

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Smt. Justice T.Rajani
LAAS.Nos.911 & 1250 of 2005
Date: 19.04.2017

LAAS.No.911/05

Between:

Sri Rajmal Raja Vijaya Krishna Gundarao (died)
Smt.M.Sirishadevi and 2 others

... Appellants

and

The Land Acquisition Officer and
Revenue Divisional Officer, Narasaraopet

...Respondent

LAAS.No.1250/05

Between:

Mrs.R.Prema Dhatri Devi

... Appellant

and

The Land Acquisition Officer and
Revenue Divisional Officer, Narasaraopet

...Respondent

DATE OF JUDGMENT PRONOUNCED: 19-04-2017

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
&
THE HON'BLE SMT. JUSTICE T.RAJANI

- | | |
|--|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Their Lordship wish to see the fair copy of the Judgment? | Yes/No |

JUSTICE C.V. NAGARJUNA REDDY

SMT. JUSTICE T. RAJANI

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Counsel for the Appellants: Mr.R.Raghunandan

Counsel for the respondent: GP for Appeals (AP)

The Court made the following:

Common Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

LAAS.Nos.911 and 1250 of 2005 arise out of Common Order, dated 28-02-2005, in LAOP.Nos.95 and 96 of 1998 respectively on the file of the Additional Senior Civil Judge, Narasaraopet.

While an extent Acs.2-36 cents in Survey No.289/1 of Vipparla Village is the subject matter of LAOP.No.95 of 1998, the extents of Acs.2.35 cents and Acs.3-51 cents in Survey Nos.289/1 and 291/1 respectively of the said Village are the subject matter of LAOP.No.96 of 1998. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued by the Government for providing housing sites to the weaker sections on 24-02-1984, which was approved by the District Collector, Guntur, and published on 09-03-1984. Though possession was taken on 24.03.1984, land was divided into house sites and the pattas were distributed to the beneficiaries, compensation was not paid to the appellants. Therefore, the appellant in LAAS.No.1250 of 2005 filed WP.No.5452 of 1992, which was dismissed as withdrawn, on 29.03.1993, on the undertaking given by the Government to pass an award. As the aforesaid Notification, dated 24-02-1984, had lapsed

by then, the Government issued a fresh notification on 20-01-1992. As the said Notification also lapsed, a third and final notification was issued on 10-4-1994, which was published on 15-04-1994, and approved by the Collector, Guntur on 08-07-1994. Pursuant to the same, the respondent has passed an award fixing the market value of the acquired land @ Rs.20,000/- per acre. Not being satisfied with the adequacy of the said market value, the appellants have got their respective disputes referred to the Additional Senior Civil Judge, Narsaraopet, under Section 18 (1) of the Act, which were numbered as LAOP.Nos.95 and 96 of 2005.

On behalf of the appellants, CWs.1 to 3 were examined and Exs.A.1 to A.8 were marked. On behalf of the respondent, he has examined himself as RW.1 and got Exs.B.1 to B.5 marked. Ex.X.1-patta issued in favour of one Jamal Saheb was also marked in evidence.

The Reference Court has enhanced the market value from Rs.20,000/- to Rs.30,000/- per acre by taking into consideration the market value of the lands prevailing in the year 1984. The appellants have filed these Appeals feeling dissatisfied with the quantum of compensation fixed by the Reference Court. They

sought for fixation of market value @ Rs.90/- per square yard. A Division Bench of this Court, by Common Judgment, dated 28.10.2014, disposed of the Appeals by confirming the market value fixed by the Reference Court @ Rs.30,000/- per acre. In the process, the Division Bench has declined to place reliance on Exs.A.3 and A.4- extracts of registered sale deeds by holding that they are not comparative sales. Assailing the said Common Judgment, the appellants have filed a Special Leave Petition before the Supreme Court. After granting leave, the Supreme Court has set aside the Judgment of the Division Bench and remitted the matter to this Court for fresh consideration by holding that the appellants are entitled to fixation of compensation prevailing in the year 1994 and not 1984. After remand, the Appeals are placed before us for hearing.

Mr.R.Raghunandan, learned Senior Counsel for the appellants, submitted that the Reference Court has committed an error in discarding Ex.A.4, on the reasoning that it was of the year 1993 while the notification was of the year 1984 and that therefore, being post notification sale transaction, the same cannot be relied upon. In the light of the finding of the Supreme Court that the appellants are entitled to fixation of compensation prevailing in the year 1994,

the aforesaid reason, on which the Reference Court has refused to consider Ex.A.4, is no longer sustainable. If the year 1994 is taken as the basis for ascertaining the market value, evidently, Ex.A.4 came into existence one year prior thereto. Therefore, Ex.A.4 cannot be discarded by terming the same as post notification sale transaction.

The learned Government Pleader for Appeals (AP) submitted that Ex.A.4 relates to a small extent of land and that therefore, the same cannot be made basis for fixing the market value of large tracts of land, which are subject matter of these Appeals.

The learned Senior Counsel for the appellants, however, placed reliance on the judgment of the Apex Court in **Nirmala Singh and others vs. State of Haryana through Collector**¹, in support of his submission that there is no prohibition in law on adopting sale transactions for small extents of lands, if they are comparable sales and that in such an event, reasonable deductions have to be made.

We have carefully gone through the judgment in **Nirmala Singh** (1 supra). One of the points framed by the Supreme Court in

¹ (2015) 2 Supreme Court Case 160

that case was “whether the sale consideration mentioned in the sale deeds of small pieces of land, which are situated close to the acquired land, can be considered in determination of the compensation in favour of the land owners ?” The Supreme Court has profitably referred to the following portion from the judgment in **Land Acquisition Officer vs. M.K.Rafiq Saheb**² :

“It may also be noticed that in the normal course of events, it is hardly possible for a claimant to produce sale instances of large tracts of land. The sale of land containing large tracts are generally very far and few. Normally, the sale instances would relate to small pieces of land. This limitation of sale transaction cannot operate to the disadvantage of the claimants. Thus, the court should look into sale instances of smaller pieces of land while applying reasonable element of deduction.”

Dealing with the principle of deductions in determination of compensation based on the sale transactions of small pieces of lands, the Apex Court relied upon the judgment in **Basavva vs. Land Acquisition Officer**³, **Bhagwathula Samanna vs. Tahsildar (LA)**⁴ and **Viluben Jhalejar Contractor vs. State of Gujarat**⁵. On consideration of these judicial precedents, the Apex Court has drawn the following conclusions:

² (2011) 7 SCC 714

³ (1996) 9 SCC 640

⁴ (1991) 4 SCC 506

⁵ (2005) 4 SCC 789

“Keeping in mind the guidelines laid down by this Court in the catena of cases referred to supra, we are of the opinion to determine just and reasonable compensation for the acquired land on the basis of the sale instances as submitted by the appellants by taking the average of the sale considerations mentioned therein that are relevant to the date of issue of notification under Section 4 of the Act. However, the same is to be determined keeping in mind that developmental costs are higher for larger areas of land as compared to small portions of land. The rate of compensation must be subject to deductions towards developmental purpose that will have to be incurred by the respondent State.

Sale instances in relation to small pieces of land situated near the acquired land can be considered, subject to (i) reasonable deductions for developmental costs that will be incurred in the future as per the cases referred to supra, and (ii) the evidence that these lands can be compared to the acquired land in terms of its vicinity and the comparable benefits and advantages.”

Applying the principles deduced from the settled legal position to the facts of the case, the Supreme Court has deducted 60% from the market value of the acquired land towards developmental expenses.

Admittedly, no sale transactions for larger extents of lands have been placed on record in these cases. Therefore, this Court is left with no option other than relying upon Ex.A.4, though the land

covered by it is a small extent of 83 square yards. However, while considering the said sale transaction, necessary deductions need be made in terms of the established legal principles as noted above.

The learned Government Pleader has submitted that Ex.A.4 does not refer to any survey number; that, on the contrary, the property sold thereunder was described as Gramakantam; and that in the absence of any evidence regarding its location and proximity to the acquired lands, this document cannot be relied upon.

Countering the above submissions, the learned Senior Counsel for the appellants invited the attention of this Court to the evidence of PW.1 wherein he has *inter alia* deposed that Ex.A.4 is the registration extract of sale deed, dated 17-02-1993, executed by Lankanapalli Subbaiah Rao and another in favour of P.Venkateswara Reddy and that this transaction relates to Gramakantam land. He has further deposed that the Gramakantam land is situated in Survey No.287, which was sub-divided into five parts, and that in the award enquiry, the Revenue Divisional Officer has mentioned Survey No.287 as Gramakantam land. In the cross-examination, nothing was elicited from PW.1 to falsify his

evidence that Survey No.287 is the Gramakantam land covered by Ex.A.4- sale transaction.

The learned Senior Counsel has also drawn our attention to Ex.A.5- plan issued by the Mandal Revenue Officer, Rompicherla, a perusal of which shows that Survey No.287/5, which is stated to be the land covered by Ex.A.4, is situated on the northern side of Survey No.289 wherein parts of acquired lands are situated with a road dividing both the Survey numbers. The learned Senior Counsel submitted that the dividing road is the National Highway between Hyderabad and Chennai.

The above discussed evidence would clinchingly establish that the land covered by Ex.A.4 is situated in the neighbourhood of the acquired lands only with the National Highway dividing both the lands. Therefore, there can be no impediment to treat Ex.A.4 as comparable sale.

The next question that needs to be decided is, what would be the fair market value of the acquired land in the year 1994. Admittedly, the sale transaction under Ex.A.4 pertains to a very small extent. Therefore, in order to convert the large extent of land into small plots, at least 1/3rd of the land is needed towards roads

and other common amenities. In addition to that, as held in **Viluben Jhalejar Contractor** (5 supra), smaller plots have several positive factors while larger extents have several negative factors.

In order to offset the various disadvantages of larger tracts of land, further deductions need to be made, which must be not less than atleast 20%. On considering the overall facts and circumstances of the case, we are of the opinion that the percentage ranging between 50% and 55% of the price reflected in Ex.A.4 needs to be deducted. On such calculation, the reasonable market value of the acquired land that could be arrived at would be about Rs.1,50,000/- per acre. In our opinion, this must be the proper and correct market value to be fixed for the acquired lands in the instant cases.

Accordingly, the Appeals are partly allowed by fixing the market value of the acquired land @ Rs.1,50,000/- per acre. It is made clear that since the acquisition is treated as of the year 1994, the appellants are not entitled to the statutory benefits under Section 23 (1) (A) of the Act. They are, however, entitled to interest on solatium from 19-09-2001.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 19th April, 2017
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