

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN
AND

* HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

+ L.A.A.S.No.303 of 2013

AND

+ L.A.A.S.No.353 of 2015

% Date: 24-11-2017

L.A.A.S.No.303/ 2013

BETWEEN:

1. The Revenue Divisional Officer/Land Acquisition Officer, Chevella Division, Ranga Reddy District.
2. The Principal Secretary, Forest Department, Saifabad, Hyderabad.

... Appellants/Referring Officers

Vs.

1. Ismail Bhai, S/o. Late Hasan Ali,
2. Saina Bai, W/o. Sfiuddin.
3. Salma Bai, W/o. Kurban Hussain
4. Malika Bai, W/o. late kaleemuddin.
5. Batool Bai, W/o. Kuttubuddin.
6. Naimuddin, S/o. Late Hasan Ali
(All are R/o. Flat No.101, Pleasant Apts., Near Cancer Hospital, Red Hills, Hyderabad.
7. Shireen, W/o. Shabbar Dawasaz, D/o. Salma Bai, R/o. Burhani Colony, Aurangabad, Maharashtra.

... Respondents/Claimants

!Counsel for the Appellants : Advocate General

^ Counsel for the Respondents : Mr. M. Narender Reddy (Sr. counsel)

L.A.A.S.No.353/ 2015

BETWEEN:

1. Ismail Bhai, S/o. Late Hasan Ali,
2. Saina Bai, W/o. Sfiuddin.
3. Salma Bai, W/o. Kurban Hussain
4. Malika Bai, W/o. late kaleemuddin.
5. Batool Bai, W/o. Kuttubuddin.
6. Naimuddin, S/o. Late Hasan Ali
 (All are R/o. Flat No.101, Pleasant Apts., Near Cancer Hospital, Red Hills, Hyderabad.
7. Shireen, W/o. Shabbar Dawasaz, D/o. Salma Bai, R/o. Burhani Colony, Aurangabad, Maharashtra.

Vs.

1. The Revenue Divisional Officer/Land Acquisition Officer, Chevella Division, Ranga Reddy District.
2. The Principal Secretary, Forest Department, Saifabad, Hyderabad

!Counsel for the Appellants : Mr. M. Narender Reddy

^ Counsel for the Respondents : G.P. for Appeals

< GIST:

> HEAD NOTE:

? Cases referred



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

L.A.A.S.No.303 of 2013
AND
L.A.A.S.No.353 of 2015

COMMON JUDGMENT: (per VRS,J.)

These appeals, the first filed by the Land Acquisition Officer and the other filed by the land owners, under Section 54 of the Land Acquisition Act, 1894, challenge the judgment passed by the reference Court in O.P.No.205 of 2005 under Section 18 of the Land Acquisition Act, 1894.

2. Heard Mr. M. Narender Reddy, learned Senior Counsel appearing on behalf of the land owners and the learned Government Pleader appearing on behalf of the Advocate General.

3. The land of an extent of Ac.3.23 guntas in Sy.No.268 of Attapur Village, Rajendranagar Mandal, Ranga Reddy District was sought to be acquired for the purpose of expansion of Nehru Zoological Park, vide a notification dated 19.03.1981, issued under Section 4 (1) of the Act. Despite the fact that the notification was issued on 19.03.1981, an Award could not be passed for reasons, with which we are not now concerned.

4. However, pursuant to an order passed in a writ petition W.P.No.17119 of 1996, dated 22.04.1997, an Award was passed in Award No.1/1844/89, dated 07.06.1997. Under this Award, the compensation was fixed at Rs.6/- per sq. yard.

5. Though the land owners made representations for making a reference under Section 18, no action was taken by the Land Acquisition Officer forcing the land owners to come up with a writ petition in

W.P.No.5676 of 2003. The writ petition was disposed of by an order dated 18.04.2003 directing the Land Acquisition Officer to take action within six weeks. Since no action was taken, a Contempt Case was filed in C.C.No.1668 of 2004. Thereafter, a reference was made and the same was taken on file by the I Additional Senior Civil Judge, Ranga Reddy District, in O.P.No.205 of 2005.

6. By a judgment dated 03.09.2012, the reference Court enhanced the compensation from Rs.6/- per sq. yard to Rs.250/- per sq. yard. Challenging the enhancement so granted, the Land Acquisition Officer and the State came up with appeal L.A.A.S.No.303 of 2013.

7. Contending that the enhancement granted by the reference Court was inadequate, the land owners have come up with another appeal in L.A.A.S.No.353 of 2015.

8. Before the reference Court, the 1st claimant was examined as PW.1. A retired Government Surveyor was examined as PW.2. A copy of a sale deed Doc.No.1208/81 was filed as Ex.A.1. The judgment of this Court in two appeals C.C.C.A.No.6 of 1987 and 110 of 1987 arising out of two different O.Ps relating to the land in another village by name Bahadurpura, were filed as Exs.A.2 and A.3. The topo sketch was filed as Ex.A.4. The village maps of Attapur and Mirsagar villages were filed as Exs.A.5 and A.6. The copy of D.O letter dated 28.08.1991 sent by the Revenue Divisional Officer after the issue of notification, was filed as Ex.A.7.

9. The Land Acquisition Officer examined himself as RW.1. But his evidence was eschewed, as he was transferred to another place. Instead,

another officer was examined as RW.2 and the copy of the Award was marked as Ex.B.1.

10. Finding that there were no sale transactions in the village in which the acquired lands were located and finding that in connected matters arising out of the acquisition of lands in a neighbouring village, viz., Bahadurpura, the compensation was fixed at Rs.250/- per sq. yard, the reference Court thought fit to fix the compensation at Rs.250 per sq. yard. Aggrieved by the same, both the parties are before us.

11. A reading of Ex.B.1-Award dated 07.06.1997 would show that the notification under Section 4(1) was published on 19.03.1981, the declaration under Section 6 was published on 09.04.1981 and the Award itself came to be passed on 07.06.1997. The Award discloses that in Rajendranagar Mandal, only one sale transaction took place in the year 1978, two transactions took place in the year 1979 and four transactions took place in the year 1980. There were no sale transactions in the year 1981.

12. Thus in all, there were only 7 sale transactions available for the Land Acquisition Officer to consider and even these sale transactions related to the years 1978 and 1980.

13. The Land Acquisition Officer, in his Award, discarded the sale transactions of the years 1978 and 1979 and accepted the valuation of the lands as found in the sale transactions of the year 1980, which worked out to Rs.6/- per sq. yard.

14. Since there were no sale transactions in Attapur Village of Rajendranagar Mandal, during the relevant point of time, the land owners

produced, – (1) a sale deed in respect of a land located in a neighbouring village as Ex.A.1; (2) the decisions of this Court in two appeals arising out of the awards passed in respect of the lands in a neighbouring village, viz., Bahadurpura, as Exs.A.2 and A.3; and (3) the topo sketch and village maps of all these villages as Exs.A.4, A.5 and A.6.

15. Therefore, before looking at Exs.A.1 to A.3 we must first look at the topo sketch and the village maps to see whether there are nearby. The topo sketch shows that Mirsagar and Bahadurpura villages are adjoining villages of Attapur village.

16. Ex.A.4 was marked through PW.2, a retired Deputy Inspector of Survey. He stated that Ex.A.4 is the extract of the village map. From the village maps, PW.2 pointed out that the distance between the acquired lands in Attapur village and the lands covered by Exs.A1 to A.3, was approximately 1320 meters.

17. The evidence of PW.2 could have been contradicted only by RW.2, since the evidence of RW.1 was eschewed. Unfortunately, RW.2 joined duty only on 30.06.2011 as seen from his cross-examination. He stated his deposition that he had not inspected the acquired lands. He also admitted in cross-examination that he did not have personal knowledge about the topography of the land acquired and its surrounding areas. But he confessed that Attapur and Bahadurpura are adjacent villages. He admitted that there was an industrial estate at Katedan village at a distance of 3½ K.Ms. from Attapur village, apart from Agricultural University and National Police Academy. He also admitted that the acquired land is within 3 K.Ms from the High Court of A.P.

18. Therefore, the evidence of RW.2 stood corroborated by the cross-examination of RW.2 and hence there was nothing wrong in the reference Court looking into Exs.A.1 to A.3. Under Ex.A.1, the lands in Mirsagar village were sold for a consideration of Rs.200/- per sq. yard. Similarly, under Ex.A.2, this Court enhanced the compensation to Rs.250/- per sq. yard in respect of a land in Bahadurpura village, Charminar Taluq, Hyderabad District. In Ex.A.2, the sale deed marked in this case as Ex.A.1 was taken as Ex.A.3.

19. Let us keep aside for a moment Exs.A.1 to A.6. Even then, the letter dated 28.08.1991 by the Revenue Divisional Officer, Chevella Division at Domalguda, Hyderabad to the District Collector, Ranga Reddy District, marked as Ex.A.7, cannot be ignored. The said letter discloses that the acquired land was involved in litigation between the respondents and the Government about title and ownership. The litigation commenced in the year 1952 and the same ended in favour of the land owners.

20. It is only thereafter that proceedings for acquisition commenced. After narrating the history of the entire litigation and the proposed acquisition, the Revenue Divisional Officer raised three issues in Ex.A.7, dated 28.08.1991. In paragraph (C) at internal page 7 of Ex.A.7, the Revenue Divisional Officer indicated that the land value at that time would not be less than Rs.200/- per sq. yard. It appears from the penultimate paragraph of Ex.A.7 letter that the market value of the land was estimated to be not less than Rs.200/- per sq. yard by the Revenue Divisional Officer, on the basis of the compensation for similar land in Sy.No.267 paid by the Department. In fact, the Revenue Divisional Officer advised the Government to adopt that rate as a guiding factor to enter into negotiations with the claimants.

21. Ex.A.7, dated 28.08.1991 cannot be ignored. If this is taken into consideration, the market value of the land at the time of Ex.A.7, viz., 28.08.1991 should be taken to be Rs.200/- per sq. yard.

22. But the notification for acquisition was published on 19.03.1981, at least about 10 years before Ex.A.7. Therefore, the market value of the land in 1981 as on the date of the notification should be at least Rs.100/- per sq. yard. If it was Rs.100/- per sq. yard in 1981, it could have got increased at the rate of 10% per annum over the years, to come to Rs.200/- per sq. yard in 1991. we could have gone by Exx.A-1 to A-3 and fixed the compensation at Rs..200/ per sq. yard, though they related to lands in neighbouring villages, but for the fact that there had been a long drawn litigation between the Government and the respondents. In cases of this nature, we would like to be conservative in our approach, though the law laid down in recent times leans towards a liberal view.

24. Therefore in the absence of (1) any sale transactions in the same village in the year 1981; and (2) any concrete material to show that the lands in Mirsagar and Bahadurpura could be taken as the guiding factor, we can only go by Ex.A.7 and arrive at the market value as in the year 1981, by a process of reverse calculation. If so done, the market value of the land would be Rs.100/- per sq. yard.

25. In view of the above, the appeal filed by the Land Acquisition Officer in L.A.A.S.No.303 of 2013 is allowed and the judgment of the reference Court is modified. The compensation is fixed at Rs.100/- per sq. yard. The respondents-land owners will be entitled to all other benefits, as per the judgment of the reference Court and in accordance with the

provisions of the Land Acquisition Act, 1894. Consequently, the appeal filed by the land owners in L.A.A.S.No.353 of 2015 is dismissed.

26. Since a period of more than 36 years has passed from the date of the notification under Section 4(1), the State shall calculate the amount payable, as fixed by this Court, and pay the same within a period of 12 weeks.

27. As a sequel, miscellaneous petitions pending in these appeals, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

A. SHANKAR NARAYANA, J.

24th November, 2017.
Js



HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

L.A.A.S.No.303 of 2013
AND
L.A.A.S.No.353 of 2015

(per VRS, J.)



24th November, 2017.

Js.