THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Appeal Suit No.4199 of 2004

JUDGMENT :

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

The appellant/claimant aggrieved by the order and decree dated 30.6.2004 made in L.A.O.P. No.497 of 2000 on the file of the court of the Principal District Judge, Ranga Reddy District, preferred this appeal on the grounds that the referral officer ought to have considered that the respondent himself called for negotiations in the year 1997 and the accepted rate was Rs.4,200/- per square yard against the claim of Rs.10,000/- per square yard by accepting the basic value rate of Rs.4,000/- per square yard, but the referral officer wrongly arrived at an amount of Rs.3,000/- per square yard.

2. The referral court ought to have seen that as per law as well as equity the claimant is entitled to the compensation at least basing on the existing market value of the land notwithstanding with the basic value register.

3. It is further contended that the referral court ought to have seen that the mulgies' physical possession was taken over in the year 1994, as such the claimant is entitled for the loss of rents for the period from 1994 to 1998, but the same was not considered. The compensation fixed is too meagre and disproportionate to the technical existing market value.

4. It is further contended that the referral court failed to see that the house and mulgies are situated in a prime locality of the main road, as such, the same is a valuable site and ought to have fixed the compensation basing on the existing market value, instead of restricting the same to Rs.3,000/- per square yard.

5. On the other hand, the contention of the respondent is that there were no sales during the said relevant period and no documents were filed by the claimant showing the market value at the rate of Rs.10,000/- per square yard.

6. Undisputed facts are that the appellant/claimant is the owner and landlord of land admeasuring 410 square yards forming part of Sy.No.42/2 of Fathenagar Village, Balanagar Mandal, R.R.District. Out of the said land, the respondent acquired an extent of 230 square yards for the purpose of laying road over bridge at Fathenagar Railway Crossing. The claimant got a residential house bearing No.7-2-36 to 40 consisting with 8 mulgies on the main road situated at chowrastha of the two roads from Balkampet to Balanagar and Fathenagar to Erragadda, each mulgi was fetching a rent of Rs.800/- per month. The Land Acquisition Officer fixed the compensation at the rate of Rs.2,150/- per square yard and in the reference under Section 18, the referral officer awarded compensation fixing the rate at Rs.3,000/- per square yard.

7. The claimant himself is examined as P.W.1 and the Special Deputy Collector, Land Acquisition, is examined as R.W.1. In support of the

claimant, Exs.A1 to A9 were marked and on behalf of the Special Deputy Collector and Land Acquisition Officer, Ex.B1 is marked.

8. From the evidence of P.W.1 it is clear that the land to an extent of 230 square yards was acquired for the purpose of laying road over bridge at Fathenagar railway crossing. It is the further evidence of P.W.1 and admissions made by R.W.1 that the property acquired is situated in the business centre abutting to the main road which is being used for commercial purpose and fetching a rent of Rs.800/- per month for each mulgi. This fact that the property acquired belongs to the claimant/P.W.1 is on the main road and 8 shop rooms were constructed which are let out is expressed by the Engineering Department in its opinion about the existing structures and its value.

9. The copy of the Land Acquisition Notification, dated 30.4.1997 is filed and marked as Ex.A1 and further notification dated 1.5.1997 is marked as Ex.A2. Exs.A3, A6 to A8 are the letters written by P.W.1 to the Special Deputy Collector. In the said letters, P.W.1 specifically averred that the property acquired is situated in a busy commercial area where the rents are high and in fact he let out 8 mulgies erected in the year 1994 and there is a loss of rents for the said mulgies during 1994 to 1998. It is also an admitted fact that the land belongs to black lite hylum was also acquired for construction of the same flyover. The explanation of the Land Acquisition Officer why he could not select and rely on sale deed in respect of Sy.No.59 for the property acquired from black lite hylum is that those sale deeds are subsequent to the notification date and

also the sales are in respect of very small extents. It is also a fact that the claimant did not file any sale deeds showing the prevailing market value of the said area except stating that the Basic Value Register mentions that the rate is Rs.3,000/- to Rs.4,000/- per square yard. In the absence of any such material, the Land Acquisition Officer fixed the market value only on the basis of the document in respect of black lite hylum and the property was also acquired almost 1 year 4 months prior to the notification which is very nearer to the land acquired.

10. It is common parallel that the property situated in a business centre abutting to the main road will fetch higher rate than the property situated interior or at a distance from the main road, because the properties abutting to the main road can be used for commercial purpose, whereas the properties interior are mostly used for residential purposes. As such, there will be variance between the market value of the property situated on the main road and on the interior. Ex.A5 is the market value of the property as per the Sub-Registrar value as on 23.8.2002. According to which, the Sub-Registrar value of the property is Rs.4,000/- in the year 1997 and Rs.6,000/- in the year 2000. In the letters under Ex.A3 and Exs.A6 to A8, the claimant clearly asserted that there were negotiations between P.W.1 and the Land Acquisition Officer and the Joint Collector on number of occasions and the Officer offered Rs.5,000/- per square yard and ultimately they agreed to pay Rs.4,000/- per square yard. Having agreed P.W.1 submitted necessary papers, but those copies of such letters were not filed before the referral officer or filed any petition to send for those papers filed before the Joint Collector. The said letters

under Ex.A3 and Exs.A6 to A8 will establish that P.W.1 sent number of applications to the Collector in which there is a categorical mention about the discussions held by the Joint Collector and also both of them agreed that at one time settlement the Government has to pay compensation of Rs.4,000/- per square yard. In fact, P.W.1 admitted, during the cross-examination, to receive the compensation at the rate of Rs.4,000/- per square yard, though made a claim for compensation at the rate of Rs.10,000/- per square yard.

11. Absolutely there is no explanation from the Land Acquisition Officer as to why he could not believe the Basic Value Register or value mentioned therein. He only fixed the market value on the basis of the document irrespective of black lite hylum and that property was also acquired almost 1 year 4 months prior to the notification with regard to the acquisition of the P.W.1's property. R.W.1 admits the basic value register value is from Rs.3,000/- to Rs.4,000/- per square yard, but he did not give any reasoning as to why he has not taken that market value into account. It is a known fact that the market value fixed by the Government in the basic value register is for the purpose of collection of stamp duty and for the purpose of registration, because in many of the transactions, though the actual amount of price is much higher, they will show lower price only to evade the payment of stamp duty. Therefore, the Government from time to time revise the market value in the basic value register, that will be a clue or a fact that can be taken into account by the Land Acquisition Officer in fixing the market value.

12. In view of the facts and circumstances discussed above and having regard to those discussions and talks between the claimant and the Special Deputy Collector and also having regard to the basic value register value under Ex.A5, the fixation of market value at Rs.2,150/- per square yard by the Land Acquisition Officer, consequently enhancing the compensation at the rate of Rs.3,000/- per square yard from Rs.2,150/- by the referral officer mostly considering the basic value register which is only material available according to which the market value is Rs.3,000/- to Rs.4,000/- per square yard at the relevant time, we are of the considered view that the market value and the compensation can be enhanced from Rs.3,000/- to Rs.3,400/- per square yard having considered that the property is situated in a prime locality abutting to the main road which is being used for commercial purpose.

13. Further, we are of the considered view that the referral officer further taking into consideration the value of the structures in the absence of any material placed by the claimant rightly accepted the report of engineering department that the value of the structures is Rs.1,52,617/-.

14. With regard to deduction towards development, we are of the considered view that the referral officer relying on the decision of ***Sub-Collector and LAO,Gudur v. Venkata Kumaraswamy***[1], has rightly held that since the land is acquired for the purpose of laying road over bridge at Fathenagar Railway Crossing, 1/3rd deduction towards development should not be deducted and allowed compensation for the same also. But, with regard to claim of rents during 1994 to 1998, the referral officer

[1] 2001 (6) ALD 231 (DB)

has rightly rejected the same. The referral officer has also rightly allowed Rs.35,268/- towards 12% additional market value from 12.5.1997 to 31.3.1998.

15. In view of the above facts and having considered the material on record, particularly the evidence of P.W.1 and admissions in the evidence of R.W.1 and discussions between R.W.1 and the Land Acquisition Officer, since the property is situated in a prime locality and commercial area, the compensation is enhanced to Rs.3,400/- from Rs.3,000/- per square yard for the entire 230 square yards with interest at 9% per annum on the enhanced amount. The claimant is entitled for all other statutory benefits as per the Land Acquisition (Amendment) Act, 1984 (Act No.68 of 1984).

16. The Appeal is partly allowed with costs.

17. Consequently miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE N.BALAYOGI

October, 2017.

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