THE HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

L.A.A.S Nos. 1067, 1068, 1069, 1070, 1071 and 1072 of 2007
AND
Cross Objections (SR) Nos. 3168, 3203, 3209, 3212, 3206 and 3215 of 2014

COMMON JUDGMENT: (per Hon'ble Sri Justice A. Shankar Narayana)

Aggrieved by the common order dated 23.03.2006 in O.P.Nos.44, 45, 46, 47, 48 and 49 of 1996 on the file of the Senior Civil Judge, at Asifabad, Adilabad District (for short, 'the reference Court') the instant appeals are preferred by the Sub-Collector-Land Acquisition Officer, Asifabad. Since identical grounds are raised in all the appeals, we are of the view that there is no need to separately refer to the grounds agitated in each of the appeals herein.

2. By the impugned order, the reference Court has uniformly enhanced the compensation to Rs.20,000/- per acre by granting additional market value at 12% per annum from the date of publication of Section 4(1) notification on 12.05.1993 till the date of award i.e. 30.06.1995 passed by the Land Acquisition Officer or till the date of possession i.e., 06.01.1977 whichever was earlier and also granted solatium at the rate of 30% on market value along with interest on the enhanced market value @ 9% per annum for the first year from the date of taking possession on 06.01.1977 and

thereafter, at 15% per annum till the enhanced amount is paid.

3. By issuing notification under Section 4(1) of the Land Acquisition Act, 1984, (for short, 'the Act'), the Land Acquisition Officer acquired a total extent of Ac.168-11 guntas of land in Survey Nos.1 to 11 and 12 of Danaboinapeta village of Asifabad mandal, as the said extent of land was coming under submergence of Vattivagu project. It is clear from the record that possession was taken on 06.01.1977 which was much prior to publication of Section 4(1) notification. It is also clear from the Award that Danaboinapeta village was submerged since 1981-82 year, therefore, the Land Acquisition Officer had no sales statistics for the relevant period preceding the publication of Section 4(1) notification, and therefore, the Land Acquisition Officer took the aid of entries made in the Basic Value Register from Sub-Registrar's Office and as per Basic Value Register pertaining to Danaboinapeta village, the value of lands in Survey Nos.1 to 5 and 5/1 was recorded as Rs.1,700 per acre; and for lands in Survey Nos.6 and 7 was recorded as Rs.2,300/-; the value of lands in Survey Nos.8, 9, 9/1 as Rs.5,200/- and the value of land in Survey No.11 as Rs.2,300/-. Taking into consideration the entries in the Basic Value Register and after due formalities, the Land Acquisition Officer fixed the market value of the acquired lands in Survey Nos.1 to 5, 5/1 at Rs.2,500/- per acre; for the lands in Survey No.6, 7, 11 at Rs.3,200/- per acre; for the lands in Survey Nos.8,9,9/1 at Rs.5,500/- per acre, and awarded all statutory benefits.

4. Having felt dissatisfied, the claimants sought reference under Section 18 of the Act, thereby the references were referred to the

Civil Court. Their claim before the Land Acquisition Officer was to grant Rs.20,000/- per acre, but when they filed claim statements before the reference Court, they sought Rs.40,000/- per acre contending that Danaboinapeta is a big village having all facilities like schools, electricity and situated at a distance of 8 KM from Asifabad Revenue Divisional headquarter. The claimants also stated in their claim petition that the lands situated in the neighbouring Linguguda village were sold at Rs.15,000/- per acre even prior to the issuance of Section 4(1) notification and therefore they sought Rs.40,000/- per acre.

5. The claim petition was resisted by the Land Acquisition Officer by filing counter. In the counter, the Land Acquisition Officer stated that Linguguda village is far away from the acquired lands and the claimants used to raise only dry crops and also used to get benefits under Integrated Tribal Development Agency, and, therefore, sought to reject the claim petition.

6. The reference Court, having formulated the point for consideration as to whether the market value fixed by the Land Acquisition Officer was just and reasonable and, if not, what would be the just and reasonable market value to be fixed for lands, proceeded with enquiry.

7. Before the reference Court, on behalf of the claimants, RWs.1 to 11 were examined and marked Exs.B1 to B19. On behalf of the Land Acquisition Officer, Revenue Divisional Officer was examined as PW1 and Exs.A1 and A2 were marked. The reference Court though elaborately dealt with the evidence on record, however, resorted to capitalisation method for want of registered instruments as no sale transactions had taken place

during the relevant period as the village itself came into submergence in the year 1981-82. The reference Court recorded a finding that Exs.B1 to B10 and B13 and B14 did not reflect that commercial crops like cotton were raised and thus, disbelieved the stand of the claimants that they used to raise commercial crops. On the other hand, from the recitals from the pahanies, the reference Court arrived at the conclusion that the claimants used to raise red gram, green gram, jowar, caster oil and ulavalu (horse gram). The reference Court relied on Exs.B11 and B12-certificate issued by the Secretary, Agricultural Market Committee to show the average yield of Jowar, green gram, red gram, cession and cotton.

8. To prove authenticity of Ex.B11 and Ex.B12, the claimants examined RWs.9 to 11. RW9 is the Secretary Grade-II working in Agricultural Market Committee, Asifabad. RW9 intended to produce the record to prove the particulars of rates shown in Ex.B12 for the years 1990-91, 1991-92, 1992-93 for five varieties of crops viz., Jowar, green gram, red gram, cession and cotton on the ground that the basic material on the basis of which entries in Ex.B12 were made was not produced. The reference Court concluded that it would be reasonable to fix average income at Rs.2,500 per acre per annum and deducted 50% therefrom towards expenses and applied multiplier 16 basing on the decisions of this Court in **Mandal Revenue Officer v. N. Satyanarayana Reddy**[1] and **2006 (1) APLJ Short Notes of High Court of A.P. between MRO/LAO Kodumer and L. Srinivasa Reddy**, and thus, arrived at Rs.20,000/- per acre as just and reasonable market value and accordingly fixed the market

value uniformly to all the lands by the impugned order.

9. It is the aforesaid order which is under challenge in the instant appeals contending that the reference Court ought not to have fixed the market value based on capitalisation method, but the reference Court ought to have compared sale transactions by taking into consideration Ex.A16. It is also stated that the reference Court grossly erred in granting interest from the date of issuance of Section 4(1) notification and the same is contrary to law laid down by the Apex Court. It is also contended that the reference Court was wrong in fixing a uniform rate of Rs.20,000/- per acre for all the lands and, therefore, sought to set aside the award and decrees passed in the respective claim petitions.

10. The claimants-respondents filed cross objections in the year 2014 i.e., Cross Objections (SR) Nos. 3168, 3203, 3209, 3212, 3206 and 3215 of 2014, respectively, in the instant appeals. Since there was a delay of 1494 days in filing the cross objections, the claimants also filed LAAS MP Nos. 410, 411, 412, 413, 414 and 415 of 2014 seeking to condone the delay of 1494 days in filing the cross objections. This Court, by order dated 02.03.2016, condoned the delay on condition that the claimants shall not be entitled to interest for the period of delay in filing the cross objections.

11. The claimants-cross objectors contend that the reference Court ought to have considered that they were getting net income between Rs.3,000/- to Rs.4,000/- per acre per annum and they were also getting benefits under the Integrated Tribal Development Agency like free seeds, fertilisers and pump sets. It is further contended that the very same reference Court has granted

Rs.16,000/- per acre for lands acquired in neighbouring villages in 1983, and hence the reference Court ought to have granted escalation for the period of 10 years. It is also contended that the reference Court ignored voluminous evidence let in by the claimants regarding crop pattern adopted by the claimants and hence sought to enhance the market value by fixing the same at Rs.30,000/- per acre.

12. Heard learned Government Pleader for Appeals for the State of Telangana for the appellants in all these appeals, and learned counsel Sri V. Manohar Rao, for the respondents-cross objectors.

13. Learned Government Pleader would submit that the reference Court went wrong in fixing the market value at Rs.20,000/- per acre without there being legally acceptable evidence with regard to nature of crops and the annual income derived thereon and, therefore, the ingredients that are required to resort to capitalisation method though, absent in these instant references, fixation of market value at 20,000/- taking net income at Rs.1,250/- per annum per acre and applying multiplier 16 is unwarranted. He also submits that granting of interest from the date of taking possession i.e., 06.01.1977 though draft notification under Section 4(1) of the Act was issued on 12.05.1993 was contrary to the statutory mandate and, therefore, sought to set aside the impugned common order passed by the reference Court. Learned Government Pleader would also submit that possession was taken much prior to the date of publication of Section 4(1) notification and hence the reference Court ought not to have granted additional market value, in view of the law laid down by the Apex Court in **Revenue Divisional Officer, Kurnool District v. M.**

Ramakrishna Reddy (Dead) by LRs.[2].

14. Learned counsel for the respondents-cross objectors would submit that the reference Court ought to have taken the net income as Rs.3,000/- or Rs.4,000/- per annum per acre as the claimants have let in evidence in abundance and the reasons assigned by the reference Court in not considering the evidence of claimants are not convincing. Learned counsel also submits that when the Government acquired lands in Areguda village through notification dated 06.07.1983 for the very same purpose i.e., for submergence of Vattivagu project, and fixed compensation at the rate of Rs.3,000/- per acre, the reference Court enhanced the compensation to Rs.16,000/- per acre in O.P.No.50 of 1996 and the same was confirmed by this Court in LAAS No.241 of 2008, dated 07.10.2013. He would also submit that the Government has also acquired lands in Bordan and Devaiguda villages through notification dated 21.02.1980 for the purpose of submergence of Vattevagu project and fixed the compensation at Rs.2,000/- , Rs.2,500/- and Rs.3,000/- per acre and the reference Court fixed the compensation at Rs.16,000/- per acre in O.P.No.47 of 1991 dated 24.03.2006 and the same was confirmed by this Court in LAAS No.815 of 2006, dated 08.10.2013; and as per the evidence of the Land Acquisition Officer, Danaboinapeta village is adjacent to Areguda, Bordan and Devaiguda villages. Therefore, the learned counsel submits that taking into consideration the time lag between the notifications under Section 4(1) of the Act in LAAS No.241 of 2008 and LAAS No.815 of 2006 on the file of this Court, and the notification under Section 4(1) of the Act issued in the instant acquisition being 12.05.1993, the reference Court ought to have fixed the market value by escalation at the rate of 10% in the

market value and hence the learned counsel prays to fix the market value at Rs.30,000/- per acre which would be just and reasonable going by the market value fixed in the other O.Ps. by this Court in LAAS No.241 of 2008 and LAAS No.815 of 2006. Learned counsel also submits that since the possession was taken on 06.01.1977, the claimants are not entitled to interest at 9% and 15% for the first year, and thereafter but they are entitled to damages at 15% in view of the decision of the Hon'ble Supreme Court in **R.L.Jain (D) by LRs., v. DDA and others**[3], and **Tahera Khotoon and others v. R.D.O. and others**[4]**.** It is also his submission that a circular memo was issued in Memo No.LA-II/864/2012, dated 10.07.2015 by the Chief Commissioner Land Administration on the basis of the decisions in **Tahera Khotoon (4 supra)**, entitling for payment of rents/damages in land acquisition cases under old Land Acquisition Act, 1894 at the rate of 15% per annum on the compensation awarded from the date the land owners were dispossessed, till the date of issuance of preliminary notification, and therefore the claimants are entitled to 15% interest per annum in the instant cross-objections from the date of taking possession till the date of issue of notification under Section 4(1) of the Act.

15. Learned counsel for the respondents-cross objectors would also place reliance on the decision of the Hon'ble Supreme Court in **Special Tahsildar (LA), P.W.D., Schemes, Vijayawada v. M.A.Jabbar**[5] for the proposition that the claimants are entitled to additional market value at 12% per annum from the date of issue of notification till the date of passing of Award. The Hon'ble Supreme Court in the said judgment at paragraph '4' held as under:

> **"Therefore, we hold that the claimants would be**

> **entitled to additional amount of the enhanced market value at 12% per annum from the date of the publication of notification under Section 4(1) till the date of the award. Since possession had already been taken before the Amending Act has come into force. Both the appeals by the State and cross-appeal by the claimant are accordingly dismissed. No costs."**

16. Learned counsel for the respondents-cross objectors placed reliance on the judgment in **R.L. Jain (4 supra)** with regard to entitlement to interest from the date of taking possession till the date of Section 4(1) notification. The Hon'ble Supreme Court in the said judgment had also the occasion to refer to the judgment in **Special Tahsildar (6 supra)** and **Assistant Commissioner, Gadag Sub-Division v. Mathapathi Basavannewwa**[6]. The Apex Court in the said judgment at paragraph 16 held as under:

> **"In this connection, it will be apposite to refer to sub-section (1-A) of Section 23 of the Act which enjoins payment of an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of publication of thenotification under Section 4(1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. There are two decisions of this Court, wherein same controversy arose, namely, whether the claimant would be entitled to additional sum at the rate of twelve per centum on the market value where possession has been taken over prior to publication of notification under Section 4(1). In Special Tahsildar (LA), PWD Schemes v. M.A. Jabbar which has been decided by a Bench of two Judges (K. Ramaswamy and Mrs. Sujata V. Manohar, JJ.), it was held that the claimant would not be entitled to this additional sum for the period anterior to publication of notification under Section 4(1). However, in Asstt. Commr., Gadag Sub-Division v. Mathapathi Basavannewwa also decided by a two-Judge Bench (K. ramswamy and B.L. Hansaria, JJ.) it was held that even the acquired land the owners would be entitled to additional amount at twelve per cent per annum from the date of taking possession though notification**

> **under Section 4(1) was published later. For the reasons already indicated, we are of the opinion that the view taken in Special Tahsildar is legally correct and the view to the contrary taken in Asstt. Commr. Is not in accordance with law and is hereby overruled.”**

17. We have perused the common order passed in the O.Ps., by the reference Court, the grounds of appeal and cross-objections and the evidence on record, both, oral and documentary let in by the rival parties and we are convinced that there is no merit in the instant appeals preferred by the Government through the Sub-Collector, Land Acquisition Officer, mainly on two grounds; firstly, the capitalisation method resorted to by the reference Court was based on the evidence let in by the claimants by elaborately discussing the nature of crops raised and the rotation in raising different crops adopted by the claimants. However, the reference Court opined that the income would be Rs.2,500/- per annum per acre and deducted 50% towards the expenses and taken the net income at Rs.1,250/- per annum per acre and applied multiplier 16 based on the judgment of this Court in **N. Satyanarayana Reddy (1 supra)**. The second reason is that, as rightly contended by the learned counsel for the cross objectors-respondents, this Court confirmed the market value fixed at Rs.16,000/- per acre in LAAS No.241 of 2008 and LAAS No.815 of 2006 in O.P.Nos.50 of 1996 and 47 of 1991, respectively, and certainly, the said Awards since confirmed by this Court would be the best piece of evidence for fixing the market value for the reason that the purpose for acquisition is one and the same i.e., for submergence of Vattivagu project and the evidence on record would in unmistakable terms establish that the lands covered by Aareguda, Bordan, Devaiguda and other cluster of villages including Danaboinapeta village in which the lands under acquisition are situated in the present

appeals, were acquired by the Government and in fact possession was taken in the year 1977 itself i.e., much prior to publication of Section 4(1) notification.

18. In view of the well-settled proposition of law, the claimants are certainly entitled to escalation by some percentage, if not at 10% per annum, for the time lag between the notifications issued in 1980 and 1983 and the notification issued in the instant acquisition proceedings on 12.05.1993. So, the short question that arises for our consideration now is at what rate the percentage escalation should be fixed?

19. In the said context, we intend to place reliance on the decision of Supreme Court in **General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and another**[7], wherein the Hon'ble Supreme Court had occasion to refer to the trend in the 1990s observing that the increase in market value in Urban and Semi-Urban areas and in Rural areas ruling that if the increase in market value in Urban and Semi-Urban areas is about 10% to 15% per annum, the corresponding increase in Rural areas would be around half of it i.e. 5% to 7.5% per annum. We feel it apt to extract the observations contained in paragraphs '13' and '14' of the said judgment which read as under:

> **"Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, in crease in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in**

> **market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.**
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> **On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."**

20. Turning to the acquisition proceedings in the instant case, it is clear from the evidence on record that Danaboinapeta village is situated at a distance of 8 KM from the Asifabad Revenue Headquarters and Aareguda and Devaiguda villages are situated adjacent to Danaboinapeta village. In so far as Aareguda lands are concerned which were also acquired for the very same purpose, the date of Section 4(1) notification being published on 06.01.1983, the Land Acquisition Officer fixed the market value at Rs.13,000/- per acre, and the same was enhanced to Rs.16,000/- by the reference Court and the same rate was confirmed by this Court in LAAS No.241 of 2008. In fact, Aareguda village is abutting Danaboinapeta village. Considering the potentiality, we are of the view, that escalation by 5.5% would be just and reasonable since the lands under acquisition were dry lands

yielding dry crops but not commercial crops. In such a case, the compensation per acre works out to Rs.24,800/-. We would like to round it off to Rs.25,000/- per acre as against the market value fixed at Rs.20,000/- fixed by the reference Court. So far as the solatium is concerned, the solatium granted at 30% by the reference Court is maintained. Even the interest granted on the solatium by the reference Court is also maintained for the first year at 9% per annum and thereafter at 15% per annum from the date of publication of notification under Section 4(1) of the Act. However, concerning the interest granted from the date of possession i.e., from 06.01.1977 by the reference Court, we intend to modify the same and grant interest on the compensation at 9% per annum from the date of issue of notification under Section 4(1) of the Act for the first year and 15% per annum thereafter, till the date of deposit of the amount.

21. Concerning grant of additional market value, in view of the decision of the Hon'ble Supreme Court in **M. Ramakrishna Reddy (2 supra)**, the claimants are not entitled to additional market value at 12% granted by the reference Court for the reason the possession was taken on 06.01.1977. The Hon'ble Supreme Court in the said judgment at paragraph 11 observed thus:

> **"The Reference Court has awarded additional amount under Section 23(1-A) at 12% per annum from the date of preliminary notification (27-8-1993). Award of additional amount under Section 23(1-A) of the Act would arise only where the possession is taken after the issuance of notification under Section 4(1) of the Act. Section 23(1-A) permits additional amount to be awarded from the date of notification under Section 4(1) of the Act to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. Where possession is taken prior to the date of notification under Section 4(1) of the Act, no additional amount is awardable under Section 23(1-A) of the Act.**

Award of such amount cannot be sustained.”

22. In view of the foregoing discussion, the L.A.A.S Nos. 1067, 1068, 1069, 1070, 1071 and 1072 of 2007 are dismissed and Cross Objections (SR) Nos. 3168, 3203, 3209, 3212, 3206 and 3215 of 2014 are allowed fixing the market value at Rs.25,000/- per acre. Further, in view of the decision of the Hon’ble Supreme Court in **R.L.Jain (4 supra)** and the circular Memo No.LA-II/864/2012, dated 10.07.2015 issued by the Chief Commissioner Land Administration, the claimants are entitled to 15% per annum on the amount from the date of possession till the date of issue of Section 4(1) notification. However, the claimants shall not be entitled to interest for the period of delay of 1494 days in filing the Cross Objections in the appeals, in view of the conditional order dated 02.03.2016 passed by this Court in ordering the petitions viz., LAAS MP Nos. 410, 411, 412, 413, 414 and 415 of 2014. No costs. Miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

A. SHANKAR NARAYANA, J

16th March, 2016
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<u>THE HON’BLE SRI JUSTICE G. CHANDRAIAH</u>

<u>AND</u>

<u>THE HON’BLE SRI JUSTICE A. SHANKAR NARAYANA</u>

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[1] 2001(1) ALT 632

[2] (2011) 11 Supreme Court Cases 648

[3] (2004) 4 Supreme Court Cases 79

[4] 2014 (2) ALD 1 SC

[5] (1995) 2 Supreme Court Cases 142

[6] (1995) 6 SCC 355

[7] (2008) 14 Supreme Court Cases 745