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

<u>LAAS Nos.301, 320, 323, 328, 334 and 339 of 2015</u>

<u>DATED: 31.01.2017</u>

Between

The Land Acquisition Officer-cum- Revenue
Divisional Officer, Nandyal.

...APPELLANT

And

Gopavaram Venkata Reddy,
S/o. Obula Reddy, H.No.25/191,
Sanjeevanagar, Nandyal,
Kurnool District and others.

...RESPONDENTS

COUNSEL FOR THE APPELLANT: GP FOR APPEALS

COUNSEL FOR THE RESPONDENTS: MR. V. MALLIK

THE COURT MADE THE FOLLOWING:

COMMON JUDGMENT: (*per the Hon'ble Sri Justice C.V. Nagarjuna Reddy*)

At the interlocutory stage, these appeals are taken up for hearing and disposal with the consent of the learned counsel for both the parties. We have heard the learned Government Pleader for Appeals (AP) and Mr. V. Mallik, learned counsel for the respondents.

2. These appeals arise out of common order dated 01.05.2015 in LAOP.No.5 of 2012 and batch on the file of the II Additional Senior Civil Judge, Nandyal.

3. An extent of Ac.15.73 cents in various survey numbers of Moolasagaram village, Nandyal Mandal was acquired for widening and deepening of Chamakalva on both sides in connection with Nandyal Flood Protection works. Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 29.09.2009 and published in the newspapers on 19.10.2009. The draft declaration under Section 6 of the Act was published in the Kurnool District Gazette dated 19.10.2009 and two daily news papers on 20.10.2009. Following notices under Sections 9(1) and 10 of the Act, the award enquiry was made and award No.5 of 2010 was passed on 23.07.2010 by the appellant fixing the market value of the land at Rs.1,50,000/- per acre with all statutory benefits of solatium, additional market value and interest. Not satisfied with the award of the appellant, the respondents sought reference under Section 18 of the Act to the civil Court by claiming Rs.50,00,000/- per acre. The reference was registered as LAOP.No.5 of 2012 and batch.

4. While the appellant has not adduced any oral evidence, he got marked Ex.A1 copy of award No.5 of 2010. The respondents/claimants

have examined R.Ws.1 and 2 and got Exs.B1 to B5 marked. The Court has marked Exs.C1 to C3 and also examined C.W.1, Advocate Commissioner. On appreciation of the oral and documentary evidence, the reference Court has enhanced the compensation to Rs.97,000/- per cent and awarded statutory benefits over the enhanced compensation. Feeling aggrieved by the said enhancement, the State, through the Land Acquisition Officer, filed these appeals.

5. The learned Government Pleader for Appeals submitted that the reference Court made a steep enhancement of compensation and that such enhancement is wholly unsustainable. Mr. V. Mallik, learned counsel for the respondents, while opposing the said submission, argued that the Land Acquisition Officer has fixed abysmally low compensation and that the reference Court, based on Ex.B5 sale transaction taken place more than three years preceding the date of notification for acquisition, fixed the market value by giving cogent reasons and that, therefore, the award of the reference Court is not liable for interference.

6. It is trite law that the compensation fixed for the land acquired under the Act must reflect the market value, which is the value a willing purchaser is prepared to pay to a willing seller. One of the methods of fixation of market value is comparable sales of the properties, which have similar potentialities to the acquired land. The respondents/claimants have produced Exs.B1 to B3 certified copies of registered sale deeds dated 07.07.2007. Ex.B1 is the registered sale deed dated 07.07.2007 under which an extent of 5745.76 sq. yards in Sy.Nos.424/2, 424/3 and 427/2 was purchased for a sum of Rs.6,89,49,120/-, which works out to Rs.5,80,00,000/-

per acre. Ex.B2 is the registered sale deed of the same date for 1306 sq. yards in Sy.No.424/3 for a consideration of Rs.1,56,72,000/-, which works out to Rs.5,80,00,000/- per acre. Under Ex.B3 an extent of 687.37 sq. yards in Sy.Nos.427/2 and 424/2 was sold for a sum of Rs.81,49,440/-, which works out to Rs.5,73,82,000/- per acre. R.W.1, who is the claimant in LAOP.No.5 of 2012 and respondent in LAAS.No.328 of 2015 deposed that these lands are similar in nature and having same potentialities to the acquired land. Under Ex.B5, certified copy of registered sale deed dated 08.09.2006, an extent of Ac.0.10 cents in Sy.No.438/A/3B was purchased for a sum of Rs.7,12,000/-. R.W.2, who is the claimant in LAOP.No.24 of 2013 and respondent in LAAS.No.301 of 2015, deposed that he is the purchaser under Ex.B5 and the same land was acquired by the appellant.

7. The reference Court, on consideration of Ex.B5 under which the cost per cent worked out to Rs.71,200/- and following the judgment of the Apex Court in OM PRAKASH v. UNION OF INDIA[1], has applied 12% per annum towards appreciation in market value and eventually fixed Rs.97,000/- per cent as the market value.

8. From the evidence on record, as discussed above, it appears that the acquired land is situated on the Kurnool-Nandyal national highway and has the potentiality of being used for non-agricultural purposes. While considering the comparative sales, no sale transaction would offer a better guidance than the sale transaction covering the land, which itself is under acquisition. It is not in dispute that the land purchased under Ex.B5 by the claimants in LAOP.Nos.24 and 25 of 2013 itself was under acquisition. Nothing was suggested to R.W.2

[1] (2004) 10 SCC 627

that the said sale transaction is not bonafide. Therefore, the approach of the lower Court in adopting Ex.B5 for fixing the market value cannot be found fault with.

9. As regards the annual enhancement, as noted hereinbefore, the reference Court has followed the ratio in OM PRAKASH (supra). However, the learned Government Pleader pleaded that the enhancement may be reduced to a reasonable extent. Mr. V. Mallik has fairly agreed for annual enhancement by 10% instead of 12%.

10. Having regard to the above discussion, we are of the opinion that fixing the market value based on Ex.B5 sale transaction by allowing enhancement at 10% per annum instead of at 12% per annum fixed by the reference Court would meet the ends of justice. Accordingly, the award of the reference Court is modified only to the above extent while confirming the same in respect of all other aspects.

The appeals are accordingly allowed in part.

As a sequel to the disposal of the appeals, LAASMP.Nos.1025, 1067, 1111, 1093, 1074, 1098 and 1112 of 2015 and LAASVMP.Nos.1274, 1276, 1275, 1273, and 1272 of 2016 are disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

T. RAJANI, J

January 31, 2017
DSK