

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

L.A.A.S. Nos.581 and 582 of 2008

COMMON JUDGMENT :

(per the Hon'ble Sri Justice N.Balayogi)

Both the appeals arose out of the common order, under reference under Section 18 of the Land Acquisition Act, referred by the R.D.O., Kurnool, in L.A.O.P. Nos.75 and 76 of 2005, dated 30.9.2008.

2. The contention of the appellant in both the appeals is that the reference court erred in enhancing the market value of the acquired lands to Rs.2,00,000/- per acre, as against the Award passed by the Land Acquisition Officer fixing the rate at Rs.32,000/- per acre, simply basing on Ex.B1 - sale deed, which lands are situated in a different village. The Land Acquisition Officer fixed the rate taking into consideration the sale statistics obtained from Sub-Registrar at the time of acquisition and making detailed enquiry as to the location, nature of fertility, prevailing market value and vicinity of the lands acquired, but the referral court relied on Exs.B2 to B6 and B9 and X1 for the lands which are far away from the acquired lands and which have not been reflected true and correct values. The reference Court further erred in applying escalation principle at the rate of 12% per acre for fixation of market value.

3. On the other hand, the contention of the respondents is that the Land Acquisition Officer – P.W.1 himself admitted that the acquired

lands are situated on the bank of river Tungabhadra having irrigation facility by drawing water through pipeline. The lands covered by Exs.B2 to B6 and B9 and X1 are at a distance of 3 K.Ms. and 1 ½ K.Ms. away from the acquired lands and they are all river bed lands. They are all fertile and irrigatable lands where three crops are being raised in a year i.e., two paddy crops and one intermittent pillipesara crop. There is no basis for the Land Acquisition Officer to fix the market rate at Rs.32,000/- per acre. The order in the reference Court is legal and do not suffer from any legal infirmities warranting interference of this Court.

4. Both L.A.O.P. Nos.75 and 76 of 2005 are disposed of by referral Court under Section 18 of the Land Acquisition Act on 30.9.2008. The L.A.O.P. Nos.75 and 76 of 2005 are referred by the Revenue Divisional Officer-cum-Referring Officer, Kurnool, in Award No.2 of 2004-2005, dated 29.4.2005 for fixing just market value of the lands acquired by the Government.

5. In L.A.O.P. No.75 of 2005 the land to an extent of Ac.0.50 cents in Sy.No.199/02 of Gundrevula Village, C.Belgal Mandal, Kurnool District, was acquired.

6. In L.A.O.P. No.76 of 2005 the lands to an extent of Ac.1.85 cents of Gundrevula Village, C.Belgal mandal, Kurnool District in Sy.Nos.161/A2, 162/1, 162/03 were acquired and R.D.O., Kurnool passed an Award No.2/2004, dated 29.4.2005 fixing the market rate at Rs.32,000/- per acre. The claimant in L.A.O.P. No.75 of 2005 already

received Rs.21,519/- and the respondent in L.A.O.P.No.76 of 2005 had received Rs.79,622/- towards the total amount of compensation.

7. Accordingly, the lands of respondents in Gundrevula Village in different survey numbers were acquired by the Government for construction of Head Works (pump house) and for approach road, part of Guru Raghavendra Project. The land in Sy.No.161/A2 to an extent of Ac.1.82 cents is classified as irrigated dry land and remaining extent in Sy.Nos.162/1, 162/3 and 199/2 are classified as dry lands. It is also proved by the evidence of R.Ws.1 and 2 and as admitted by P.W.1 that the pattedars i.e., claimants in both L.A.O.P. Nos.75 and 76 of 2005 reclaimed the lands into wet lands by drawing water through unauthorized Government irrigation from Tungabhadra river by laying pipelines and raising wet crop like paddy basing on the availability of the water in the river. P.W.1 admitted raising of two paddy crops and one intermittent pillipesara crop in a year.

8. To establish that the lands acquired are having equal potential to the lands under Ex.B2 to B6 and B9 and X1, the claimants produced the evidence of R.Ws.1 to 3 and marked Exs.B1 to B9 and X1.

9. R.W.1 is the claimant in L.A.O.P. No.76 of 2005. R.W.2 is an independent witness and resident of Mudumula Village who produced Ex.X1 - Award under which his lands were acquired and the Court fixed the market value under Ex.B6, which is certified copy of the order in L.A.O.P. Nos.17/2004 to 23/2004. R.W.3 is a retired Mandal

Agricultural Officer. Ex.B1 is a registered sale deed dated 29.12.1992. Ex.B3 is the certified copy of the order in District Court, Kurnool in L.A.O.P. Nos.1103 of 1998 to 1108 of 1998 and 52 of 2000 to 54 of 2000 in respect of the lands concerned under Ex.B2 – Award No.4 of 1998. Ex.B4 is the order of the High Court against Ex.B2 – Award. Ex.B7 is the certificate issued by R.W.3 and Ex.B8 is certificate issued by Assistant Director, Marketing, Kurnool.

10. Claimants also filed Ex.B9 – certified copy of order in L.A.O.P. Nos.1096 of 1996, 1097 of 1998, 1098 of 1998 and 1099 of 1998 in Award No.3 of 1998 and Ex.X1 is certified copy of the Award No.2 of 2004, which is produced by R.W.2.

11. It is clinching evidence of R.W.1 that the lands acquired concerning these appeals are having some geographical location and market value, situated in K.Singavaram and Mudumula Villages which are adjacent to the acquired lands. The lands in K.Singavaram and Mudumula Villages are situated on the bank of Tungabhadra river like the lands now acquired from the claimants. For the lands situated in K.Singavaram and Mudumula Villages, the compensation was awarded at Rs.1,76,562/- per acre as per Award Nos.3 of 1998 and 4 of 1998 and other Awards covered by Ex.B9. While fixing compensation, the existing pre-notification sale of lands in K.Singavaram under Ex.B1, dated 29.12.1992 for an extent of Ac.1.05 cents which was sold at Rs.1,32,000/- per acre was taken into consideration, which lands were acquired under Ex.B2 - Award and

the market value was fixed at Rs.1,76,562/- per acre for the lands acquired under Ex.B2.

12. As per Ex.B3 - certified copy of the order in L.A.O.P. No.1103 to 1108 of 1998 and 52 of 2000 to 54 of 2000, the market value was fixed at Rs.1,76,526/- per acre. Against the Order and Decree under Ex.B3, an appeal was preferred before the High Court, wherein the High Court under an appeal under Ex.B4 enhanced the compensation and fixed at Rs.2,00,000/- per acre. These all facts are deposed by P.W.1 and spell out from the record under Exs.B1 to B4.

13. Further evidence of P.W.1 is that the Government acquired the lands in Mudumula Village under Ex.B5 - Award No.1A/2004. The market value was fixed for the lands covered under Ex.B5 at Rs.2,84,426/- per acre. Ex.B6 is concerned with the lands under Ex.X1 which were acquired from R.W.2. The evidence of R.Ws.1 and 2 supported by admissions made by P.W.1 and supported by documentary evidence under Exs.B2 to B6 and B9 and X1 clinches the issue that the acquired lands concerned in L.A.O.P.Nos.75 and 76 of 2005 are equally situated on the bank of river Tungabhadra and are having irrigation facility by raising two paddy crops and one intermittent crop of pillipesara in a year and they are having high fertility, irrigation and yielding good crops and fetching annual income of Rs.24,000/- and odd per acre. The lands acquired from the claimants are having equal potential in all respects in respect of lands acquired from the villages of K.Singavaram and Mudumula and the

referral court, having taken into consideration oral and documentary evidence of R.Ws.1 to 3, admissions made by P.W.1 and documentary evidence under Exs.B2 to B6 and B9 and X1, fixed the market value at Rs.2,00,000/- per acre.

14. Admittedly, K.Singavaram Village is at a distance of 3 K.Ms. and Mudumula Village is at a distance of 1 ½ K.Ms. from Gundrevula Village, situated at the bank of river Tungabhadra and the said lands are very fertile lands. The villages are adjacent to each other. It is also evident from the evidence of R.Ws.1 and 3 that the pipeline for irrigation of the acquired lands laid underground and irrigated the lands by raising three crops in a year i.e., two paddy crops and one intermittent pillipesara crop and getting yield having river silt deposits and having perennial source of water. The claimants get two crops in a year and during Kharif season, they get 26 quintals of paddy per acre and in Rabi season, they get 25 quintals per acre, which is evident from the evidence of R.W.3 and also Ex.B7 - certificate issued by him. According to Ex.B7, the net income per acre is Rs.24,150/- and as per the certificate under Ex.B8, issued by the Assistant Director, Marketing, the value of paddy per quintal is at Rs.950/- during the year 2001 and 2002. The evidence of R.W.3, supported by Exs.B7 and B8, corroborated with R.W.1, established that the net income on the agricultural land per acre is at Rs.24,150/-.

15. In the case of the *Assistant Collector and Land Acquisition Officer (RDO) Gadwal and Others Vs. Pandu Rangaiah and Others*¹

it is observed that previous judgment not inter re-determining the value of the land in the vicinity are admissible under Section 58 of the Evidence Act. By applying the same to the facts of the present case, the lands acquired from the claimants are in the same vicinity of K.Singavaram and Mudumula Villages and equally fertile and potential lands and irrigated with paddy and pillipesara crop yielding net income of Rs.24,150/- per acre. Therefore, the referral officer rightly relied on earlier Judgments and Awards under Exs.B2 to B6 and B9 and Sale Deed – Ex.B1 and the Certificate issued by the Mandal Agricultural Officer under Ex.B7 and the Certificate issued by the Assistant Director, Marketing, Kurnool under Ex.B8 and fixed the market rate at Rs.2,00,000/- per acre, which is legal and the claimants are entitled for compensation as such.

16. The lands of the claimants were acquired under Award dated 29.4.2005 and Ex.B1 is dated 29.12.1992. The period in between Ex.B1 and the Award under Ex.A1 is 12 years and 4 months, therefore, the referral officer basing on the well settled principles of law allowed 12% of additional market value from the date of 4(1) notification dated 4.12.2004 to the date of Award dated 29.4.2005 at Rs.1,25,000/- per acre. If the appreciation amount of Rs.1,85,000/- is added to Rs.1,25,000/-, the market value of one acre under Ex.B1

¹ 1997 (4) ALT 144 (DB)

comes to Rs.3,10,000/-, since the claimants claimed the maximum of Rs.2,00,000/- per acre, the referral officer restricted the value per acre at Rs.2,00,000/- which is just and reasonable market value. He also allowed 30% solatium and 15% of interest on the enhanced market value. The order of the referral court accordingly is legal and valid.

17. Having considered the above evidence of R.Ws.1 to 3 and admissions made by P.W.1 and Exs.B1 to B9 and Ex.X1, we are of the considered opinion that the referral officer elaborately discussed the oral and documentary evidence on record and came to the right conclusions that the lands now acquired and the lands covered by Exs.B2 to B6 and B9 and X1 are of the same vicinity and they are irrigated dry lands. The claimants used to raise two paddy crops and one intermittent pillipesara crop in a year and the lands are fertile silt deposit lands and they are fertile and yielding the income of Rs.24,150/- per acre. The lands are having equal potential in all respects in respect of the lands acquired from the villages of K.Singavaram and Mudumula and the referral officer fixed the value per acre at Rs.2,00,000/- on par with the rates fixed under Exs.B2 to B6 and B9 and X1 and also rightly applied escalation principle at the rate of 12% per annum from the date of 4(1) notification dated 4.12.2004 to the date of Award dated 29.4.2005 and also rightly granted solatium at 30% and interest at 15% on the enhanced market value from 29.4.2005 till the date of realization. Therefore, the

impugned order is legal, valid and do not suffer from any legal infirmities warranting interference by this Court.

18. Accordingly, L.A.A.S. Nos.581 and 582 of 2008 are dismissed, while confirming the Common Order, dated 13.9.2008, in L.A.O.P.Nos.75 and 76 of 2005 on the file of the Principal Senior Civil Judge, Kurnool, in all respects. There shall be no order as to costs in both the appeals.

19. Miscellaneous Petitions pending, if any, in these appeals shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE N. BALAYOGI

29th August, 2017.
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