record, which clearly established the prevailing market value at the relevant time. Narayanaguda of Hyderabad is an important and prime locality in the city and the acquired premises of the claimants is admittedly adjacent to main road. Even by the date of acquisition that locality is a very well developed commercial locality. There was and is heavy demand for mulgies in that commercial locality. The reference court had erred in not taking into consideration the sale deed dated 24.12.1998 referred to in the award by the LAO. In the said sale deed, the market value of the property was mentioned as Rs.8,373/- per square yard. Similarly, the reference court had failed to take into consideration the sale deed dated 08.01.1999, which was also referred to by the LAO in the award. Under the said document, the market value of the property was mentioned as Rs.16,000/- per square yard. The court below ought to have taken into consideration the aforementioned sale deeds, which were also referred to by the LAO in his award, and ought to have awarded compensation @ Rs.15,000/- per square yard. Exhibit A6, the market value certificate dated 08.06.1999 issued by the Sub Registrar also would show that the market value of the properties at Narayanaguda was Rs.15,000/- per square yard at the relevant time. The reasoning given by the reference court for not relying upon exhibit A6 is not correct. The extent of the acquired property is 40 square yards and not 28.70 square yards.'

6. In the light of the facts and the rival contentions, the points that arise for determination in these appeals are -

> **(1) Whether the market value fixed by the reference court is not correct, adequate and proper as contended by the claimants? Whether the compensation fixed by the reference court is high and excessive as contended by the LAO?**
>
> **(2) What shall be the just and fair compensation to be awarded to the claimants in respect of the acquired property?**
>
> **(3) To what relief?**

7. <u>POINTS 1 to 3</u>:

7. (a) The facts leading to the filing of these two appeals and the contentions of both the parties are stated supra, in detail. We have given earnest consideration to the facts and the evidence on record and the submissions. The 2nd claimant who is Son of the deceased 1st claimant was alone examined as PW1. Exhibit A5 dated 05.05.1990 is the death certificate of the 1st claimant who is no other than the mother of the 2nd claimant. Exhibit A1 is the registered sale deed dated 13.10.1991 in favour of the 1st claimant. Its' English translation is exhibit A2. Exhibit A3 dated 20.11.1970 is the registered partition deed between Lakshmi Bai and Sivamma, who are the purchasers under exhibit A1. As per the recital in exhibit A3, the acquired property had fallen to the share of Lakshmi Bai. Thus, there is no dispute that the 1st claimant Lakshmi Bai originally had right, title and interest in respect of the acquired property. It is undisputed that the said Lakshmi Bai, the 1st claimant, during her life time, had constructed mulgies in her property including the acquired property. The copy of the approved plan is exhibit A4. There is also no dispute that the 2nd claimant Dharampal is the sole legal heir of the deceased 1st claimant, who is his mother. There is also no dispute that the present claimants brought on record in these appeals as necessary parties are the legal heirs of the deceased 2nd claimant. It is also an admitted fact that prior to the acquisition, the mulgi, a portion of which was acquired for road widening purpose, was under the occupation of a tenant and that R.C.No.746 of 1997 was pending by then on the file of the learned III Additional Rent Controller, Hyderabad. The copies of the petition and the orders in the said RC No.746 of 1997 are exhibits A8 and A9. The certified copy of the order in R.C.No.766 of 1997 on the file of the learned IV Additional Rent Controller filed by the 2nd claimant against the tenant in the property is exhibit A12. After eviction orders, the property was delivered to the 2nd claimant; and, exhibit A13 is the delivery warrant and exhibit A14 is the delivery receipt. Therefore, the legal representatives of the 2nd claimant who were brought on record are entitled to receive the compensation in respect of the acquired property is well established and is also undisputed.

7. **(b)** Coming to the contention that the extent of the acquired property is 40 square yards and not 28.70 square yards, PW1 had asserted the said contention in his evidence and had further stated that there is a land of 3 feet in front of the mulgi, which is his own property, and that the said three feet width of property was left as front side set back and that at the time of taking possession, measurements were not taken in his presence and that while taking measurements, a site of 6 feet on the Eastern side, which is a wide open land with a depth of 12 feet was not included in the measurements and that therefore, the measurements taken by the LAO were incorrect and hence, the extent of the acquired property is 40 square yards and not 28.70 square yards. He had further asserted in his evidence that the measurements should have been taken in the presence of an Engineer concerned of the Government. The records of acquisition clearly go to show that the extent of the acquired property is 28.70 square yards. Be it noted that the objection of the claimants is not only in regard to the measurements of the property; but also in regard to the extent of the property. No documentary evidence or evidence of reliable character is produced to show that the extent of the property taken possession from the claimants is 40 square yards. Therefore, the dispute is not squarely with regard to the measurements but precisely is in regard to the extent of the property taken possession from the claimants. Therefore, we do not deem it appropriate to go into the question as to whether excess extent of property was taken possession from the claimants as there is no adequate evidence to come to a safe conclusion on the said aspect. If possession of the property is taken in excess of the acquired extent of property, it is for the claimants to claim an appropriate relief in an appropriate civil proceeding or seek appropriate releifs for damages and recovery of possession of the portion of the property, which was not acquired. When only an extent of 28.70 square yards of property was acquired, a compensation for higher extent, which is not acquired, cannot be determined in the proceedings under the Act. Since the extent of the acquired property is only 28.70 square yards, the enquiry and decision shall be confined to the said acquired extent only in these appeals arising out of the reference proceedings.

7. **(c)** Coming next to the quantum of compensation to be determined and awarded, the learned Government Pleader had pointed out that the LAO had considered a sale transaction that had taken place on 06.03.1997 in respect of 150 square yards of site with structures, which was sold at Rs.4,50,000/- and that according to that sale transaction, the value of the property acquired works out to Rs.3,000/- per square yard and that after giving deduction towards value of the structures, the LAO had correctly determined the market value of the property at Rs.2,906/- per square yard and that the LAO had also awarded Rs.62,019/- towards the value of the structures in the acquired property on the basis of the estimate of the Executive Engineer of the Municipal Corporation of Hyderabad and that there is no other evidence much less of reliable nature to enhance the compensation. Be that as it may. The claimants had filed exhibit A6, the market value certificate issued by the Joint Sub Registrar of Hyderabad. The said certificate was issued in regard to the properties at Narayanaguda area which are situated on the main road running from Narayanaguda to Barkatpura. The basis for the value mentioned in that certificate is the basic value at the rate of Rs.15,000/- per square yard as on 01.08.1998 mentioned in the basic value register that was being maintained in the office of the Sub Registrar. The claimants had also filed exhibit A15, which is the extract of the registered sale deed dated 19.07.1997 under which the ground floor shop room in an extent of 575 sft with undivided vacant site of 26.03 sq. yards site was sold for a sum of Rs.4,90,000/-. A careful perusal of the said document particularly with reference to the stamp duty paid at the time of registration would reveal that the correct market value in respect of the property relating to the sale transaction under the said document was Rs.5,17,000/-. That property under exhibit A15 is admittedly a premises bearing Door Nos.3-4-637 to 641 and is therefore, away from the present acquired property which bears the Door No.3-4-705. Moreover, as rightly contended by the learned Government Pleader for Appeals, the properties facing the main road, which are having more width, and which are of large extents would fetch more value than the other mulgies of smaller sizes and extents. No evidence was brought on record to show that the said sale transaction under exhibit A15 is comparable and that the said house properties under the said document are in the same locality or within the same vicinity. Therefore, the court below had rightly taken a view that the transaction under exhibit A15 is not exemplar and cannot be taken as safe guidance for determination of the market value of the acquired property. Though the learned counsel for the claimants had placed reliance on two documents dated 24.12.1998 and 08.01.1999 referred to in the award of the LAO, the copies of the said documents were not exhibited and no evidence was adduced to show that the properties covered by the said documents are exemplar. Coming to exhibit A6, the market value certificate that was issued by the Joint Sub Registrar concerned, the law is well settled that the basic value register is maintained only for fiscal purpose of collecting stamp duty and registration charges and it cannot form a foundation to determine the compensation. In that exhibit A6, the market value as on 01.08.1998 generally of the properties at Narayanguda without reference to any particular premises/premiseses, was mentioned @ 15,000/- per square yard. It is appropriate to refer to the ratio in the decision of the Supreme Court in **Land Acquisition Officer vs Jasti Rohini**[1] wherein the Hon'ble Supreme Court held as follows:

> '**The admissibility and evidentiary value of the entries in the basic value register was considered by this Court in Jawajee Nagnatham v. Revenue Divisional Officer. After an elaborate consideration this Court held that the basic value register is maintained only for fiscal purpose of collecting stamp duty and registration charges. The market value mentioned therein cannot form a foundation to determine the compensation under Section 23(1) of the Act**.'

Hence, the learned Government Pleader had contended that in the absence of any credible and reliable evidence, the finding of the Court below that the claimant is entitled to enhanced compensation at the rate of Rs.4,500/- per square yard for the acquired property is clearly unsustainable more particularly when the said finding is not supported by any reasons much less valid reasons.

7. **(d)** Be that as it may. The potential value of the acquired property is one more important aspect, which requires consideration. It is an admitted fact that the subject property was acquired for road widening and that the same was adjoining a main road in a well established commercial locality of the Hyderabad city. The acquired property is a mulgi, which was fit for commercial use. In fact, it was being put to such use at the time of acquisition. PW1 deposed that there is high demand for commercial mulgies in that locality. As per the decision in **A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy**[2] potentiality of the acquired land, insofar as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration. Having thus analysed the evidence, we find no infirmities in the order of the Court below fixing the market value of the acquired property @ Rs.4,500/- per square yard. Coming to the structural value, the Executive Engineer had fixed the value of the structures at Rs.62,019/-; and, in the absence of any legally acceptable evidence to the contra; the said awarded amount was confirmed by the reference court. The claimants had filed before the reference court exhibit A7, the abstract of estimation prepared by a retired Deputy Executive Engineer, R & B, where under the value of the structures and the land was shown as Rs.9,06,225/-. However, the said retired Dy. Executive Engineer who had prepared exhibit A7 is not examined. The law is well settled that mere marking of a document is no proof. Therefore, we find that there are no reasons to interfere with the compensation awarded towards value of the structures as well. Viewed thus, we find that the contentions of the claimants and the LAO in these two appeals are devoid of merit and that both the appeals are liable to be dismissed. Points 1 to 3 are accordingly answered.

8. In the result, both the appeals are dismissed, however, without costs.

Miscellaneous petitions, if any, pending in these appeals shall stand closed.

K.C.BHANU, J

M. SEETHARAMA MURTI, J

19th March 2015
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[1] 1995 SCC (1) 717

[2] (2010) 9 SCC 118