THE HON'BLE SRI JUSTICE K.C.BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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<u>L.A.A.S.Nos.1614 & 1685 of 2005</u>

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

The appeal-L.A.A.S.No.1614 of 2005 by the claimants and the appeal-L.A.A.S.No.1685 of 2005 by the Land Acquisition Officer & Revenue Divisional Officer, Manthani, Karimnagar District, are directed against the orders dated 13.06.2005 passed in O.P.No.30 of 2004 by the learned Senior Civil Judge, Manthani.

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. In these appeals, the parties shall hereinafter be referred to as 'the claimants' and the 'Land Acquisition Officer' ('the LAO', for short) for convenience and clarity.

4. The introductory facts, in brief, are as follows:

The Executive Engineer, Sri Ram Sagar Project ('SRSP', for short) by his letter dated 22.12.2003 had submitted a requisition for acquisition of land in an extent of Ac.28-19 guntas in Sy.Nos.325, 326 and 327 of Kalwacherla village of Kamanpur Mandal of Karimnagar District for extension of tank bed land, which was already submerged in Cheemala Cheruvu situated at Kalwacherla village. The area covered by the said survey numbers was localised as ‘wet’ under SRSP registered and submerged in Cheemala Cheruvu at Kalwacherla village. A joint inspection that was conducted by the Mandal Revenue Officer and the Surveyor had revealed that two agricultural wells, one motor shed, 12 sendhi trees, one bhurgu tree and one tamarind tree were existing in the requisitioned lands, which were submerged from 01.07.1982 due to feed of SRSP water and that the said lands were not being cultivated and are under the control of the Irrigation Department. The draft Notification and draft declaration proposals were submitted to the Collector, Karimnagar on 23.12.2003 under Section 4(1) of the Land Acquisition Act, 1894 (‘the Act’, for short) for approval. The draft Notification under Section 4(1) of the Act was published in District Gazette No.39 dated 23.12.2003. The same was also published on 23.12.2003 and 25.12.2003 in Eenadu Telugu newspaper and an English newspaper respectively and the substance of the publication in the locality was made on 27.12.2003. The draft declaration proposals were submitted to the Collector under Section 6 of the Act on 31.12.2003 and the Collector had approved the same on 22.01.2004 and a Gazette publication was made in District Gazette No.2 on 22.01.2004. The substance was published on 24.01.2004 and publication was also made in an English news paper and a vernacular newspaper on 24.01.2004 and 23.01.2004 respectively. After due enquiry, the LAO had fixed the market value of the acquired lands at Rs.33,018/- per acre and had further awarded Rs.88,000/- for one Well though two Wells were in existence in the acquired lands. Further, a sum of Rs.31,000/- was fixed and awarded for motor shed; and, Rs.696/- in all was awarded for the trees in the acquired lands. The LAO had also awarded 30% solatium and interest.

4. (a) Not being satisfied with the compensation awarded, the claimants sought reference by filing an application under Section 18 of the Act. On a reference made to the civil court, O.P.No.30 of 2004 was taken on file. The claimants had claimed compensation of Rs.30,00,000/- per acre together with interest, solatium and other statutory benefits. Before the reference court, the 9th and 2nd claimants were examined as PWs 1 and 8 and their supporting witnesses were examined as PWs 2 to 7 and 9 and exhibits A1 to A36 were marked. The then R.D.O was examined as RW1 and the award was marked as exhibit B1. On merits, the reference court had allowed the claim in part with proportionate costs and had determined the compensation for the acquired land at Rs.3,20,000/- per acre. The operative portion of the order of the court below reads as follows:

> **"In the result, the reference is partly allowed with proportionate costs and it is ordered that the compensation for the acquired lands shall be paid at the rate of Rs.3,20,000/- (Rupees three lakhs twenty thousand only) per acre and the value of the well is enhanced to two times over and above than the compensation awarded by the Land Acquisition Officer and to the motor shed is enhanced from Rs.31,000/- to Rs.51,750/- and for the acquired trees @ Rs.200/- per Sendhi tree each, Rs.500/- for burgu tree and for Rs.500/- tamarind tree under Section 23(1) of the Land Acquisition Act with 30% solatium on the enhanced compensation amount. The claimants are entitled for interest at 9% per annum from 1-1-1980 to 31-12-1980 and interest at @ 15% per annum from 1-1-1981 to till the date of payment of compensation. The claimants are also entitled to additional market value @ 12% per annum from 1-1-1980 to 31-1-2004 till the date of passing of award."**

Not being satisfied with the compensation awarded, the claimants had preferred the first mentioned appeal. On the other hand, the LAO had preferred the latter mentioned appeal *inter alia* contending that the compensation as determined by the court below is high and excessive.

5. The learned counsel for the claimants contended that the claimants had adduced credible oral and documentary evidence and that the claimants had also examined an expert as PW2 and had established that the acquired land has huge deposits of black clay and lime kanker of great value and utility in the surface soil and that the claimants had further exhibited copies of several registered sale deeds showing the value of the lands at the relevant time which are exemplar and that there is adequate evidence as regards the enormous potential value of the land and that the reference court had erroneously fixed a meagre compensation and that the claimants are entitled, in any view of the matter, to the restricted claim of compensation of Rs.5,40,000/- per acre in their appeal and that the claim of the claimants is reasonable by any standards. He had further contended that the claimants are entitled to compensation towards two irrigation Wells, motor shed, all the trees and the canal bund of a length of 301 metres. He would also contend that the court below had not awarded any compensation for the canal bund and also for one of the irrigation Wells and that the court below had awarded low compensation for the trees. The learned counsel for the claimants while contending that the claimants would have extracted the deposits of clay and lime kanker in the acquired land and would have made good money but for the acquisition had placed reliance on a decision in **Thressiamma Jacob v. Deptt. of Mining & Geology** in support of the contention that the claimants who are the owners of the acquired land are entitled to the sub soil rights including the clay and lime kanker. On the other hand, the learned Government Pleader for Appeals had strongly contended that without any acceptable and reliable evidence, the court below had enhanced the compensation and that the LAO had fixed the compensation by correctly taking into consideration the exemplar sale transaction and that the claimants had not filed any document in respect of any land which is exemplar and that the land was submerged long before the notification was issued and that the claimants are not entitled to interest from the date of taking possession but are only entitled to interest from the date of notification as per the settled legal position. He would further contend that the claimants are not entitled to claim compensation under capitalization of yield method and on the basis of land value on one hand and also compensation on the basis of potentiality on the other by contending that the land has surface soil deposits of black clay and lime kanker. He had next contended that the land is not acquired by the Government to extract the available deposits of clay and kanker and that the deposits of minerals etcetera in any land vest in the Government and that under the provisions of the State enactments and the Mines & Minerals (Development & Regulation) Act, 1957 the land owner has no proprietary rights over the sub soil and minerals and that the activity of extraction of minerals is regulated by the said Act and that in any view of the matter, the claimants are not having exclusive right to work those minerals and that therefore, the proprietary rights to subsoil consisting of the deposits of clay and kanker vest in the Government and at best, the claimants would be entitled to extract the same with the permission and under a valid licence and at any rate would only be entitled to a share and not the whole of the deposits, if any, in the land. He had further urged that the lands are tank bed patta lands liable for submersion and that the cultivation in the acquired lands was used to be taken up as and when the tank water receded and that therefore, the lands were used to be cultivated of and on and were not yielding regular annual incomes even before their submersion on account of SRSP waters. He had finally urged that the compensation determined by the court below is high and excessive and that the order of the court below is unsustainable.

6. Now, 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?

3. Whether the claimants are entitled for compensation separately or otherwise for the 'clay' and 'lime kanker' existing in the acquired lands.

4. To what relief?

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

7. (a) The admitted and undisputed facts are as follows: The land in an extent of Ac.28.19 guntas in Sy.Nos.325, 326 and 327 of Kalwacherla village was acquired for extension of tank bed land, which was already sub-merged in Cheemala Cheruvu situated at Kalwacherla village of Kamanpur mandal. The aforesaid lands are dry patta lands localised as wet under SRSP registered and submerged in Cheemala Cheruvu at Kalwacherla village. The acquired lands remained submerged from 01.07.1982 due to feed of SRSP water. Therefore, on account of the submersion of the lands even before the draft notification was issued, it was considered that possession of the acquired lands was taken on 01.07.1982. The draft Notification under Section 4(1) of the Act was published in A.P. Gazette on 23.12.2003. The draft declaration proposal under Section 6 of the Act was published in Gazette on 22.01.2004. When no acquisition was made and no compensation was paid, the claimants had earlier approached this Court by filing W.P.No.10473 of 1997. This Court, by orders dated 31.03.2000, directed the District Collector, Karimnagar to acquire the lands of the claimants as per the procedure prescribed under law. The Writ Appeal No.1242 of 2000 filed by the District Collector against the orders in the said writ petition was dismissed. The SLP filed before the Supreme Court of India was also dismissed on 22.08.2003. On such dismissal of the SLP, a petition for contempt was filed; and, on that a direction was given to pass an award within one month and pay compensation to the claimants. Accordingly, the LAO had passed the award on 31.01.2004 fixing the market value of the acquired lands at Rs.33,018/- per acre. The LAO had further awarded Rs.88,000/- for one Well as per the estimate prepared by the Executive Engineer R & B, Peddapalli and had deferred payment of compensation for the other Well as the Well was already submerged in the water; he had further awarded Rs.31,000/- as compensation for the motor shed as per the estimate prepared by the Executive Engineer, R & B, Peddapalli besides compensation of Rs.96/- for 12 Sendhi trees, Rs.400/- for one Burgu tree and Rs.200/- for one Tamarind tree. The LAO had also awarded 30% solatium, 4% interest from 01.07.1982 to 29.04.1984, 9% interest from 30.04.1984 to 29.04.1985 and 15% interest from 30.04.1985 to 31.01.2004. The details of the enhanced compensation awarded by the reference court are already mentioned supra.

7. (b) Since the contention of the claimants is that the compensation awarded by the LAO and the reference court is meagre amount and that they are entitled to much higher compensation, the burden is upon them to prove the said fact. Section 23 of the Act clearly stipulates the principles under which the value of the land has to be determined.

7. (c) We shall first avert to the evidence on record. The claimant No.9, who was examined as **PW1**, while asserting his case and the admitted facts had further testified that the LAO had adopted the sale price in respect of a sale transaction covered by the sale deed dated 21.07.2003 in respect of the land in Sy.No.323 under which the land was sold at Rs.33,018/- and had ignored the sale transaction in respect of a land in the same survey number which took place on 31.07.2003 and where under, the land was sold at Rs.64,250/- per acre. He had further deposed to the following effect: 'The surrounding land of the acquired lands were sold at rates ranging from Rs.1,50,000/- to Rs.4,20,000/- per acre. Reliance was placed by the LAO on sale transactions relating to dry lands. Even the Mandal Revenue Officer, Kamanpur in his report dated 13.12.2003 had stated that the existing market value of the land in the vicinity for dry land was Rs.1,30,000/- to Rs.1,50,000/- per acre. No document related to a transaction in regard to sale of double crop wet land is available in the vicinity of the land acquired; he had, hence, filed documents pertaining to single crop wet lands. The only documents which were available and which pertained to single crop wet land were referred to in the report of the Mandal Revenue Officer. Therefore, the value of the double crop wet land can be arrived at by doubling the value of the single crop wet land. There are two perennial irrigation Wells situated in the acquired land; but, the LAO did not award adequate compensation for one of the Wells and had deferred award of compensation for the said Well, as the said well was sub-merged. Several registered sale deeds in respect of lands, which are near and adjacent to the acquired lands which were sold at prices ranging from Rs.1,50,000/- to Rs.4,20,000/- per acre were filed. The land is having potentiality. It has deposits of 'pottery clay' and 'lime kanker' in the sub soil; and, on survey a geological expert had estimated the available deposits/reserves and had furnished his report in that regard. The land is suitable for construction of houses as it is very near to Centenary Colony and the main road. The details of the location of the land were also stated in the award. The value of the acquired land is Rs.30,00,000/- per acre. Prior to acquisition the claimants used to cultivate the acquired lands with the water of two wells fitted with one oil engine and another with electric pump and the claimants used to raise two crops and they used to get income of Rs.20,000/- per acre per crop after deducting all the expenses. But, due to submergence of the acquired land since the year 1982 they have lost their income on the crops. The acquired lands are adjacent to Centenary colony, where house plots were sold on yard basis at the rate of Rs.2,000/- to Rs.3,000/- per yard. The acquired lands are situated behind the Centenary Colony. The historic 'Ramagiri Fort' is situated just at a distance of 1 KM from the acquired lands. The acquired land is alluvial land consisting of clay soil to a depth of 2 to 2.5 mt thick without any stone or sand. The same is useful for making pottery bricks and tiles. There is a lime deposit which is fit for use in the cement industry and local lime manufacturing units. The claimants got assessed the surface soil which is clay in nature and also the lime kanker deposits and the assessments were got made through an expert agency and a detailed estimate and the report of the expert were filed. The LAO did not take the same into consideration. The claimants are entitled to compensation for minor mineral rights at the rate of Rs.30/- per tonne in respect of available black clay of 6.12 lakh tonnes and Rs.100/- per tonne for the available lime kanker reserves of 2.58 lakh tonnes. The claimants are entitled to adequate compensation for motor shed, bund, both the irrigation Wells besides compensation for the trees. The claimants are entitled to compensation of Rs.8,00,000/- for one irrigation Well. The value of the motor shed, bund canal and irrigation well were got estimated and the total compensation to which the claimants are entitled in that regard is Rs.4,24,000/-." PW8, who is the 2nd claimant had supported the version of PW1.

7. (d) Coming to the determination of the value of the land, the LAO had taken into consideration the sale transaction under the sale deed dated 21.07.2003 in respect of land in Sy.No.323 situated in the same village, where under the land was sold @ Rs.33,018/- per acre and had determined the market value of the land at that rate. PW1, while deposing that within a span of ten days from the above said sale transaction, i.e., on 31.07.2003, the land in the same survey number was sold @ Rs.64,250/- per acre, had further deposed that the lands in the surrounding areas of the acquired land were being sold at prices ranging from Rs.1,50,000/- to Rs.4,20,000/- per acre. The claimants had also placed reliance on the transactions related to the sales of lands, which were referred to in the report of the Mandal Revenue Officer dated 13.12.2003, where under, it was stated that the market value of the land in the vicinity insofar as the dry lands was ranging from Rs.1,30,000 to Rs.1,50,000/- per acre. The claimants having filed several registered documents relating to sale transactions said to be of adjacent lands had contended that the market value of the acquired lands at the relevant time was ranging from Rs.1,50,000/- to Rs.4,20,000/- per acre. Further, having highlighted the potential value of the said land, the claimants claimed a compensation of Rs.30,00,000/- per acre. Be it reiterated that the reference court had determined the market value at Rs.3,20,000/- per acre. The claim of the appellants in these appeals is restricted to Rs.5,40,000/- per acre.

7. (e) On a careful consideration of the facts and evidence, it is obvious that the claimants had placed reliance on the following two crucial aspects in support of their entitlement to the claim for compensation at the rate of Rs.5,40,000/- per acre. The first aspect is the potential value of the land; the second aspect is the sale transactions relating to the adjacent lands covered by the various documents exhibited on their side. The learned counsel for the claimants had also contended that their claim for compensation before this court is now based on the potential value of the land, which had enormous and valuable reserves of black clay and lime kanker. It is fairly conceded that compensation cannot be claimed on the basis of the land value on one hand and also on the basis of potentiality on account of clay and lime kanker deposits on the other.

7. (f) We shall first deal with the sale transactions covered by the documents relied upon by the claimants. Exhibits A10 to A17 are the relevant registered sale deeds. Before adverting to the transactions under the registered sale deeds, it is to be restated that the date of notification is 23.12.2003 and that the entire subject land is of vast extent of Ac.28.19 guntas in Sy.Nos.325, 326 and 327 of Kalwacherla village and was sub-merged due to feed of SRSP water even by 01.07.1982 and hence possession was taken on the said date. Coming first to exhibit A10, it is a certified copy of registered sale deed, dated 16.09.2003, where under, PW7 sold Ac.1.00 of land in Sy.No.328/A of same village for consideration of Rs.1,50,000/-. This document is about three months prior to the Notification. According to the deposition of PW7, the acquired lands are superior in nature, texture and fertility than his land and that the acquired lands are suitable for construction of houses as they are situated adjacent/near to Centenary Colony and Kalwacherla villages. Exhibit A11 is the certified copy of registered sale deed dated 28.10.2003 in respect of a land in an extent of 635.25 square yards in Sy.No.7/C of the same village, where under, the sale consideration was Rs.54,000/-. Therefore, the value of the said land per acre works out to Rs.4,11,428,57/-. PW4 is the attestor of the said document. He proved the due execution as well as passing of the consideration under the said document. According to him, the lands under exhibit A11 are similar to the acquired lands in nature, texture, fertility and potentiality and also situationally and that the acquired lands are suitable for construction of houses and are nearer to Ramagiri colony of M/s. Singareni Colony of Kalwacherla. Exhibit A12 is the certified copy of the registered sale deed dated 10.12.2003 where under, PW6 had purchased Ac.0.33 guntas of land in Sy.No.427 of the same village. The sale consideration for the said transaction was Rs.1,00,000/-. Therefore, the value of the said land per acre works out to Rs.1,21,212.12 ps. This document is just a few days prior to the notification. PW6 had deposed that the acquired lands of Kalwacherla village are nearer to his land under exhibit A12 and that the acquired lands are superior in nature, texture and fertility and also situationally than the land purchased by him and that the acquired lands are suitable for construction of houses as they are nearer to centenary colony and the village. Exhibit A13 is the certified copy of the registered sale deed dated 10.05.2000 for an extent of Ac.0.10 guntas in Sy.No.205/A of the same village, where under the said land was sold for a consideration of Rs.90,800/- and, therefore, the value per acre works out to Rs.3,63,200/-. No person concerned with the sale transaction under this deed was examined. The extent sold is a small extent. Exhibit A14 is the certified copy of the registered sale deed dated 07.11.2002 for the land in an extent of 13 ½ guntas in Sy.No.621/B of the same village, where under, the sale consideration was Rs.1,36,600/- and therefore, the value of the land per acre as per the consideration mentioned in the document works out to Rs.4,04,740.72 ps. It is a fact that no person connected with the sale transaction under exhibit A14 was examined. The extent sold is a small extent. Exhibit A15 is the certified copy of the registered sale deed dated 21.11.2002 relating to a land in an extent of 484 square yards in Sy.No.197/D of the same village, where under, the sale consideration was Rs.40,200/- and therefore, the sale consideration works out to Rs.4,02,000/- per acre. No person concerned with the sale transaction under exhibit A15 was examined. Exhibit A16 is the certified copy of the registered deed dated 25.06.2002 in respect of land in an extent of 847 square yards in Sy.No.582/B of the same village, where under the sale consideration was Rs.70,400/- per acre. PW5 is the vendee under the said document. He had deposed that the acquired lands are superior in nature, texture and fertility when compared to his lands under exhibit A16 and that the acquired lands are suitable for construction of houses as they are near to centenary colony. Exhibit A17 is the certified copy of the registered rectification deed dated 07.11.2002. The transaction under this document was taken by the reference court as the yardstick for determining the market value of the acquired lands. The rectification deed was executed for rectification of survey number from Sy.No.204A to 204B of the land under the sale deed dated 11.09.2002. Under this document, an extent of Ac.0.17 guntas in Sy.No.204/B of the same village was sold for a consideration of Rs.1,70,000/-. Therefore, the value of the land as per the sale transaction under this document works out to Rs.4,00,000/- per acre. PW9 is the purchaser under exhibit A17. He deposed that he knows the acquired lands in Sy.Nos.325, 326 and 327 of Kalwacherla village and that the acquired lands are near to the land purchased by him under sale deed dated 11.9.2002 in respect of which exhibit A17 rectification deed was executed. The land sold under this document was only 17 guntas and the sale transaction is pre notification sale transaction. But even by that year the claimants are pursuing remedies by filing writ petitions for acquisition of their submerged lands and for payment of compensation.

7. (g) Thus, we have examined the contents of the sale deeds carefully. It is fairly conceded that there are no sale transactions during the relevant period in respect of the lands in Sy.Nos.325, 326, 327 in which the acquired lands are also situate. The learned Government Pleader for Appeals had forcefully contended that none of the sale transactions under the original of exhibits A10 to A17 relate to the lands in Sy.Nos.325, 326 and 327 and that the lands covered under the above said documents are situate in different survey numbers, namely, 328/A, 7/C, 427, 205/A, 621/B, 197/D, 582/B and 204/B and that therefore, the lands under the said exhibits are not exemplar and cannot be compared to the acquired lands. He had also pointed out that the sale prices ranged from Rs.1,50,000/- to Rs.4,11,000/- and odd under the above said sale transactions and there is no consistency. On the other hand, the learned counsel for the claimants contended that all the lands covered by the above said documents, particularly the document under exhibit A11, A13, A14, A15, A16 and A17 are very close to the acquired lands and that all the witnesses had consistently deposed that the acquired lands are superior in potential value and in all respects when compared to the lands under the said documents and that therefore, the acquired lands, which are superior to the lands covered by the said documents would have fetched more market value in case they were sold at the relevant time and therefore, the claim made before this court at the rate of Rs.5,40,000/- per acre is just and proper. The learned Government Pleader further contended that the LAO had taken a sale transaction related to the land in the same survey number 327 under the sale deed dated 31.07.2003, which is about six months prior to the date of notification and that therefore, the land under the said document is only a comparable and exemplar sale. Though, there was a reference in the evidence of PW1 about the sale deed dated 31.07.2003, where under the land in the same survey number was said to have been sold @ Rs.64,250/- per acre, a copy of the said sale deed was not exhibited. Thus, it cannot be said that any of the documents relied upon by both the sides deal with transactions which are exemplar. Therefore, it has to be concluded that any transaction covered by any document exhibited can be safely relied upon as exemplar sale transaction. However, various transactions under the documents exhibited have to be kept in mind and the transaction therein, with necessary deductions wherever necessary, can be taken as some sort of guidance while determining the market value of the acquired lands, in view of the oral evidence of the persons associated with the said documents, who were examined PWs 4 to 7 and 9 and also the evidence of claimant nos.9 and 2 (PWs 1 and 8). However, we hasten to add that there is reliable evidence that the land covered by exhibit A17 is situated adjacent to the acquired land. Be that as it may. The land was submerged in the year 1982. Since 1997, the claimants are making claims for acquisition of their lands and payment of compensation. A writ petition was also filed in the year 1997. The copy of this court's order dated 31.03.2000 in W.P.No.10473 of 1997 is exhibited as exhibit A1. Therefore, even by the year 1997, the claimants are aware that they are likely to get compensation for the acquired land. Whereas, exhibit A17 is dated 07.11.2002 and the sale consideration for an extent of Ac.0.17 guntas of land under the said document was Rs.1,70,000/-. The value of one acre of land (=40 guntas) works out to Rs.4,00,000/- as per the sale consideration under exhibit A17. Therefore, the sale consideration under exhibit A17 can be taken as some guidance only after making reasonable deductions. Apart from the copies of sale deeds, the MROs report dated 13.12.2003-exhibit A2, showing the structures and trees in the land is also exhibited.

7. (h) Now, we shall consider the admitted facts and the evidence brought on record in regard to the aspect of the potential value of the acquired land. The evidence brought on record and the admitted facts would lay bare the following aspects: "At the relevant time, the village which is having a population of 8000 is situated by the side of the main road leading from Peddapalli to Manthani. There is a big colony by name Centenary Colony of M/s. Singareni Collieries Company Ltd., wherein about 8000 quarters consisting of population of 25,000 to 30,000 people are residing and that colony is quite adjacent to Kalwacherla village. There used to be a High School, a Junior College and residential schools in Kalwacherla village. Two petrol and Diesel bunks of Indian Oil Corporation and Hindustan Petroleum Corporation out lets, which were managed and owned by the respective companies were established in the village. There are about three para boiled rice mills and 2 to 4 modern rice mills. Kalwacherla village is a well developed village and lot of housing construction activity was going on as the main PWD road leading from Peddapalli to Manthani is passing from the middle of the Kalwacherla village. 3/4th area of the village is coming under the command of SRSP; the main RSB canal of D/83, which is taking water to Manthani and providing irrigation waters to various other villages, is passing from the Southern side of Kalwacherla village. All the field channels, distributaries of L2 and L3 canals of RSB were dug up and were laid with cement lining. Most of the agricultural fields had assured irrigation facility with SRSP water and the village is a water belt area. Most of the cultivators/land owners had dug up irrigation wells and bore wells and had duly installed electric motors and the lands are thus having irrigation facility for the 2nd crop. There is a river by name Bokkala vagu passing through the village and it divides the agricultural lands of Kalvacherla village. Most of the land owners have put up electric motors to the river and are lifting the water for irrigating their fields with 2nd crop. The said Bokkala vagu is a perennial river having sufficient water and flows throughout the year. A patch of area consisting of about 200 to 300 acres situated on the South side of R.S.B Canal of SRSP is an up land, which cannot be irrigated with the SRSP waters. People of that area had dug up irrigation wells and bore wells and are raising various crops. Most of the cultivators of the village are raising Food crops and commercial crops like paddy, vegetables, chillies, Tobacco, cotton etcetera. The basic amenities like Transportation, education, markets, private telephones/public telephones and other facilities are available in the village on account of big inhabitation of the Centenary colony situated by the side of the village. There is a good market for vegetables and chillies etcetera. There is good transport facility connecting the village to the District headquarters and all the RTC buses plying from Manthani, Mahadevpur, Kaleswaram passing on PWD road stop at Kalwacherla Stage. The market trend of the land value in the village is upward and most of the Agricultural lands were converted into House Plots and new houses are coming up in the Agricultural Fields. The acquired lands are situated quite near to the village and Centenary colony. The road from Kalwacherla village to 'Ramagiri Fort' is passing by the side of the acquired lands. The lands are localised under SRSP canals and as such had assured irrigation facility for raising wet crops. There are two irrigation wells; one was fitted with electric pump and the other with oil Engine to provide irrigation waters for the 2nd crop at the times when the SRSP water was not available. The nature of land is Alluvial and Clay which is Fertile in nature and most useful for raising any crop. The potential value of the land is also towards raising side since the lands are situated in the proximity of Kalwacherla village and Centenary colony."

The facts and circumstances and also the evidence brought on record sufficiently established the strategic location and the potential value of the land.

7. (i) Another important aspect regarding the potential value of the land is in regard to the deposits/reserves of clay and lime kanker in the surface of the acquired land. PW1 had testified that the land has deposits of ‘pottery clay’ and ‘lime kanker’ in the sub soil; and that on survey a geological expert had estimated the available deposits/reserves and had furnished his report in that regard. The claimants had also examined **PW2**, a Geologist who is a post graduate in Geology and who had earlier worked in Mineral Exploration Corporation, Nagapur, Government of India Enterprises, for 16 years. According to his evidence, he is recognised as a qualified person by MCDR 1988 by Indian Bureau of Mines, Government of India and after retirement he had established a Mining Geological consultancy and exploration Agency having its headquarters at Hyderabad under the name and style of M/s. Sagar Earth Science Allied Services and he is the Chief Executive of the said Agency. According to him, on the claimants’ request, he had verified the mineral potentiality in the acquired lands measuring 28.19 guntas in Sy.Nos.325, 326 and 327 situated at Kalwacherla village of Kamanpur mandal of Karimnagar district and he had carried on the field work on 20.05.2000 and had carefully examined the area regarding the availability of valuable economic mineral deposits in the acquired lands and had prepared a detailed note and gave his report. He had further testified as under: ‘He had collected samples and found that the soil in the land is best suited for manufacturing bricks for civil construction and for the pottery; and that the thickness of the black clay is at 2.5 mts thick on an average assessment. This type of material is a rare commodity in these areas and thus is of economic significance. The lime kanker can be used in cement industry and also can be used in medium range chemical industry for burning the lime stone in kilns; the same can be used to produce Hydrate lime. The area acquired contains 5,81,701 tonnes of pottery black clay and 2,58,534 tonnes of high grade lime kanker. The market value of the black clay is Rs.15/- per tonne and the market value of the lime kanker is at Rs.70/- per tonne. The chemical industry pays value as high as Rs.100/- per tonne. The estimated lime kanker is 2.58 lakhs tonnes and the estimated black clay reserve is 6.12 lakhs tonnes. Both these minerals are occurring at the surface and can be exploited by open cast quarrying.’ The report submitted by PW2 was marked as exhibit A3. His qualification certificate was exhibited as exhibit A19. Based on this evidence, the learned counsel for the claimants while contending that the claimants would have extracted the deposits of clay and lime kanker in the acquired land and would have made good money but for the acquisition, had placed reliance on a decision in **Thressiamma Jacob v. Dept. of Mining & Geology** (1 supra) in support of the contention that the claimants who are the owners of the acquired land are entitled to the sub soil rights including the clay and lime kanker. A careful analysis of the evidence on this aspect would show that the expert furnished his report in July 2000. According to his report, he had inspected the land and did the field work on 20th May, 2000. But the undisputed evidence on record would show that the land was submerged even by the year 1982. Therefore, it is very much doubtful as to whether there was a possibility by May 2000 for doing field work and scientific investigation in the acquired land and examine the geological set up and lithiology etcetera and also estimate the probable or available reserves of 'clay' and 'lime kanker' and also determine the qualities and values of the same per tonne. When it was suggested to PW2 that he did not visit the acquired land and had not tested it and that he had issued the certificate to help the claimants and that exhibit A3 is a false and fabricated document, he had denied the said suggestions. Be that as it may. The land is having some deposits of clay and lime kanker is not in dispute. Therefore, this additional potential value of the land deserves consideration. On this aspect, the learned Government Pleader contended that the land is not acquired by the Government to extract the available deposits of clay and kanker and that the deposits of minerals etcetera in any land vest in the Government and as per the existing local laws like the A.P (Telangana Area) Land Revenue Act and under the provisions of Mines & Minerals (Development & Regulation) Act, 1957 the land owner has no proprietary rights over the sub soil and minerals and that the activity of extraction of minerals is regulated by the said Act and that in any view of the matter, the claimants are not having exclusive right to work those minerals and that therefore, the proprietary rights to subsoil consisting of the deposits of clay and kanker vest in the Government and at best, the claimants would be entitled to extract the same with the permission and under a valid licence and at any rate would only be entitled to a share and not the whole of the deposits, if any, in the land. In the **Thressiamma Jacob's case** (1 supra), a question whether the owners of the *jenmom* lands in the Malbar area are the proprietors of the soil and the mineral underneath the soil fell for consideration. The Hon'ble Supreme Court having taken note of the legal position with respect to minerals obtaining in the sub-soils in various types of lands, which were necessary for consideration, had held as follows:

> **"For the above mentioned reasons, we are of the opinion that there is nothing in the law, which declares that all mineral wealth/subsoil rights vest in the State, on the other hand, the ownership of subsoil/mineral wealth should normally follow the ownership of the land, unless the owner of the land is deprived of the same by some valid process. In the instant appeals, no such deprivation is brought to our notice and therefore, we hold that the appellants are the proprietors of the mineral obtaining in their lands."**

However, in this cited case, the land owner's liability to pay royalty to the State was not declared as that question stood referred to a Larger Bench.

7. (j) In the decision in **Singareni Collieries Company Limited, Ramagundam Project Area v. Devaraju Venkateswara Rao and others**, this court considered the issue of determination of compensation for large extent of acquired land in different survey numbers in Adrial village of Manthani Mandal of Karimnagar District. The facts of this reported decision show that there was mineral wealth/coal in the acquired land. A Division Bench of this court also held that it is not proper for the LAO or a civil court to separately award the compensation towards subsoil mineral rights and that it is permissible to take that factor into account while determining the market value of the acquired land and had proceeded to determine the market value of the acquired land in that cited case having regard to the facts peculiar to that case and also the fact that the land was acquired for the purpose of excavating coal.

7. (k) Therefore, the legal position makes it clear that the claimants in the instant case are entitled to the subsoil/mineral wealth subject to certain limitations. Therefore, we are inclined to consider this additional feature of the acquired land as one of the necessary considerations while determining the market value of the acquired land. Besides that there is one Well for which determination of compensation was deferred. For one of the irrigation Wells a compensation of Rs.88,000/- was awarded as per the estimate prepared by the Executive Engineer concerned of the R & B. Coming to the contention of the claimants that there is a bund of about 301 feet in the lands and for the said bund also no compensation was determined by the Court below, though there was a reference to the same in the order of the court below, it is to be noted that there is no whisper in the evidence in regard to this bund and the compensation for the bund. Therefore, no compensation is awardable in respect of the said bund. Regarding the trees which were found on inspection compensation was awarded. We do not find any reason to award any further compensation towards the value of any other trees as claimed by the claimants for want of evidence of reliable character. Therefore, while determining compensation in a comprehensive manner for the acquired land, we have to take into consideration the compensation also to be awarded for one more Well only for which the determination of compensation was deferred in the award.

8. We have thus given earnest consideration to the facts of the case, the oral and documentary evidence, which was discussed supra in detail and also the various factors associated with the potentiality of the land. On such detailed consideration, we are of the well-considered view that the compensation for the acquired land can be determined comprehensively at Rs.3,20,000/- per acre as also determined by the court below. The claimant shall also be entitled to Rs.50,000/- for the other irrigation Well for which the determination of compensation was deferred due to submergence of the land at the time of inspection by the officer concerned of the State. The claimants shall not be entitled to any other additional compensation amounts except those already awarded by the court below towards one Well, motor shed, trees as mentioned in the impugned order. It is needless to mention that the claimants shall be entitled to all the statutory benefits on the additional compensation amount of Rs.50,000/- now awarded by this court apart from the other statutory benefits in respect of the amounts already awarded by the court below. The points are accordingly answered.

9. Before parting with the case, it is necessary to mention that in this case, possession was taken on 01.07.1982, i.e., prior to the notification. The draft notification under Section 4(1) of the Act was published on 23.12.2003 in the District Gazette No.39. Therefore, in view of the judgments of the Hon’ble Supreme Court in **R.L. Jain (D) by Lrs. v. DDA and others** and **Tahera Khotoon and Ors. Vs. Revenue Divisional Officer/Land Acquisition Officer and Ors.**, the appellants-claimants are not entitled for any interest from the date of taking possession inasmuch as possession was taken even prior to the notification under Section 4(1) of the Act. However, as per the settled position, the appellants/claimants are entitled to file a claim petition for award of damages. The learned counsel for the claimants contended that instead of driving the claimants to file an application for damages, damages for use and occupation may be awarded at the rate of 10% or 15% on the basic compensation from the date of taking possession of the land to the date of issuance of notification under Section 4(1) of the Act. It is no doubt true that the Hon'ble Supreme Court in the cited decisions had awarded damages for use and occupation @ 15% and directed the State Government to pay the same to the dispossessed land owners instead of directing the land owners to file application for determination of damages for use and occupation for the period between the date of taking possession and the date of notification, which was subsequent to the date of taking possession. In the case on hand, the land was submerged even by the year 1982. A writ petition was filed in the year 1997. Pursuant to the orders in the writ petition, a petition for contempt was filed and on that a direction was given to pass an award within one month and pay the compensation to the claimants. Thereafter, a notification was issued on 23.12.2003. Thus, more than two decades time had elapsed from the date of taking possession till the date of the notification. No cultivation accounts showing the crops raised and the yield realized from the acquired lands are filed. Therefore, it is not possible in this proceeding to determine just compensation towards rents/damages for use and occupation of the acquired land, which is a vast extent of land, more particularly, in the absence of any evidence of reliable character in regard to the net annual income from the lands which were said to be cultivated of and on and not continuously. Hence, it is for the claimants to pursue the remedies, which the law permits in this regard.

10. <u>POINT No.4</u>:

In the result, the appeal of the claimants in LAAS 1614 of 2005 is allowed in part and a compensation of Rs.50,000/- is awarded towards the value of one of the irrigation Wells for which the determination of compensation was deferred by the LAO. In regard to the rest of the aspects, the order of the court below is confirmed subject to the rider that insofar as interest on solatium is concerned, the appellants-claimants are entitled for the same from 19.09.2001, i.e., the date of the judgment of the Hon'ble Apex Court in **Sunder v. Union of India**. We also make it clear that in view of the judgments of the Hon'ble Supreme Court (3 and 4 supra), the appellants-claimants are not entitled for any interest from the date of taking possession inasmuch as possession was taken even prior to the notification under Section 4(1) of the Act. However, the claimants are at liberty to pursue the remedies, which the law permits, for claiming rents/damages from the date they were dispossessed and till the date of the issuance of draft notification. The appeal of the State in LAAS No.1685 of 2005 shall stand disposed of as a sequel to the findings in the aforementioned appeal of the claimants. There shall be no order as to costs.

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

K.C.BHANU, J

M. SEETHARAMA MURTI, J

13th March 2015

<u>Note</u>:- L.R. copy to be marked

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