The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.4013 of 2014

Dated 26.02.2015

Between:

Union of India,
rep. by the General Manager

...Petitioner

and

P.Prakash and another

...Respondents

Counsel for the Petitioner: Mr.M.L.Ali

Counsel for respondent No.1: Mr.N.Vasudeva Reddy

The Court made the following:

Order:

This Civil Revision Petition arises out of Order, dated 28.06.2014, in EP.No.30 of 2011 in OP.No.22 of 1994, on the file of the Court of the learned Senior Civil Judge, Vikarabad, Ranga Reddy District.

I have heard Mr.M.L.Ali, learned Counsel for the petitioner, and Mr.N.Vasudeva Reddy, learned Counsel for respondent No.1, and perused the record.

This case has a long drawn history. An extent of 9922 square yards of land in Survey No.22/aa of Gangaram Revenue Village, Vikarabad Mandal, belonging to respondent No.1, was acquired by the petitioner for the purpose of railway siding at Vikarabad Railway Junction. Respondent No.2- Land Acquisition Officer has passed award on 20-03-1994 by fixing the compensation for the said land @ Rs.50/- per square yard and allowing deduction of 1/3rd compensation towards developmental charges. Feeling dissatisfied with the said award, respondent No.1 has got the dispute referred to the Civil Court under Section 18 of the Land Acquisition Act, 1894 and the same was registered as OP.No.22 of 1994. By award dated 31.12.1996, the reference Court, while sustaining the award of respondent No.2 to the extent of deduction of 1/3rd compensation towards developmental activities, has, however, partly allowed the OP by enhancing the compensation from Rs.50/- to Rs.75/- per square yard. Still not being satisfied with the said award of the reference Court, respondent No.1 has filed AS.No.461 of 1997. By judgment and decree, dated 18-01-2011, a Division Bench of this Court has allowed the appeal by enhancing the compensation "for the acquired land" from Rs.75/- to Rs.125/- per square yard.

After filing Execution Petition No.30 of 2012, respondent No.1 has filed WP.No.19096 of 2012 for a Mandamus directing respondent No.2 and the petitioner herein to deposit the enhanced compensation to the credit of the EP in the lower Court. The said Writ Petition was disposed of, on 27.06.2012, with the direction to the respondents therein to deposit the enhanced compensation within three months from the date of receipt of a copy of the said order. Alleging disobedience of the said order, respondent No.1 has filed CC.No.1938 of 2012. At that stage, the petitioner, which was not a party to the acquisition proceedings, has got itself impleaded in EP.No.30 of 2011 and filed calculation memos, which were not accepted by the Executing Court, while passing order, dated 06-08-2013. Feeling aggrieved by the same, the petitioner has filed CRP.No.4332 of 2013, which was disposed of by this Court by Order, dated 21-04-2014. Though the issue as to whether the calculation memos filed by the petitioner by deducting 1/3rd compensation was correct or not arose in the said CRP, this Court has declined to render any finding thereon and instead, it has permitted both the parties to file fresh calculation memos with a direction to the executing Court to consider the same afresh in accordance with law and pass a reasoned order. Thereafter, the executing Court has passed order, dated 28-06-2014, out of which the present Civil Revision Petition has arisen.

At the hearing, Mr.M.L.Ali, learned Counsel for the petitioner, has submitted that, while several issues relating to calculation memos were raised before the Executing Court, the only issue, which is being pressed before this Court, pertains to the deduction of 1/3rd compensation towards developmental activities. He has submitted that the reference Court in its award, dated 31-12-1996, has rendered a categorical finding that the Land Acquisition Officer has rightly deducted 1/3rd compensation towards the developmental activities and that the Division Bench, in its judgment passed in AS.No.461 of 1997, has not set aside the award of the reference Court to the extent of such deduction. He has, therefore, submitted that the executing Court has committed a serious error in not accepting the calculation memos filed by the petitioner by deducting 1/3rd compensation.

Per contra, Mr.N.Vasudeva Reddy, learned Counsel for respondent No.1, has, strenuously, submitted that the Division Bench is clear and categorical on the issue of deduction of 1/3rd compensation, and in support of this submission, he had taken this Court through various observations rendered in its judgment. The Division Bench, submitted the learned Counsel, has accepted the plea of respondent No.1 that no deduction need be made based on Ex.A.2, which was also relied upon by the earlier Division Bench in AS.Nos.1427 of 1997 and 656 of 1998.

On the respective submissions made by the learned Counsel for the parties, the only issue that arises for consideration in this CRP is, whether the Division Bench, in its judgment in AS.No.461 of

1997, has accepted the plea of respondent No.1 that no deduction towards developmental activities need be made and on the strength of the said judgment and decree, whether respondent No.1 is entitled to payment of the entire compensation without any deduction.

Before undertaking discussion on this point, this Court is unable to refrain from expressing its dissatisfaction at the approach of the lower Court. The order does not disclose that the lower Court has gone through the judgment in AS.No.461 of 1997. No attempt was made by it to analyze the contents of the judgment and record its conclusions on its true purport. On the contrary, the Court below has observed that a perusal of the decree in AS.No.461 of 1997 does not disclose that 30% deduction in the area of the acquired land was made and that the judgment debtor did not choose to get the decree amended under Section 152 of the Code of Civil Procedure, 1908, so as to get such deduction incorporated therein. These observations would impliedly mean that the decree in AS.No.461 of 1997 is not in conformity with the judgment passed therein and that the petitioner ought to have taken steps to get the same amended. This observation of the lower Court is wholly unsound as evident from the following reasoning.

AS.No.461 of 1997 was filed by respondent No.1 with a twofold grievance. *Firstly*, that the enhancement made by the reference Court was inadequate and that he is entitled to higher compensation. *Secondly*, that the deduction of 1/3rd compensation towards the developmental activities by the Land Acquisition Officer as well as the reference Court is illegal and improper. For both these purposes, respondent No.1 has placed reliance on Ex.A.2- certified copy of the judgment in OP.No.9 of 1993.

In Paragraph 3 of its judgment, the Division Bench has noted the pleas of the claimants as under:

> "The acquired land was claimed by the claimants to be located within Vikarabad Municipal Limits within two furlongs from the municipal office, other business establishments and schools and no deduction of 1/3rd need have been made towards development charges and compensation should have been awarded at Rs.300/- per square

yard.”

While referring to Exs.A.2 and A.3, the Division Bench, in Paragraph 13 of its judgment, observed as under:

> “While Exs.,A.2 and A.3 in any view could have been straight away relied on by the reference Court for comparing the value of the lands under the circumstances, even if Ex.A.4, which is more inside in the limits of Vikarabad, could not have been so relied on, a Division Bench of this Court in A.S.Nos.1427 of 1997 and 656 of 1998 also, while dealing with Ex.A.2, stated that the evidence in that reference itself showed that the land sold under Ex.A.6 therein for Rs.83/- per square yards within the limits of Vikarabad municipality was comparable to the land acquired under Ex.A.2. While providing an escalation of Rs.2/- per square yard since the transaction under Ex.A.6 therein, the Division Bench fixed the value at Rs.85/- per square yard without making any deductions towards any development charges obviously because of the location of the lands.”

In Paragraph 14, the Division Bench referred to the reasons, which dissuaded the reference Court from relying upon Ex.A.3 in the following words:

> "One of the reasons, which dissuaded the reference Court from relying on Ex.A.2 appears to be the pendency of the appeal against the same at the instance of the Government, but the result of the appeal having been placed before this Court and the judgment of the Division Bench having admittedly become final, the same should form the basis for fixing the market value of the subject lands at the relevant time. The reference Court was referring to the absence of any positive evidence about the presence of amenities like electricity, water and telephone connections for the acquired land, but the lands covered by Exs.A.2 and A.3 also would have had similar advantages or disadvantages. While it is not known whether the appeal against Ex.A.3- award is pending or has been disposed of and while Exs.A.4 and A.5 are not being relied on for the purpose of fixing the market value of the subject lands in view of the better location of the lands covered by them, the market value has to be fixed with reference to Ex.A.2 which land is adjacent to the subject lands in question."

In Paragraph 15 of its judgment, the Division Bench has observed as under:

> "If so, if the market value was fixed

> at Rs.85/- per square yard under a notification under Section 4 (1) of the Act, dated 20-06-1989, the claimants will also be naturally entitled to enhancement in value over the years by the time of the subject notification on 16-12-1993 after about 4 ½ years."

In Paragraph 17, the Division Bench has held as under:

> "In the result, the claimants are declared to be entitled to the <u>value of the acquired land</u> at Rs.125/- per square yard with solatium at 30% on such value and an additional amount of 12% on such value from 16.12.1993, the date of notification under Section 4 (1) of the Act, till 04-07-1994, the date of the award, with interest from the date of notification under Section 4 (1) of the Act on 16-12-1993 for one year at 9% per annum and thereafter, at 15% per annum till payment on the market value of the land, solatium and additional amount and the award, dated 30-12-1996, in OP.No.22 of 1994, on the file of the Subordinate Judge's Court, Vikarabad, Ranga Reddy District, is modified accordingly and the payments, if any, already made by the respondent under the impugned award shall be given credit to in the amounts due as per the present determination." (emphasis added)

In conclusion, the Division Bench has allowed the appeal as evident from Para 18 of its judgment.

On a wholistic reading of the judgment of the Division Bench referred to above, one is left with no doubt that it has upheld both the pleas of respondent No.1 *viz.*, (1) that it is entitled to fixation of higher compensation than what was enhanced by the reference Court and (2) that the acquired lands were situated adjacent to the lands, which are covered by Ex.A.2, and in view of their better location, the market value has to be fixed with reference to Ex.A.2. The Division Bench has also taken notice of the fact that the lower Court has not relied upon Ex.A.2 for the reason that the same was subject matter of an appeal and that as the said appeal was disposed of by this Court, there was no impediment for it to rely upon the said document. No doubt, the Division Bench has not expressly held in the concluding part of its judgment that the awards of both the Land Acquisition Officer and the reference Court to the extent of deduction were bad, but however, from the phrase "value of the acquired land" in Paragraph 17, it is clear that the Division

Bench enhanced the compensation for the entire acquired land without deducting $1/3^{rd}$ towards developmental activities as was done in AS.No.1427 of 1997 based on Ex.A.2.

In the light of the above discussion, this Court has no hesitation to hold that under the judgment in AS.No.461 of 1997, respondent No.1 is entitled to payment of the enhanced market value for the entire acquired land *viz.*, 9922 square yards. The lower Court should have taken little pains to go through the said judgment and discussed its contents, instead of making a perfunctory approach, which it has done while disposing of EP.No.30 of 2011. Be that as it may, despite the flawed reasoning of the lower Court, there will be no change in the outcome of the case.

For the above-mentioned reasons, I do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.5475 of 2014, filed by the petitioner for interim relief, is dismissed as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 26th February, 2015
LUR