The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt. Justice T.Rajani

LAAS.Nos.316, 317 & 318 of 2008, 35 of 2009 and 664 & 650 of 2010, Cross-Objection (Sr) No.11532 of 2010 in LAAS.No.318 of 2008 and Cross-Objection (Sr) No.5110 of 2014 in LAAS.No. 35 of 2009

Date: 18.04.2017

LAAS.No.316/08

Between:

The Land Acquisition Officer-
cum-Special Deputy Collector,
LA Unit, PJ Project
Gadwal Mahabubnagar District

… Appellant

and

Smt.Boina Shankaramma and 95 others

…Respondents

Counsel for the Appellant: **Mr.T.Sharath Spl.G.P. (TS)**

Counsel for the respondent: **Mr.J.Janakirami Reddy**

The Court made the following:

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

The State through its Land Acquisition Officer filed LAAS.Nos.316, 317 and 318 of 2008 and 35 of 2009 against separate but similar orders and decrees passed by the learned Senior Civil Judge, Gadwal (hereinafter referred to as 'the Reference Court') in OP.Nos.14, 74 & 18 of 2004 and 19 of 2005 respectively. The claimants in LAOP.Nos.14 and 74 of 2004 filed LAAS.Nos.664 and 650 respectively not satisfied with the fixation of market value by the Reference Court. The claimants in OP.No.18 of 2004 filed Cross-Objections in LAAS.No.318 of 2008 filed by the State. Some of the claimants in OP.No.19 of 2005 have filed Cross-Objections in LAAS.No.35 of 2009 seeking further enhancement of the market value.

The lands, which are subject matter of all these Appeals, are covered by two separate notifications issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'). They were published on 24-04-2002 and 08-10-2003. However, the purpose of acquisition remained the same *viz.*, construction of Tungabhadra Barriage near Sunkesula Village of Kurnool District.

Since the evidence adduced by both parties is identical in all the OPs, out of which the present Appeals arise, it will suffice, if we refer to the facts in LAAS.No.664 of 2010.

The facts in this case are that a total extent of Acs.216.06 guntas of agricultural land was acquired under Notification, dated 24-04-2002 and Award No.13/03, dated 29-05-2003, was passed whereunder a sum of Rs.80,000/- per acre was fixed as the market value. Not satisfied with the adequacy of the compensation fixed, the claimants got the dispute referred to the Reference Court under Section 18 of the Act.

The claimants have examined PWs.1 to 9 and got Exs.A.1 to A.10 marked. The Land Acquisition Officer /Reference Officer has examined herself as RW.1 and got marked Ex.B.1- Award.

On considering the oral and documentary evidence, the Reference Court has enhanced the compensation to Rs.1,91,000/- per acre in respect of the lands, which are the subject matter of OP.Nos.18, 14 & 74 of 2004 and 664 & 650 of 2010, and to Rs.2,05,900/- in respect of the lands, which are the subject matter of OP.No.19 of 2005. As referred to above, both the State as well as the claimants have filed their respective Appeals and Cross-Objections.

We have heard Mr.T.Sharath, learned Special Government Pleader appearing for the learned Advocate-General for the State of Telangana, Mr.J.Janaki Rami Reddy, learned Counsel for the respondents/claimants in LAAS.No.316 of 2008, appellants/claimants in LAAS.Nos.664 and 650 of 2010 and also for the cross-objectors in LAAS.No.35 of 2009 and Mr.S.Venkateswar Reddy, learned Counsel for the Cross-Objectors/respondents in LAAS.No.318 of 2008.

The learned Special Government Pleader argued that in the absence of comparable sales of contemporaneous period, the Land Acquisition Officer has taken into consideration the potentialities of the lands and fixed the market value @ Rs.80,000/- per acre, which is reasonable. He has commended the soundness of the reasons given by the Land Acquisition Officer in Ex.B.1 and submitted that the Reference Court has committed an error in placing reliance on Ex.A.2- sale deed, which was executed more than 10 years prior to the acquisition of the lands.

Both Mr.J.Janakirami Reddy and Mr.S.Venkateswar Reddy, learned Counsel for the claimants, also expressed their grievance against the approach of the Reference Court in not adopting the market value as fixed under Ex.A.9- Common Judgment in

AS.No.73 of 2003 & batch in respect of the lands situated on the southern side of Tungabhadra river notwithstanding the fact that the fertility and potentialities of both these lands are identical. They have, accordingly, urged the Court to fix the same market value as was fixed under Ex.A.9.

We have carefully considered the respective submissions of the learned Counsel for the parties with reference to the record.

One of the methods of assessing the market value pertains to relying upon the comparable sales. The annual yield is also another method by which the market value of the land is assessed. In the present cases on hand, the former method has been adopted. Exs.A.1 to A.3 are the certified copies of the registered sale deeds filed by the claimants. Ex.A.1 is dated 16.11.2001, while Exs.A.2 and A.3 are dated 30.10.1992 and 12.11.1992 respectively. The Reference Court has considered these three documents and chosen to place reliance upon Ex.A.2. It has given reasons for discarding Ex.A.1, under which the land was described as 'Aruthadi', which means that single crop can be raised with available water. Similarly, Ex.A.3 was also discarded as it also pertained to a single crop land. The Reference Court relied upon Ex.A.2 for the reason that PW.3, who is claimant No.43 in LAOP.No.14 of 2004, in his evidence has requested to fix the market value based on Ex.A.2 by giving appreciation @ 10% p.a. for the time gap between the date of Ex.A.2 and the date of Section 4 (1) Notification. Accepting this request, the Reference Court has taken Ex.A.2 as the basis for fixing the market value by giving 10% escalation per annum.

The learned Special Government Pleader has not disputed the fact that Ex.A.2 is a comparable sale, if proper annual escalation is allowed. Therefore, in our opinion, the Reference Court has displayed a rational approach and assigned weighty reasons to accept Ex.A.2 as a comparable sale by providing reasonable escalation.

The learned Special Government Pleader also did not dispute the fact that allowing 10% escalation per annum to bring Ex.A.2 on par with the present market value also is neither unreasonable nor unconscionable. Hence, in our opinion, the State Cannot have any grievance against the Award in fixing the market value at Rs.1,91,000/- in respect of the lands, which are the subject matter of OP.Nos.18, 14 & 74 of 2004 and 664 & 650 of 2010, and at Rs.2,05,900/- in respect of the lands, which are the subject matter of OP.No.19 of 2005. Therefore, all the four Appeals filed by the State must fail.

Coming to LAAS.Nos.654 and 650 of 2010 and the Cross-Objections in LAAS.Nos.318 of 2008 and 35 of 2009, the claim for enhancement is based on Ex.A.9- Common Judgment in AS.No.73 of 2003 of this Court whereunder a sum of Rs.2 lakhs per acre was fixed. The Reference Court has declined to place reliance on Ex.A.9 on the ground that the lands covered by the said Judgment were situated on the southern side of Tungabhadra river falling under Kurnool District and that even though the fertility and potentialities may be more or less similar, the same, by itself, would not constitute the sole criterion for fixing the market value. We have no reason to come to a different conclusion from the one arrived at by the Reference Court in this regard. Even if the acquired lands have similar fertility and potentialities as that of the lands covered by Ex.A.9, still the market value varies depending upon the availability of purchasers and the demand for the lands. Unless comparable sale deeds exist, the Court cannot enhance the market value merely based on the fertility and potentialities of the lands. At any rate, the difference between the market value fixed by the Reference Court in the instant cases and that fixed under Ex.A.9 is very marginal. Therefore, we are not impressed by the submission of the learned Counsel for the claimants that market value may be fixed based on Ex.A.9. We are, however, inclined to accept the submission of the learned Counsel for the claimants that the Reference Court ought to have given 12% annual escalation instead of 10%, following Ex.A.9. It is not in dispute that under

Ex.A.9- Common Judgment, the annual escalation was fixed at 12%. In our opinion, the annual escalation @ 12% is reasonable while adopting the sale consideration under Ex.A.2- sale deed. Accordingly, to this extent, the Orders and Decrees of the Reference Court are modified. The claimants are entitled to higher compensation based on 12% escalation per annum over the sale consideration under Ex.A.2 instead of 10% as was fixed by the Reference Court. In all other respects, the Orders and Decrees of the Reference Court are confirmed.

In the result, LAAS.Nos.316, 317 & 318 of 2008 and 35 of 2009 are dismissed and LAAS.Nos.664 & 650 of 2010, Cross-Objection (Sr) No.11532 of 2010 in LAAS.No.318 of 2008 and Cross-Objection (Sr) No.5110 of 2014 in LAAS.No.35 of 2009 are partly allowed to the extent indicated above.

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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