

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

**APPEAL SUIT Nos:3687, 3688, 3779, 3686, 3778, 3690 and 3798
of 2003 and A.S.No.831 of 2004**

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

These appeals are preferred by the Municipal Corporation, Vijayawada, the beneficiary, for whose sake the Collector has acquired Ac.25.71 cents situate in various survey numbers of Kundavari Kandrika, a sub-urban village of Vijayawada Rural Mandal for a public purpose namely for developing a housing colony. The notification under Section 4 (1) of the Land Acquisition Act, 1894 (henceforth referred to as 'the Act') was issued on 17.01.1981. In view of the urgency, the possession of the land was taken over on 14.03.1981. The Land Acquisition Officer has considered and fixed the market value at Rs.10,000/- per acre by his award dated 03.03.1986. Then the claimants sought for reference to be made under Section 18 of the Act to the civil Court for determining the correct market value. Accordingly, O.P.Nos.12 and 13 of 1987 and O.P.Nos.71, 72, 73, 74, 176 and 177 of 1988 came to be referred to the II Additional Senior Civil Judge's Court at Vijayawada. By an order dated 17.03.2003, the civil Court has arrived at a conclusion that the land, which was acquired, has got great potentiality and hence, granted Rs.32,000/- per acre notwithstanding the fact that the claimants have made a claim for Rs.2,00,000/- per acre. It is challenging this order dated 17.03.2003 of the civil Court, the present Appeals have been preferred by the beneficiary.

The Land Acquisition Officer/Collector has not preferred any Appeal.

Heard Sri R. Sudheer, learned counsel on behalf of

Sri T. Balaswami, learned Standing Counsel for the appellant-Corporation and Sri G. Vasantha Rayudu for the respondent – claimant and the learned Government Pleader for Land Acquisition (Andhra Pradesh) on behalf of the Collector.

It has been brought before the civil Court that there are two important roads, which are abutting the acquired lands; one is Vijayawada – Nuzvid road and the other is Vijayawada – Mylavaram road. Both these highways passed by the lands in question. Since Vijayawada urban area was rapidly expanding particularly towards Nuzvid and Mylavaram, the Municipal Corporation has proposed for acquisition of the lands in question for developing the same into a residential township. Accordingly, the notification has been issued. During the year 1980, various sale transactions of lands, which are proximately close to the lands in question, have been carried out and there are as many as 21 sale transactions, in which consideration was shown as Rs.30,000/- per acre. There were various sale transactions during the year 1981 ranging from Rs.30,000-40,000/- up to Rs.60,000/-. Thus, at about the time when the Collector proposed, under Section 4 (1) of the Act, to acquire the land in question, the sale transactions of lands in the vicinity disclose that the market price is ranging between Rs.30,000 – Rs.40,000/- per acre.

In 1981, when the notification has been taken out by the Collector proposing to acquire the land in question, it was found that the land was lying merely at a distance of 2 Kms. from the periphery of Vijayawada City. In fact, the village Kundavari Kandrika has been included within the limits of Vijayawada Municipal Corporation and it was included in Ward No.24 thereof. The lands in question are proximately close to the main habitation of an important city such as Vijayawada, hence, its value is bound to be much higher than the conservative estimate of Rs.10,000/- per acre arrived at by the Land Acquisition Officer. In fact, the Urban Development Authority has been sanctioning approval for various layouts developed in the vicinity of the

lands in question, as is seen from Exs.A.20 and A.21. Those approved layouts relate to the lands lying in Sy.Nos.71 and 72 of the same village, whereas the lands in question are lying in Sy.No.63 and various sub-divisions thereof of the village. Exs.A.20 and A.21, which are contemporaneous record, would clearly disclose that the lands in question are, in fact, suitable for being developed into a housing colony and consequently, the fixation of market value could be done on square yard basis instead of acreage basis. But however, in such circumstances, nearly 30 to 40% of the land has got to be set apart for formation of compulsory civic amenities, such as roads, water supply lines, drainage, electricity poles, other community purposes such as parks, etc. Instead of undertaking such an exercise, the Court below, upon taking into account the sale transactions of lands that have taken place during the year 1980, has arrived at a finding that the market value on an average is of the range of Rs.32,000/- per acre.

At this stage, it is also appropriate for us to notice that entertaining a batch of appeals preferred against the market value determined by the civil Court in various O.Ps. concerning the lands, which have been acquired in Payakapuram Village, Vijayawada Mandal, through a notification dated 16.01.1981, this Court has upheld the fixation of market price of the lands at the rate of Rs.35,000/- per acre, enhancing it from Rs.12,000/- fixed by the Land Acquisition Officer, by its judgment rendered on 04.01.2007.

We have perused the judgment of the Civil Court. It was based upon the documentary evidence brought before it, particularly in the form of Ex.A.5, which is an extract of the registered sale deed dated 07.07.1980, whereby Ac.01.00 of land situate in R.S.No.65/1A of the same village was sold for Rs.45,000/- per acre. The land covered by Ex.A.5 is not a small extent, but Ac.01.00. When we take the same into account and consideration, the land belonging to the various claimants has also been acquired, approximately of the same range. Therefore, Ex.A.5 offers a valid platform for purpose of fixation of the market value

of the land in question. It is also appropriate to bear in mind that the sale transaction covered by Ex.A.5 is nearly 6 months ahead of the provisional notification issued under Section 4 (1) of the Act on 17.01.1981. Hence, there could not be any ring of artificiality around Ex.A.5, for purpose of inflating the market value of the lands. In fact, a small housing plot of 200 square yards is sold for a sum of Rs.10,000/- as evidenced by Ex.A.7. The value of the land covered by Ex.A.7 comes to Rs.50/- per square yard and even if the extent of one-third is deducted for purpose of civic developments, still going by the rate of Rs.50/- per square yard, the value of the land would be in the order of Rs.1,50,000/- per acre.

We are, therefore, of the opinion that the conservative standard adopted by the civil Court in arriving at the market value at the rate of Rs.32,000/- per acre is on the correct lines after duly complying with the relevant principles on the subject for determination of the market value.

But however, the learned Government Pleader for Land Acquisition is certainly right in pointing out one error of judgment found in paragraph No.47 of the judgment under appeal. While holding that the claimants are entitled for payment of 30% solatium and interest at the rate of 9% from the date of taking possession of the land i.e. 14.03.1981 up to the date of award on the market value of the land fixed at Rs.32,000/- per acre, the civil Court has also declared that the claimants are entitled for payment of 12% additional market value for the lands, which have been acquired. In this context, the learned Government Pleader has pointed out that the payment of additional market value at the rate of 12% was introduced by the Parliament by amending Section 23 and incorporating sub-section 1-A thereto, by providing that the Court shall, in every case, award an amount calculated at the rate of 12% p.a. on such market value for the period commencing on and from the date of the publication of the notification under Section 4 (1) of the Act, in respect of such land up to the date of

the award passed by the Collector or the date of taking possession of the land, whichever is earlier. But, it will be appropriate to notice that this amendment was inserted by the amending Act 68 of 1984, which was brought into force by notification dated 24.09.1984. Consequently, the benefit of Section 23 (1-A) of the Act can be availed by the land losers provided the land has been acquired by a notification issued on or after 24.09.1984, but not in respect of the notifications, which appeared earlier thereto. In the instant case, it is not in dispute at all that the notification under Section 4(1) of the Act was published on 17.01.1981 and hence, the finding of the civil Court entertaining reference under Section 18 of the Act that the claimants are also entitled for payment of additional market value at the rate of 12% p.a. from 14.03.1981, the date on which the possession of the land was taken, till the date of Award, is clearly erroneous and unsustainable. To this extent, the order of the civil Court stands modified duly deleting the said relief granted to the claimants. In all other respects, we find that the reasoning adopted by the civil Court is the result of appreciation of facts and circumstances correctly and the legal principles on the subject properly. Hence, we dismiss these Appeal Suit Nos:3687, 3688, 3779, 3778, 3690 and 3798 of 2003 and A.S.No.831 of 2004 subject to the modification noted supra, but however, without costs.

In so far as the Appeal Suit No.3686 of 2003 is concerned, it is rather unfortunate that the Appeal was preferred impleading as respondent the original claimant, who has died during the pendency of the reference before the civil Court. Before the civil Court, legal representatives of the original claimant, in fact, have been brought on record. Thus, the Appeal could not be maintained against the dead claimant without bringing on record his legal representatives, who are available on the record of the civil Court itself. However, even in this appeal, in view of the infirmity of granting additional market value at the rate of 12% p.a., as noticed by us, we delete the said declaration

and direction and dismiss the Appeal with the hope that care would be taken henceforth.

Accordingly, this Appeal is also dismissed. No costs.

Consequently, the miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

28.01.2016
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