HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

C.C.C.A.No.124 of 2002

JUDGMENT: (Per Justice R. Subhash Reddy)

This appeal is filed under Section 54 of the Land Acquisition Act, 1894 (for short "the Act") by the claimant in O.P.No.530 of 1991 on the file of the First Senior Civil Judge, City Civil Court, Hyderabad, aggrieved by the order and decree dated 01.10.2001, by which the aforesaid O.P., referred under Section 18 of the Act is dismissed, confirming the market value of the acquired land as fixed by the Land Acquisition Officer in his award.

2. The General Manger, Telecommunication District (Planning Branch) Suryalok Complex, Hyderabad, had sent requisition for acquisition of land admeasuring 15,938 sq. yards equivalent to 13,326 sq. mtrs., covered by T.S.No.3/1/2 and 3/2/2, Block 'K' Ward No.6, situated at Ameerpet locality of yellareddyguda village of Golconda Mandal, Hyderabad for the purpose of construction of Telephone Exchange and support services. Draft notification was published under Section 4(1) of the Act in Andhra Pradesh Gazette, Hyderabad No.11 dated 15.03.1989 and declaration under Section 6 of the Act was published on 08.12.1989. In the award-enquiry after issuing necessary notices under Section
9(1) and 10 of the Act, the Land Acquisition Officer has obtained the particulars of sale transactions from 15.03.1986 to 15.03.1989. He has taken the value of the land covered at Sl.No.10 in the award dated 01.10.1988 relating to Plot No.6 in Sy.Nos.124 and 125 of Yellareddyguda village, under which 100 sq. yards of land was sold for a consideration of Rs.40,000/-.

Accordingly, he fixed market value of the land acquired at Rs.400/- per sq. yard as against the claim of the appellant-claimant at Rs.2000/- per sq. yard, by deducting 1/3rd area out of the acquired land, towards development. Not satisfied with the market value of Rs.400/- per sq. yard, as fixed by the Land Acquisition Officer, at the request of the appellant-claimant, the matter was referred to the civil court under Section 18(1) of the Act and numbered as O.P.No.530 of 1991.

3. Before the civil court, on behalf of the appellant-claimant, P.Ws.1 and 2 were examined and Exs.A.1 to A.4 were marked. The respondent – Spl. Deputy Collector, Land Acquisition (General) was examined as R.W.1 and Exs.B.1 to B.4 were marked on his behalf.

4. The civil court, having considered the oral and documentary evidence on record has confirmed the fixation of market value of the acquired land at Rs.400/- per sq. yard after deduction of 1/3 of the acquired land towards roads and development and held that there are no grounds to enhance the market value as claimed by the appellant-claimant at Rs.2,000/- per sq. yard.

5. Heard Sri Koka Raghava Rao, learned senior counsel assisted by
Sri Thanniru Srinivas – counsel for the appellant-claimant and the learned Government Pleader for Appeals on behalf of the respondent.

6. In this appeal, it is contended by Sri Koka Raghava Rao, learned senior counsel, appearing for the appellant-claimant, that the acquired land was purchased by the appellant-company for the

purpose of outdoor shooting and the same is situated on the National Highway leading to Bombay and located in a developed area; in spite of oral and documentary evidence on record to prove that the acquired land is in developed area which is fit for commercial and residential purpose, the Land Acquisition Officer has fixed the market value at Rs.400/- per square yard without any basis; though comparable sales are filed to prove the market rate as on the date of acquisition at not less than Rs.1,000/- per sq. yard, under Exs.A.2 and A.3, the civil court has discarded such sales without assigning valid reasons. It is further contended that Ex.A.4 is a report prepared by a Superintending Engineer (Retd.) of Irrigation Department, suggesting the value of the acquired land as on the date of notification at Rs.1,067/- per sq. yard, but the same is also brushed aside without any reason. It is further submitted that, as the acquired land is in a developed area and surrounded by residential and commercial localities and having regard to the purpose of acquisition, i.e. for construction of Telephone Exchange and support services, the Land Acquisition Officer and the civil court have committed error in deleting 1/3rd area out of the acquired land for the purpose of development. Lastly, it is contended that as the acquisition is not for any housing purpose and it is for the purpose of construction of Telephone Exchange and support services, which is for a compact usage, no deduction can be made for the purpose of development and wastage. In support of his contentions, learned senior counsel has relied on the following decisions of the Hon'ble Supreme Court:

- **Valliyammal and Another vs. Special Tahsildar (LA) and Another**[1]

- **Thakur Kuldeep Singh (Dead) Through LRs., and others vs. Union of India and others**[2]

7. On the other hand, it is submitted by the learned Government Pleader for Appeals, appearing on behalf of the respondent, that the market value fixed by the Land Acquisition Officer for the acquired land in his award as confirmed by the civil court is just and proper. It is further contended that the acquired land was notified as early as on 15.03.1989, at which point of time it was in the outskirts of Hyderabad city and the market value fixed at Rs.400/- per sq. yard represents true market value as on the date of notification; the acquired land is in the limits of Yellareddyguda village, whereas the lands which are the subject matter of sale transactions sought to be relied on by the appellant-claimant are situated in Ameerpet and Panjagutta localities, as such, they were rightly discarded; when sale transactions relating to the lands in the same village and nearby the acquired land are available, there is no reason to rely on sale transactions relating to the lands situated far away from the acquired land; the acquired land is not situated on the main road and there is a building and further area belonging to the appellant towards the roadside, as such, the acquired land is not fit for commercial purpose. Lastly, it is contended that as the acquisition is for construction of Telephone Exchange and support services; for the purpose of internal roads and development, rightly 1/3rd of the area is deducted out of the acquired land, while passing the award, as confirmed by the civil court; thus there are no grounds to interfere with the impugned order and decree of the civil court, fixing the market value at Rs.400/- per sq. yard.

8. Having regard to the rival contentions, the following points

arise for consideration in this appeal:

i. Whether the determination of market value for the acquired land at Rs.400/- per sq. yard is just and proper? If not what would have been the market value of the acquired land as on the date of the notification, i.e. 15.03.1989?

ii. Whether deduction of 1/3rd area out of the acquired land for the purpose of development, while passing award by the Land Acquisition Officer, as confirmed by the civil court, is correct?

9. On behalf of the appellant-company, to substantiate its claim, the accountant of the appellant-company is examined as P.W.1. The Superintending Engineer (Retd.) in Irrigation Department, who prepared Ex.A.4 – report is examined as P.W.2. P.W.1, in his deposition, has stated that the acquired land is a commercial land and there are no agricultural lands in and around the acquired land and Exs.A.2 and A.3 are the certified copies of registered sale deeds dated 27.10.1998 and 06.02.1988 respectively with regard to the lands nearby the acquired land and placing reliance on Exs.A.2 and A.3, he deposed to fix the market value of the acquired land at Rs.2,000/- per sq. yard.

10. In the cross-examination, there was a suggestion to P.W.1 that the acquired land is not abutting National Highway but a little away from the National Highway. There was also a suggestion that the main building of the appellant-claimant is at a distance of 500 sq. yards from the National Highway. P.W.1 has admitted that a drainage channel is running by the side of the acquired land. At the same time, he has admitted in the cross-examination that the property covered by Ex.A.3 is situated at Panjagutta which is a busy commercial area and he further admitted that the land covered by Ex.A.2 is situated at Ameerpet

and the sale transaction relates to sale of property including *mulgies.*

11. Mr. B. Sanjeevaiah, Superintending Engineer (Retd.) of Irrigation Department, who prepared Ex.A.4 is examined as P.W.2. Notification under Section 4(1) of the Act was published in the Gazette on 15.03.1989. In his chief examination, he deposed that he inspected the land of the appellant-claimant in the months of February, March and September, 1997 for the purpose of valuing the property and furnished Ex.A.4 – report. In his deposition, he has stated that the value of the acquired land is at Rs.1,067/- per sq. yard as on the date of notification. In the cross-examination, he admitted that he has inspected the acquired land at the instance of the appellant-claimant in the year 1997. There was also a suggestion to him that false report is prepared to help his pay-master, which is denied by him.

12. The Spl. Deputy Collector, Land Acquisition is examined as R.W.1. In his evidence, he has stated that sale statistics for the relevant period were considered and based on the transactions covered by document No.1850/1988 dated 30.09.1988 and document No.1851/1988 dated 01.10.1988, he fixed the market value of the acquired land at Rs.400/- per sq. yard. In his deposition, he further stated that distance between the main road and the main building of the appellant-claimant is about 500 sq. yards and between the National Highway and the acquired land, there is about 1000 sq. yards of land belonging to the appellant-claimant. Further, in his deposition, he has stated that the land covered by Ex.B.2 is situated on the other side of the road at a distance of 2 furlongs from the acquired land and the lands

covered by Exs.B.2 and B.3 and the acquired land possess similarities in all respects. In the cross-examination, while denying the suggestion that the land acquired is abutting National Highway, he has stated that some open land belonging to the appellant-claimant is situated in between the National Highway and the acquired land.

13. The appellant-claimant mainly relied on documentary evidence under Exs.A.2 and A.3 to prove that the acquired land fetches more value than what is fixed by the Land Acquisition Officer, as confirmed by the civil court. Ex.A.2 is dated 27.10.1988, under which property bearing No.6-3-811/A consisting of 2 *mulgies* in an area of 51.19 sq. yards in Ward No.6 of Block No.3 of Ameerpet, was sold for a consideration of Rs.49,000/-, which works out to Rs.980/- per sq. yard. The said document cannot be relied on for the reason that it does not relate to open land, but it is with regard to the property with 2 *mulgies* and that too, it is situated in Ameerpet area. Long prior to development of area in and around Yellareddyguda, the area of Ameerpet was well developed. As the acquired land is within the limits of Yellareddyguda village and not near the commercial area of Ameerpet, Ex.A.2 is rightly discarded as incomparable sale for the purpose of fixing market value for the acquired land. Insofar as Ex.A.3 is concerned, it is a sale transaction dated 26.02.1988 under which residential plot bearing No.70 admeasuring 476 sq. yards in Sree Panjagutta Cooperative Housing Society Ltd., was sold for a consideration of Rs.3,92,700/-, which works out to Rs.825/- per sq. yard. P.W.1 himself has deposed that the distance between the acquired land and the land covered by Ex.A.3 is 1 km., and that too the land covered by Ex.A.3 is situated in Panjagutta area. Even before development in the area

in and around Yellareddyguda, Panjagutta area was also well developed and it is a busy commercial area. Further, from the boundaries of Ex.A.3 also, it is clear that the land covered by Ex.A.3 is situated in a developed residential area. In that view of the matter, Ex.A.3 is also rightly discarded by the civil court. There is evidence of P.W.2 who is Superintending Engineer (Retd.) in Irrigation Department. It is clear from his deposition that he has prepared the report marked as Ex.A.4, at the instance of the appellant. Such report under Ex.A.4 prepared by P.W.2 cannot be the basis for fixation of market value. Unless there is cogent evidence, by way of comparable sales, appellant is not entitled to claim higher market value based on the report under Ex.A.4 prepared by P.W.2. It is also clear from the evidence on record that the main building of the appellant itself is at a distance of 500 sq. yards from the National Highway. Further, R.W.1, in his cross-examination, has clearly stated that, between the acquired land and National Highway, other land belonging to the appellant-claimant is situated. From the documentary evidence, it is clear that small passage is left from the acquired land to the main road. The entire acquired land is behind the open land and building belonging to the appellant, as such, the same cannot be treated as commercial property for the purpose of fixing market value. The Land Acquisition Officer and the civil court relied on Ex.B.3, i.e., document No.1851/88 dated 01.10.1998 under which land situated in Yellareddyguda, which is nearer to the acquired land, was sold at Rs.400/- per sq. yard. Except the documentary evidence under Exs.B.3 and B.4, no other documentary evidence is filed wherein lands nearer to the acquired land are situated so as to prove that the market value of the acquired land is more than what was fixed by the Land Acquisition Officer as confirmed by the civil court.

The recitals under Ex.B.3 also go to show that the vendor obtained building permit from MCH vide No.191/7 dated 23.02.1988 after payment of betterment charges for a small extent plot of 100 sq. yards and there are plots of neighbours on three sides. The evidence, viz,., Ex.A.4 – report prepared by P.W.2 cannot be the basis for fixing the market value of the acquired land. Hence, we are of the view that the Land Acquisition Officer as well as the civil court have rightly taken Ex.B.2 and B.3 as comparable sales and fixed market value of the acquired land at Rs.400/- per sq. yard. As such, in the absence of any other evidence on record, no interference is called for with the market value fixed at Rs.400/- per sq. yard. It is true, under Exs.B.3 and B.4, for the purpose of registration, market value of the property is shown at Rs.725/- per sq. yard for the purpose of payment of stamp duty and registration. But when recitals in the document show that the land was sold at the rate of Rs.400/- per sq. yard, the declared value for the purpose of registration cannot be the basis for fixing market value of the acquired land. It is well settled that book values maintained by the Registration Department are for the purpose of stamp duty and registration only and the same cannot be the basis to arrive at the market value.

14. The second point is, whether the Land Acquisition Officer and the civil court are justified in deducting 1/3rd of the area for the purpose of development towards etc. It is clear from the various judgments rendered by the Hon'ble Supreme Court that there cannot be any straightjacket formula for the percentage of deduction towards development and wastage while fixing market value of the acquired lands. The extent of deduction will depend on several aspects, namely, location of the acquired land and the purpose of acquisition etc. If the acquired land is in a

fully-developed area, the extent of deduction can be on minimum side. Where the acquired land is in semi-developed area, the extent of deduction should be more. Similarly, where the acquisition is for housing purpose, deduction should be more for the reason that approval of layout should be sought, so as to divide the area into small plots for residential purpose. In that event, necessarily, substantial area is to be left towards roads and parks etc. In this case, it is not in dispute that acquisition is only for the purpose of constructing Telephone Exchange and building for support services. As such, it is clear that acquisition is for compact usage of entire plot for the purpose of Telephone Exchange and support services building. In that event, except internal roads which are required to have access within the area, there would be no other wastage. The land acquired is admeasuring 15,938 sq. yards equivalent to 13,326 sq. mtrs., which is for public purpose, i.e., construction of Telephone Exchange and building for support services; as such, we are of the view that deduction of 1/3rd of the area is on the higher side.

15. In the case of **Valliyammal** (1 supra), when large tract of land was acquired for the purpose of construction of houses by the Tamilnadu Housing Board and when deduction was approved by the High Court at 40 per cent, the Hon'ble Supreme Court has held that 1/3rd deduction would be appropriate. In the said case, the Hon'ble Supreme Court has referred to the decision in the case of **Kasturi v. State of Haryana** [(2003) 1 SCC 354], wherein it was held as under:

> "............It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of

compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

(emphasis supplied)

16. In the decision in **Thakur Kuldeep Singh** (2 supra), relied on by the learned counsel for the appellant, the Hon'ble Supreme Court has held as under:

> "Sections 23 and 24 of the Act speak about the matters to be considered and to be neglected in determining compensation. Let us consider whether the appellants are entitled to higher compensation than that of the one fixed by the High Court or Union of India is justified in seeking reduction of the market value/compensation for the acquired land. While fixing compensation, it is the duty of the Land Acquisition Collector as well as the Court to take into consideration the nature of the land, its suitability, nature of the use to which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available. The Land Acquisition Collector as well as the Court should al- ways keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence. The relevant factor would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser of normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification under Section 4(1) of the Act. In other words, the Judge who sits in the armchair of the willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The market value so determined should be just, adequate and reasonable."

17. From the aforesaid decisions of the Hon'ble Supreme Court, it is clear that percentage of deduction cannot be constant and it all depends on various factors as referred to supra. In this case, it is clear from the evidence that the acquired land is for the purpose of Telephone Exchange and support services building and the same is near National Highway leading to Bombay. It is true that the acquired land is within the limits of Yellareddyguda village, but within in the radius of 1 km., there are
areas like Ameerpet and Panjagutta which are well developed for commercial purposes. Having regard to the purpose of acquisition and taking into account the development of the area, which is within 1 km., radius from the developed areas like Ameerpet and Panjagutta, and further, as the acquired land is near the National Highway leading to Bombay, we are of the considered view that deduction of $1/4^{th}$ of the area would be appropriate instead of $1/3^{rd}$ as ordered by the civil court.

18. In the result, the appeal is allowed in part, modifying the percentage of deduction from $1/3^{rd}$ area to $1/4^{th}$ area out of the total acquired land of 15,938 sq. yards, equivalent to 13,326 sq. mtrs. The market value fixed at Rs.400/- per sq. yard, is confirmed. Further, appellant-claimant is entitled to all other statutory benefits as per the Land Acquisition (Amendment) Act, 1984 (Act No.68 of 1984). The order and decree dated 01.10.2001 passed in O.P.No.630 of 1991 stands modified to the extent indicated above. No order as to costs.

As a sequel, miscellaneous petitions, if any pending in the appeal, stand disposed of.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

17th April, 2015
MRR

[1] **(2011) 8 SCC 91**

[2] **(2010) 3 SCC 794**