THE HON'BLE SRI JUSTICE K.C. BHANU
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

L.A.A.S. No.1028 of 2011

JUDGMENT:(per Hon'ble Sri Justice K.C.Bhanu)

This appeal, under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act'), is filed challenging the Order and decree, dated 12.07.2011, in Original Petition No.118 of 2008 passed by the learned Principal Senior Civil Judge, Anantapur, whereunder and whereby, the Original Petition was allowed in part holding that the claimant is entitled for enhanced value of Rs.24,130/- with all statutory benefits.

2. House bearing D.No.5/17 situated in S.No.170 of Mylarampalli village, Uravakonda Mandal of Anantapur District was acquired by the Government for the purpose of PABR Dam by issuing a notification under Section 4(1) of the Act on 11.02.1994. Due enquiry was conducted and the Land Acquisition Officer had passed an award bearing No.8 of 1995 on 09.06.1995 fixing the compensation for the acquired house at Rs.1,83,784/-.

3. Not satisfied with the market value fixed by the Land Acquisition Officer under the Award, the claimant made an application under Section 18 of the Act to refer the matter to the competent Civil court for determination of just and reasonable market value. Accordingly, the same was referred to the learned Principal Senior Civil Judge, Anantapur, which was taken on file as OP No.118 of 2008.

4. Before the reference Court, on behalf of the claimant, PWs.1 to 3 were examined and Exs.A.1 and A.2 were marked. On behalf of the Land Acquisition Officer, RW.1 was examined and Exs.B1 and B2 were marked.

5. The reference Court, basing on Exs.A.1 and A.2, sale deed dated 04.07.1988 and estimation and considering the evidence of PWs.1 to 3, had held that the valuation made in regard to construction costs of the house is proper, but, however, deduction of contractor's profit at 10% is unsustainable. Thus, the claimant was entitled for enhanced value of Rs.24,130/- with statutory benefits. Aggrieved thereby, the claimant had preferred the present appeal.

6. The learned counsel for the appellant/claimant contended that the reference court did not appreciate the evidence of PWs1 to 3 in proper perspective and that though the claimant is entitled for a compensation of more than Rs.4,00,000/-, it had only enhanced the compensation at Rs.24,130/-; that the LAO in stead of basing on the Schedule Standard Rates (SSR) for the years 1991-92 ought to have taken the SSR for the year 1994 since the subject notification was issued in 1994; that the claimant is also entitled for the market value towards value of the land as well as the structures and that depreciation at 16% is not tenable and hence, it is prayed that the compensation be enhanced.

7. Per contra, the learned Government Pleader for Appeals (Andhra Pradesh) would contend that the claimant failed to produce the SSR relating to the year 1994 and therefore, the LAO determined the rates of the structures basing on the SSR for the year 1991-92 and that admittedly, the Government is the owner of the property and therefore, the claimant is not entitled for any compensation for the land and hence, he prays to dismiss the appeal.

8. The facts are not in dispute. Coming first to the aspect of the entitlement of the claimant for the escalation of prices as per the SSR 1991-92, it is sought to be contended that the reference court erred in determining the compensation placing reliance on the SSR for the year 1991-1992 alone and that it failed to take into consideration that the material cost of the house is increasing year to year and that therefore, the construction material cost at the relevant point of time has to be taken into consideration and escalation of price at the rate of at least 10% ought to have been awarded while determining the compensation.

9. We are not able to agree with the said submission of learned counsel for the reason that the Government will fix the SSR and it will change the SSR whenever the need arises. There is no need for the Government to notify the SSR for a particular year, if the cost of material for construction of houses is not increased. The claimant could not produce the SSR issued by the Government for the year 1994-95 for the purpose of determination of the market value of the structures. Therefore, in the absence of any evidence, the reference Court is left with no other option except taking into consideration the available evidence on record in determining the compensation.

10. Coming next to the claimant's entitlement for market value of the land on the site acquired, admittedly, the site acquired is a Government poramboke and the claimant occupied and started residing in the land acquired by the Government by making construction. No doubt, the claimant has been in possession and enjoyment of the property by constructing a house since a long time. That by itself does not entitle the claimant to claim title over the site in question. As a matter of fact, the Government is the title holder and therefore, the reference Court rightly disallowed the claim in respect of the compensation for the land acquired.

11. Learned counsel for the claimant further submits that the reference Court is not justified in depreciating 16% towards the value of the house. In support of the said contention, learned counsel for the claimant relied upon a decision in **Union of India v. Savjiram and**

another[1] wherein it is held at paragraph 9 as under:

> **'A bare reading of para 44 shows that it is a method of calculation indicated relating to the computation of the compensation. The compensation for houses and buildings are required to be calculated on (a) the present value of materials, and (b) in addition to the cost of construction at present rates. Both the components for working out the compensation relate to present value of the materials and cost of construction at present rates less the value of any material made over to the proprietor. Obviously, the calculation has to be done on the basis of the present value or the present rates, as the case may be. The expression "present" means in existence at the time at which something is spoken or written, being in a specified place, thing. Grammatically, it means denoting a tense of verbs used when the action or event described is occurring at the time of utterance or when the speaker does not wish to make any explicit temporal reference. It also means for the time being, now. Commonly, it denotes existence of a particular thing or a matter at the time of consideration. Obviously, therefore, after arriving at the cost of construction at the prevalent rate at the time of fixing the compensation or working out the value of the materials there is no scope for making any further deduction.'**

A perusal of the above decision would clearly go to show that the compensation for houses and buildings are required to be calculated on the present value of the materials as well as the cost of construction prevailing at the time of fixation of the compensation. In view of the principle laid down in the above decision, the reference Court is not justified in depreciating 16% towards the value of the structures. Learned Government Pleader had also fairly conceded that the trial Court committed error in deducting amount towards depreciation of the value of the property. Therefore, the finding of the reference Court in that regard is unsustainable.

12. In the result, the appeal is allowed in part holding that the claimant is entitled to the amount deducted towards 16% depreciation. In all other aspects, the order of the reference court shall hold good. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

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K.C. BHANU, J

M. SEETHARAMA MURTI, J

02.02.2015

Vjl

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[1] (2004) 9 SCC 312