

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE M.S.K.JAISWAL**

L.A.A.S.No. 484 OF 2012

DATED 26TH FEBRUARY, 2015.

BETWEEN

M.Buchi Reddy and ors

....Appellants

And

The Land Acquisiton Officer (Revenue
Divisional Officer) Miryalaguda, Nalgonda District
And ors.

...Respondents.

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE M.S.K.JAISWAL**

L.A.A.S.No. 484 OF 2012

JUDGMENT: (per HONOURABLE SRI JUSTICE G.
CHANDRAIAH)

This appeal is directed against the judgment and decree dated 26.10.2009 rendered in O.P.No.62 of 1995 on the file of the learned Senior Civil Judge, Nalgonda.

The issue, though short, but substantially important, that falls for consideration is as to whether the learned Reference

Court is justified in restricting itself in awarding compensation at Rs.1000/- per each tree based on the observation made by the appellate Court while remanding the matter though, thereafter, the claim statement was got amended in view of affording opportunity to the claimants.

In order to adjudicate the aforesaid issue, the undisputed factual matrix that arose for filing of the instant appeal needs to be canvassed and it is briefly stated as follows: Initially, altogether an extent of Ac.370.00 guntas of land in various survey numbers situate at Kondapur village of P.A. Pally mandal, Nalgonda District was acquired for a public purpose of construction of filtration plant and pumping station at Kondapur village of Nalgonda District. After following the due procedure laid down under the Land Acquisition Act, the Land Acquisition Officer passed an Award on 1.6.1994 awarding compensation at the rate of Rs.9,000/- per acre in addition to the value of the orchards, open wells and bore wells separately. Being dissatisfied with the Award passed by the Land Acquisition Officer, the claimants sought for a reference under Section 18 of the Land Acquisition Act and the same has been taken on file in OP.No.62 of 1995 by the learned Reference Court. The Reference Court upon appreciation of the evidence on record, assessed the market value of the acquired land at Rs.12,000/- per acre and did not grant any further relief so far as the orchards, bore wells and open wells are concerned. Being dissatisfied with the same, the claimants carried the matter in appeal before this Court in A.S.Nos.3790 and 3791 of 2000 whereas, the Land Acquisition Officer preferred an appeal in A.S.No.3784 of 2000 being aggrieved by the said enhancement.

A Division Bench of this Court through its Judgment dated 10.11.2004 while enhancing the market value of the acquired land from Rs.9,000/- per acre to Rs.28,000/-per acre did not grant any compensation in respect of sweet orange plants existing on the acquired land on the ground that the learned Reference Court did not consider any evidence for assessment of compensation payable in respect of the plants is concerned and thereby remitted the matter to the learned Reference Court for consideration afresh in regard thereto. While remitting the matter, this Court observed that the claimants are bound by the claim statement submitted by them in the reference Court restricting their claim at the rate of Rs.1000/- per each sweet orange plant. It was also kept open to the learned Reference Court to consider the claim of the claimants for payment of compensation at the rate claimed by them for which purposes alone the claimants should be entitled to lead further evidence.

Pursuant to the same, the learned Reference Court on appreciation of the evidence on record and considering the submissions advanced by the learned Counsel on either side, through its judgment and decree dated 26.10.2009 though assessed the market value of each tree at Rs.2560/- based on the report of the Three-Man Committee, it restricted the same at Rs.1000/- per tree. Aggrieved by the same, the present appeal is filed.

In this appeal, as noticed supra, the point in controversy lies in a narrow compass and it is to the effect whether the learned Reference Court was justified in awarding compensation at the rate of Rs.1000/- per each orange tree having determined the same at Rs.2560/- per tree based on the evidence on record

on the ground that when the matter was remanded by the appellate Court it was observed that the claimants cannot claim compensation per tree at the rate more than Rs.1000/- since they have claimed that amount.

Admittedly some of the claimants preferred appeals being AS.Nos.3790 and 3791 of 2000 against the order of the learned Reference Court in OP.No. 62 of 1995, dated 8.8.2000 and by order dated 10.11.2004 a Division Bench of this Court while enhancing the compensation payable for the acquired land from Rs.9,000/- per acre to Rs.28000/- per acre did not however award any compensation for the trees, but remanded the matter to the learned Reference Court to determine the compensation payable in respect of the trees afresh. While remanding the matter, this Court observed that since the claimants have claimed the compensation at the rate of Rs.1000/- per tree, they cannot be awarded more than that amount. It is necessary to reproduce the relevant portion of judgment of the Division Bench of this Court in AS.Nos.3790 and 3791 for better understanding of the matter, which reads as under:

“That so far as the claim in respect of sweet orange plants is concerned, the learned Judge did not assign any reasons whatsoever for accepting the award passed by the Land Acquisition Officer. The oral evidence adduced by the appellants-claimants has not been taken into consideration. The findings recorded by the reference court for accepting the award passed by the land Acquisition Officer are totally unsatisfactory. It is a clear case of non-consideration of evidence so far as the assessment of compensation payable in respect of the plants is concerned. The reference court is required to appreciate the evidence for which purpose we consider it appropriate to remit the

matter for fresh consideration by the reference court in accordance with law. It shall be open to the parties to lead further evidence. It shall also be open to the beneficiary to lead evidence if it so chooses. However, we make it clear that the appellants herein are bound by the claim statement submitted by them in the reference court restricting their claim at the rate of Rs.1000/- per each sweet orange plant. The reference court under no circumstances can grant beyond what has been claimed by the appellants in the claim statement. There is some dispute raised by the appellants with regard to the number of plants existing in the acquired land. But there is no evidence for the same. The appellants are therefore bound by the number of plants estimated by the Land Acquisition Officer in respect of which award has been granted. However, it shall be open to the reference Court to consider the claim of the appellants herein for payment of compensation at the rate claimed by them for which purposes alone the appellants shall be entitled to lead further evidence.

In the result the appeals preferred by the claimants are allowed in the manner referred to hereinabove without any order as to costs. AS.No.3784 of 2000 preferred by the State shall accordingly stand dismissed without any further orders as to costs.

We also make it clear that the appellants herein shall not be entitled to payment of two sets of compensation, one for the land and another for the plants. Such of those claimants shall who are claiming compensation for the plants are entitled to payment of compensation only for the plants and no separate compensation for the lands. The reference court on remand shall also reconsider the claim of the appellants herein for grant of enhanced compensation for the bore wells but the appellants are not entitled for payment of any separate compensation so far as the wells are concerned. The reference Court is directed to dispose of the OP within a period of four months from the date of receipt of a copy of the order for which purpose it shall proceed with the trial on day

to day basis without granting any unreasonable adjournments to any of the parties. No order as to costs.”

On such remittance of the matter, the learned Reference Court, after appreciation of the evidence on record, and consideration of the material made available before it, through its order under appeal dated 26.10.2009 observed in Paragraph 24 thereof as under:

“But Honourable Supreme Court in S.T.Pampanna Shetty Vs. Assistant Commissioner-cum-Land Acquisition Officer, Bellary in 2005(9)SCC 562 held that the compensation can be arrived on the basis of yield per annum. Normally in the cases of where compensation is awarded on yield basis multiplier ‘10’ would be proper and appropriate. Thus, in the light of the above authority, I am of the opinion that the compensation can be granted on yield basis and with a multiplier of ‘10’, which would be appropriate. Thus, the claimants are entitled for compensation at the rate of Rs.256 x 10 = Rs.2560/- per plant. But the Honourable High Court has categorically held in Appeals in A.S.Nos.3790, 3784, 3791/2000 dated 10.11.2004 that the compensation amount for each plant shall not exceed Rs.1000/-. Therefore in view of the directions of the Honourable High court the compensation is restricted to Rs.1000/- per each fruit bearing plant. Further the claimants are entitled only after deduction of the compensation amount already paid towards the cost of the land and plants. As per the award the Land Acquisition Officer has fixed the compensation amount at the rate of Rs.9000/- per acre. The Honourable High Court has enhanced the compensation for the lands to Rs.28,000/- per acre. As per the evidence of the claimants, PWs.9 and 14 and the Assistant Director, Horticulture and G.O.Ms.No. 357, dated 22.3.2006 an average plantation per acre would be 100 plants. The same is taken into consideration.

Thus, the amount already granted towards the compensation of the land at the rate of Rs.28,000/- per acre and the compensation already paid by the Land Acquisition Officer for the plant shall be deducted from the compensation payable. The claimants are entitled for the compensation at the rate of Rs.1000/- per fruit bearing tree minus compensation already paid towards the cost of the land and the fruit bearing plants. The claimants are further entitled for all the attendant statutory benefits under the Act.

In the result, LAOPs are allowed with costs and the market value of each tree is fixed at Rs.1000/- minus the compensation already paid towards costs of the land and each tree. The claimants are entitled for all the attendant benefits as per the amended Act. The Land Acquisition Officer is directed to deposit the amount within one month from the date of order.”

Therefore the learned Reference Court even though came to the conclusion based on the evidence on record that when the claimants are entitled to Rs.2560/- per tree, but it restricted the compensation payable to the trees at the rate of Rs.1,000/- per tree.

This is assailed in the present appeal contending that the learned Reference Court was not justified in restricting itself in awarding the compensation; that at the time when the matter was remanded the claimants claim was no doubt Rs.1000/- per tree, but after remanding the matter, in view of the opportunity afforded to the claimants they have got the claim statement amended to the effect that they are entitled to receive the compensation at the rate of Rs.4,000/- per tree; that as the amendment petition was allowed , the claimants were allowed to

get their claim increased per each tree from Rs.1,000/- to Rs.4000/-; that the said order was ultimately became final and therefore when the matter was adjudicated afresh by the learned Reference Court the amended claim statement claiming compensation of Rs.4000/- per tree has to be taken into account, but not the claim of Rs.1000/- per tree which was the claim of the claimants original by before remanding the matter to the learned Reference Court. The learned Counsel for the appellants further submitted that the learned Reference Court ought to have awarded just and reasonable compensation based on the evidence on record irrespective of the claim made by the claimants and that the Reference Court cannot itself restrict the award of compensation merely because there is an observation from the Division Bench of this Court while the matter was remanded. In support of his contentions, he placed reliance on the decisions of the Apex Court in ASSISTANT COMMISSIONER, INCOME TAX, RAJKOT Vs. SAURASHTRA Kutch STOCK EXCHANGE LIMITED {(2008)14SCC 171} and AMBYA KALYA MHATRE (D) by LRS Vs. STATE OF MAHASTRA {2012 (2) ALD 37(SC)}.

On the other hand, the learned Government Pleader appearing for the State submitted that the order and decree under appeal passed by the learned Reference Court is perfectly based on the evidence on record and there is no scope at all for enhancement of compensation payable for the trees in view of the observation made by this Court while remanding the matter. In support of his contention, he relied on the decision of the Apex Court in GIRIMALLAPPA Vs. THE SPECIAL LAND ACQUISITION OFFICER {2012(1)DT(SC)(NRC)309} He further

submitted that there are no merits in the appeal and the same deserves to be dismissed in toto.

We have heard the learned Senior Counsel appearing for the appellants and learned Government Pleader appearing for the State elaborately and perused the order under appeal, orders of the Division Bench dated 10.11.2004 passed in AS.Nos.3790, 3784 and 3791 of 2000. We are of the considered opinion that the learned Reference Court was not justified in restricting the Award at Rs.1,000/- per each tree after having come to a specific conclusion that the claimants are entitled to the compensation of Rs.2560/- per each tree. In determining this amount, the learned Reference Court has referred the report of the Three Men Committee where under they have fixed the compensation per each tree at Rs.256/- and applied the multiplier '10' while calculating the compensation payable per each tree.

Once the matter has been remanded to the trial Court and an opportunity was afforded to the claimants for amendment of the claim statement, claimants are at liberty to adduce evidence, if any, in support of their claims and if the claimants have successfully got amended the claim statements and that was before the learned Reference Court for adjudication and consideration thereon, the learned Reference Court ought to have considered the claim of the appellants based on the amended claim statement and evidence adduced in support of the same, and ought not to have adjudicated the claim based on the original claim based on which the appellate Court made an observation that the claimants cannot be awarded more than

Rs.1000/- per each tree. The situation that prevailed at the time of remand by this Court has been considerably changed by the time when the matter came up for adjudication by the learned Reference Court. In that view of the matter, the learned Reference Court ought to have considered the award of compensation based on the amended claim statement and evidence adduced in support of the same, but not as stated supra. This view of ours is supported by the decision of the Apex Court in ASSISTANT COMMISSIONER, INCOME TAX, RAJKOTE (supra), wherein it was observed as under:

“The core issue, therefore, is whether non-consideration of a decision of Jurisdictional Court (in this case a decision of the High Court of Gujarat) or of the Supreme Court can be said to be a "mistake apparent from the record"? In our opinion, both - the Tribunal and the High Court - were right in holding that such a mistake can be said to be a "mistake apparent from the record"? In our opinion, both the Tribunal and the High Court, were right in holding that such a mistake can be said to be a 'mistake apparent from the record', which could be rectified under Section 254(2).

A similar question came up for consideration before the High Court of Gujarat in *Suhrid Geigy Limited v. Commissioner of Surtax, Gujarat*, (1999) 237 ITR 834 (Guj). It was held by the Division Bench of the High Court that if the point is covered by a decision of the Jurisdictional Court rendered prior or even subsequent to the order of rectification, it could be said to be "mistake apparent from the record" under Section 254 (2) of the Act and could be corrected by the Tribunal.

In our judgment, it is also well- settled that a judicial decision acts retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a 'new rule' but to maintain and

expound the 'old one'. In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the Court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.”

Further in the case of *Ambya Kalya Mhatre (D)* per LRs (supra), the Apex Court concluded as under:

“The assumption made by the High Court that when a reference is sought objecting to the amount of compensation, the claim for increase will have to be frozen with reference to the amount claimed in the application under section 18 of the Act and therefore the quantum of the claim cannot subsequently be revised or increased is misconceived. Similarly, the assumption that if the claim for increase in an application for reference (relating to an acquisition involving a property consisting of land, building and trees), was only in regard to the compensation for the land, the land owner cannot thereafter make a grievance seeking increase in regard to the building or trees in the pleadings before the Reference Court and that in such a case, the Reference Court gets the jurisdiction to determine only the market value in regard to the land and not in regard to the building and trees, is also not correct. Section 18 does not require a land owner objecting to the amount of compensation, to make a claim for any specific amount as compensation, nor does it require him to state whether the increase in compensation is sought only in regard to the land, or land and building, or land, building and trees. A land owner can seek reference to civil court, with reference to any one or more of the four types of objections

permissible under section 18 of the Act, with reference to the award. His objection can either be in regard to the measurement of the acquired land or in regard to the compensation offered by the Collector or in regard to persons to whom it is shown as payable or the apportionment of compensation among several claimants. Once the land owner states that he has objection to the amount of compensation, and seeks reference to the civil court, the entire issue of compensation is open before the Reference Court. Once the claimant satisfies the Reference Court that the compensation awarded by the Land Acquisition Officer is inadequate, the Reference Court proceeds to determine the compensation, with reference to the principles in section 23 of the Act. As the Act does not require the person aggrieved/landowner to specify the amount of compensation sought, when objecting to the amount of compensation and seeking a reference, mentioning of the amount of compensation sought is optional. As there is no obligation to specify the amount in the application for reference, it can be specified in the claim statement filed before the Reference Court. The period of limitation in section 18 of the Act has nothing to do with specifying the amount of compensation claimed.

It therefore follows that if the reference is in regard to objection to the amount of compensation, the Reference Court can permit any application for amendment of the claim relating to compensation.

. The High Court has lost sight of the scheme of the Act. When a land is acquired, the Land Acquisition Officer makes an offer on behalf of the state government, in regard to the compensation. The offer made by the Land Acquisition Officer is not an adjudication of the market value or the compensation payable to the land owner. When such offer is made, the land owner has the choice of either accepting the compensation in full and final satisfaction or to seek a reference to the civil court for determination of the amount of compensation.

Where the land owner does not seek a reference within the time specified in section 18 of

the Act, he is deemed to have accepted the award and the award of the Land Acquisition Officer attains finality under section 12 of the Act. Section 18 of the Act enables the land owner or person interested to make a written application to the Collector requiring his objection to the award, to be referred for determination by the court. In the application, he has to state whether his objection is in regard to measurement, quantum of compensation, persons entitled to compensation, or apportionment. He is also required to state the grounds on which the objection to the award, is taken. But the section does not require the land owner while seeking a reference, to specify the quantum of compensation demanded by him. Section 18 merely requires a land owner who has an objection to the amount of compensation awarded by the Land Acquisition Officer to require the matter to be referred to reference court for determination of compensation by specifying the grounds of objections to the award.

Section 19 of the Act provides that on receipt of the application seeking reference made in accordance with section 18 of the Act, the Collector is required to make the reference by forwarding the application for reference (or a copy thereof) with his statement setting out the grounds on which the amount of compensation was determined by him. Section 19 is extracted below :

"19. Collector's statement to the Court.--(1) In making the reference, the Collector shall state, for the information of the Court, in writing under his hand, --

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11;

(cc) the amount paid or deposited under sub-section (3A) or section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of

compensation was determined.

(2) To the said statement, shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested, respectively."

(emphasis supplied)

When the reference is received, the court causes notice specifying the date of hearing for determining the objection of the land owner/person aggrieved (section 20 of the Act). The Reference Court has to call upon the claimants to file their statement of claim and call upon the Collector to file his objections to the claim statement and then proceed with the matter. Where the application under section 18 contains the necessary particulars, the Reference Court may treat the application for reference under section 18 and the Collector's statement under section 19 of the Act as the pleadings. The land owner is entitled to specify the amounts claimed by him as compensation and the heads of compensation for the first time in such claim statement before the Reference Court. He can also file an application amending the claim. What is not permitted after the expiry of the period of limitation specified in section 18 of the Act, is changing the nature of objections from one category to another. If the reference had been sought with reference to objection to amount of compensation, the land owner cannot after the period of limitation, seek amendment to change the claim as objection to measurement or objection to apportionment.

. A land owner, particularly a rural agriculturist, when he loses the land may not know the exact value of his land as on the date of the notification under section 4(1) of the Act. When he seeks reference he may be dissatisfied with the quantum of compensation but may not really know the actual market value. Many a time there may not be comparable sales, and even the courts face difficulty in assessing the compensation. There is no reason why a land owner who has lost his land, should not get the real market value of the land and

should be restricted by technicalities to some provisional amount he had indicated while seeking the reference. As noticed above, the Act does not require him to specify the quantum and all that he is required to say is that he is not satisfied with the compensation awarded and specify generally the grounds of objection to the award. Under the scheme of the Act, it is for the court to determine the market value. The compensation depends upon the market value established by evidence and does not depend upon what the land owner thinks is the value of his land. If he has an exaggerated notion of the value of the land, he is not going to get such amount, but is going to get the actual market value. Similarly if the land owner is under an erroneous low opinion about the market value of his land and out of ignorance claims lesser amount, that can not be held against him to award an amount which is lesser than the market value. When the Act does not require the land owner to specify the amount of compensation, but he voluntarily mentions some amounts, and subsequently, if the market value is found to be more than what was claimed, the land owner should get the actual market value. We fail to see why the land owner should get an amount less than the market value, as compensation.

Consequently, it follows that if the land owner seeks amendment of his claim, he should be permitted to amend the claim as and when he comes to know about the true market value. When the Act is silent in regard to these matters, to impose any condition to the detriment of an innocent and ignorant land owner who has lost his land, would be wholly unjust.

. The Collector making the offer of compensation on behalf of the state is expected to be fair and reasonable. He is required to offer compensation based on the market value. Unfortunately Collectors invariably offer an amount far less than the real market value, by erring on the safer side, thereby driving the land owner first to seek a reference and prove the market value before the reference court and then approach the High Court and many a time this Court, if he does not get adequate compensation. In most land

acquisitions, the land acquired is the only source of his livelihood of the land owner. If the compensation as offered by the Collector is very low, he cannot buy any alternative land. By the time he fights and gets the full market value, most of the amount would have been spent in litigation and living expenses and the price of lands would have appreciated enormously, making it impossible to buy an alternative land. As a result, the land owner seldom has a chance of acquiring a similar land or an equal area of similar land. It would be adding insult to injury, if the land owner should be tied down to a lesser value claimed by him in the reference application, even though he was not required by law to mention the amount of compensation when seeking reference. The Act contemplates the land owner getting the market value as compensation and no technicalities should come in the way of the land owner getting such market value as compensation.

. It is relevant to notice the definition of land in section 3(a) of the Act. It provides that the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Therefore when the Act refers to acquisition of 'land', the reference is not only to land but also to land, building, trees and anything attached to the earth. In the absence of any restriction in section 18 of the Act, and the respective roles assigned by the Act to the Land Acquisition Collector and the Reference Court in the context of making a reference and determining the compensation, we are of the view that once the reference is made in regard to amount of compensation, the Reference Court will have complete jurisdiction to decide the compensation for the land, buildings and trees and other appurtenances. The Reference Court will also have the power to entertain any application for increasing the compensation under whatever head. The fact that the landowner had sought increase only in regard to the land in the application for reference, will not come in the way of the landowner seeking increase even in regard to trees or structures, before the Reference Court.

From the above observations of the Apex Court, it is manifest that the learned Reference Court is not justified in restricting itself in awarding just and reasonable compensation in respect of the trees is concerned. Even at the cost of repetition, it is to be stated that on the basis of the evidence on record the learned Reference Court in its order under appeal at paragraph 24 observed categorically based on the Three-Men Committee report that the cost of each tree can be fixed Rs.2560/-, but however, the Reference Court awarded Rs.1000/- per each tree in view of the observations made by this Court while remanding the matter as referred supra.

In view of the foregoing discussion and having regard to the principle of law in regard thereto laid down by the Apex Court in the decisions referred above, we have no hesitation to hold that the order under appeal passed by the learned Reference Court is not correct and consequently the same is liable to be modified holding that the claimants are entitled to Rs.2650/- per each tree as against Rs.1000/-per each tree as awarded by the learned Reference Court. Accordingly there shall be an order and in all other aspects, the order under appeal stands as it is.

In the result, the L.A.A.S. is allowed to the extent indicated above. There shall be no order as to cost

Miscellaneous petitions pending consideration if any in the appeal shall stand closed in consequence.

JUSTICE G.CHANDRAIAH

JUSTICE M.S.K.JAISWAL

DATED 26TH FEBRUARY, 2015.

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