THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE MRS. JUSTICE ANIS

APPEAL SUIT NO. 295 OF 1998

ORDER: (*Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The claimants are the appellants in this appeal. Pursuant to the notification issued under Subsection (1) of Section 4 of the Land Acquisition Act,1984 on 31.12.1983 by the Collector, land of a total extent of Ac.17.16 cents has been acquired for the purpose of providing house sites to the weaker sections. The Land Acquisition Officer passed an award on 25.01.1984 fixing the market value of Rs.8,000/- per acre. Considering the fixation of market value of the Land Acquisition Officer as very inadequate, the claimants sought for a reference to be made to the Civil Court and accordingly, a reference was made to the Civil Court at Chodavaram. Accordingly, the Subordinate Judge's Court at Chodavaram dealt with O.P.No.12 of 1985. By its order dated 28.02.1995, the Civil Court fixed the market value at Rs.13,500/- per acre. Questioning the correctness of this fixation of market value by the Civil Court, the present appeal has been preferred under Section 54 of the Land Acquisition Act. On behalf of the claimants, P.Ws 1 to 12 are examined and Exs.A-1 to A-10 are marked. On behalf of the respondents, R.Ws.1 to 3 were examined and Exs.B-1 to B-8 were got marked. The Court has also marked Exs.X-1 and X-2. After taking totality of the circumstances into account and consideration, the Civil Court has enhanced the market value of the land from Rs.8,000/- to Rs.13,500/- per acre. In doing so, the Court has taken into account the potentiality of the land as a house site, its proximity to the main village and also its closeness to the main road towards Narsipatnam. It has also noticed that there is visible development in the locality and hence the land has fair potentiality to be developed and sold-off as housing sites. But however, it should be noted that the Reference Court has taken into account and consideration Ex.B-6, an extract of sale deed, which is registered on 17.11.1982 concerning land of an extent of Ac.1.15 cents for a consideration of Rs.9,200/-. On that basis and also of the fact that the said land was purchased on 17.11.1982 which is almost one year prior to the date of publication of the notification under Section 4(1) on 31.12.1983 and hence, the Court has also adopted the formula of granting an annual increment in the range of 10% to 15% and accordingly enhanced the market value covered by Ex.B-6 by 12% and arrived at a conclusion that the land value could be around Rs.13,440/-. Instead of such an odd figure, it has rounded-off the same and held that the market value could be Rs.13,500/-.

Sri K. Subramanyam, learned counsel for the appellants would strenuously submit that this is a completely erroneous approach adopted by the Reference Court while passing the order in the O.P.No.12 of 1985. The learned counsel for the appellants would rely heavily on the contents of Ex.A-1, which is a similar order passed by the Sub Court at Chodavaram on 20.11.1987 in O.P.No.14 of 1985. According to Sri K. Subramanyam, if only Ex.A-1 is properly studied and taken into account and consideration, the land value would have been anything upwards of Rs.20,000/-, though the market value in the open market is around Rs.50,000/- per acre. Therefore, according to Sri K. Subramanyam the valuation arrived at by the Senior Civil Judge's Court in the present O.P.No.12 of 1985 and fixing it at Rs.13,500/- is a hopelessly inadequate consideration for the compulsory acquisition of land. According to the learned counsel, the error has resulted in failure to take into account and consideration the potentiality of the land and its proximate closeness to the expanding town of Narsipatnam in Visakhapatnam District.

We have given anxious consideration to the submissions made by Sri K. Subramanyam. We have, in fact, perused Ex.A-1, copy of order and decree dated 20.11.1987 rendered in O.P.No.14 of 1985 by the same Sub Court at Chodavaram. In O.P.No.14 of 1985, the Civil

Court was concerned with lands which have been acquired to an extent of Ac.5.27 cents. It was also found by the Court therein that the lands in question are hardly at a distance of 2 kms from Narsipatnam Town, which was rapidly developing those days. The Court which decided O.P.No.14 of 1985 has placed reliance upon the earlier sale transaction covering Ac.0.05 cents for a sum of Rs.800/-. Taking the said sale into account and consideration, the Court has worked out that the value of the land would have come to Rs.16,000/- per acre and on that basis, the Court in that case concluded tersely that ends of justice would be met if the rate per acre is fixed at Rs.20,000/-. Thus, the judgment rendered and covered by Ex.A-1, an element of guess work was indulged in by the learned Subordinate Judge in relying upon the transaction of land consigned in Ac.0.05 cents, whereas, in the instant case, the land acquired was fairly vast extent of more than Ac.17.00. The land in question is a dry land and hence, it is only fit to raise the compensation by treating it as having potentiality for house sites.

If a land has got potentiality to be developed into a housing colony, such land has got to be improved upon first of all. Earth filling has to be undertaken to make it reach atleast the road level, if not slightly above the road level. Thereafter, methods of compaction and consolidation have to be undertaken. Then, the land will become fit to be laid out into housing plots. For doing so, roads have to be laid throughout the extent of the layout. Some basic amenities have also got to be provided for, such as, electricity lines, telephone lines, water lines, drainage and for the community good green space, etcetera. Nearly 30% to 40% of the total extent of the land would go only for achieving these purposes of formation of roads, etcetera and consequently, <u>nearly 30% to 40% of the lands so laid out become incapable of being sold</u> out to any one as a Housing site. So, therefore, after spending substantial amount for improving the land from its agricultural land status to that of a fit status to be laid out, and thereafter lot of money has got to be spent for providing basic infrastructural amenities, which itself might account for nearly 40% to 50% of the land value and thereafter, a private land developer would be justified in expecting a minimum of 20% of return on his capital investment representing his profit margin and he would also be spending atleast another 5% towards administrative expenses towards maintaining clerks/supervisors/agents and also for advertisement purposes, etcetera. Thus, if land is offered for sale let us say Rs.100/- per square yard, nearly 70-75% of that cost would have gone towards the development costs alone, leaving the value of the land at Rs.30-40/- per square yard. Therefore, for an un-invested and unimproved land of potentiality, the corresponding value towards developmental costs and other incidental expenses has got to be deducted, in case the claimants seek the value of it has to be determined on “square yard” basis, instead of “acreage” basis. That, in a case like the present, one might work out to the disadvantage of the claimants as well. In those circumstances, we have confined our scrutiny only as to whether the Reference Court has carried out the exercise of fixing the market value properly and correctly or not.

In the instant case, Ex.B-6 covers a sale transaction of land of an extent of Ac.1.15 cents that took place on 17.11.1982, a little more than 13 months prior to the date of notification under Subsection 1 of Section 4 on 31.12.1983 in the instant case. Further, land covered by Ex.B-6 is not a small extent, but is an extent of Ac.1.15 cents. In the given circumstances, it offers a reasonably valid platform for purposes of comparison for arriving at the market value. It is no doubt true that in the open market land which has got potentiality to be developed as housing colony, may fetch little more than what was actually reflected in a sale deed relating to agricultural lands. For a variety of reasons, including for purposes of avoiding payment of stamp duty and registration fee, persons who enter into transactions would tend to play down the true value/consideration that was exchanged by and between the parties and would tend to reflect the consideration as nearer to the valuation fixed by the Government for purposes of revenue collection. But however, the Courts are not supposed to take any such unreliable factors into consideration for fixing the market value. In the instant case, since Ex.B-6 covers the transaction of land one year prior to the date of the compulsory acquisition, the Reference Court granted an annual increment of 12% on the value worked out by Ex.B-6. We are, therefore, of the opinion that the approach adopted by the Reference Court in the instant case is fair and reasonable and in those circumstances, the fixation of market value at the rate of Rs.13,500/- per acre cannot be faulted. Therefore, the claimants are only entitled for the benefit of 30% solatium and interest to be paid thereon in accordance with the amended act. But however, they may not be entitled to be paid additional market value of 12%, as contained in the amended provision namely Section 23(1)(A) of the Act. Accordingly, we dismiss this appeal.

We grant one month time to the Land Acquisition Officer to pay the entire amount of compensation, payable to the appellants in accordance with the judgment rendered by the Reference Court and as indicated by us herein above as well, if not already paid to the claimants by now.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

23.11.2015
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