

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE A.SHANKAR NARAYANA**

C.C.C.A.No.146 OF 2004

DATED 28TH MARCH, 2016

BETWEEN

The Special Deputy Collector (MCH),
Land Acquisition Officer, Hyderabad.

....Appellant

And

Yousuf Ali Khan (died per LRs Claimants 2 to 17),

...Respondents.

**HONOURABLE SRI JUSTICE G.CHANDRAIAH
AND
HONOURABLE SRI JUSTICE A.SHANKAR NARAYANA**

C.C.C.A.No.146 OF 2004

ORDER: (Per Hon'ble Sri Justice A.SHANKAR NARAYANA)

The Special Deputy Collector (MCH)-cum-Land Acquisition Officer preferred the instant appeal under Section 54 of the Land Acquisition Act, 1894 aggrieved by the order and decree dated 11.08.2003 passed in OP.No.54 of 1997 on the file of the learned First Senior Civil Judge, City Civil Courts, Hyderabad, whereby and where under, the market value of the land acquired was enhanced from Rs.90/- per square yard to Rs.150/- per square yard.

Notification under Section 4(1) of the Land Acquisition

Act and declaration under Section 6 thereof were published on 6.2.1982 by the Land Acquisition Officer in order to acquire an extent of 2492.44 square yards comprised in Sy.Nos.2 and 3 of Musheerabad village for construction of Storm Water drain from Amber tank to Nagamiah Kunta. The subject matter of this appeal is confined to an extent of 2031 square yards belonging to the claimants who are respondents herein. The Land Acquisition Officer based on the sales statistics for the relevant period fixed the market value of the land acquired at Rs.90/- per square yard and awarded all the statutory benefits. Aggrieved by the same, the respondents/claimants sought reference under Section 18 of the Act. Accordingly, the matter was referred to the Court of First Additional Senior Civil Judge, City Civil Courts, Hyderabad and the said reference was registered as OP.No.54 of 1997. During the course of enquiry, P.W.1 was examined on behalf of the claimants and Exs.A1 to A3 were marked on their behalf. On behalf of the Land Acquisition Officer, R.W.1 was examined and Exs.B1 to B.3 were marked.

In the said reference, the claimants sought to fix the market value of the land acquired, at Rs.1000/- per square yard. The Reference Court having considered that in respect of the land to an extent of 191.30 square yards, which is part and parcel of total extent of 2492.44 square yards and acquired under the same notification, and having fixed the market value at Rs.150/- per square yard as against Rs.90/-per square yard as fixed by the Land Acquisition Officer, fixed the market value of the subject land at Rs.150/- per square yard. On the ground that the enhancement of market value of the land acquired is excessive and arbitrary, the instant appeal is preferred by the

Land Acquisition Officer by raising various grounds.

The learned Government Pleader appearing for the appellant-LAO would submit that the subject matter of instant appeal is squarely covered by the judgment of a Division Bench of this Court in C.C.C.A.No.157 of 2000, dated 13.04.2010 (*The Special Deputy Collector/Land Acquisition Officer, Municipal Corporation of Hyderabad, Vs. Sri Laxminarayana Patel (died) per LRS*) wherein the market value fixed by the Reference Court at Rs.150/- per square yard was confirmed by the Division Bench of this Court. On a perusal of the aforesaid judgment, it is clear that as against the judgment and decree passed in OP.No.9 of 1990 by the Reference Court, arising out of the same notification, a Division Bench of this Court confirmed the market value fixed by the Reference Court at Rs.150/- per square yard in respect of the land belonging to Lakshminarayana Patel (since deceased). Out of the total extent of 2942.44 square yards, in respect of which notification under Section 4(1) of the Act and declaration under Section 6 of the Act were issued, an extent of 2301 square yards belonged to the claimants/respondents herein and an extent of 191.30 square yards belonged to the Lakshminarayana Patel (since deceased) who was claimant in OP.No.9 of 1990. Since the subject matter of land in OP.No.9 of 1990 is part and parcel of total extent of 2942.44 square yards which was covered by same notification and declaration, the subject matter of the instant appeal is squarely covered by the decision of the Division Bench of this Court in CCCANo. 157 of 1990 and, therefore, the market value fixed at Rs.150/- per square yard by the Reference Court is confirmed.

The learned Government Pleader would submit that since the 4(1) notification was issued on 6.2.1982 and the provisions of the Amending Act came into force on 30.4.1982, the claimants are not entitled to additional market value. The Honourable Apex Court while interpreting the provision under Section 23(1-A) of the Land Acquisition (Amendment) Act, 1984 in the case of *K.S.Paripprnan Vs. State of Kerala* {(1994)5SCC 593} while answering the reference therein held in paragraph '110' that the claimants are entitled to additional market value in all those cases where the proceedings were pending and the award had not been made by the Collector on or before 30.4.1982. Therefore, it is unnecessary to refer to other decisions relied on by the learned Counsel for the claimants/respondents.

The issuance of Section 4(1) notification in the case on hand was though, prior to the insertion of provision of Section 23(1-A) of the Act, but the Award had not been passed by the LAO before the said date and it was passed on 22.09.1986. Therefore, in view of the decision of the Honourable Apex Court referred to supra, the claimants are entitled to additional market value at 12% per annum from the date of notification on 6.2.1982 till date of passing Award on 22.09.1986. Admittedly, possession of the subject land was taken on 21.01.1979, i.e. even before issuance of 4(1) notification. Therefore, in view of the decision of Honourable Apex Court in *Tahera Khotoon Vs. Revenue Divisional Officer/Land Acquisition Officer* {(2014)13 SCC 613}, the claimants are also entitled to damages/rent at the rate of 15% per annum on the compensation awarded from the date the landowners were dispossessed till the date of issuance

of preliminary notification on 6.2.1982. Further, as was held by the Reference Court in the light of the decision of Honourable Apex Court in *Sunder Vs. Union of India* {(2001)7SCC 211}, the claimants/respondents are entitled to interest on solatium and market value from the date of aforesaid decision of the Honourable Apex Court , which was delivered on 19.09.2001

Accordingly the appeal is partly allowed. Miscellaneous petitions pending consideration if any in the CCCA shall stand closed in consequence. No order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE A.SHANKAR NARAYANA

DATED 23RD MARCH, , 2016.
Msnrx