*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ L.A.A.S. Nos.586 of 2017 and 278 of 2018

% Date: 15-11-2018

L.A.A.S. No.586 of 2017:

The Special Deputy Collector, Land Acquisition,
Greater Hyderabad Municipal Corporation, Hyderabad

… Appellant/Respondent

Vs.

$ 1. M.Trilok Singh S/o Late Narayan Singh, Aged 64 years,
Occ: Retired Employee, R/o H.No.3-1-425/1,
Nimboliadda, Kachiguda, Hyderabad

2. M.Dalveer Singh S/o Late Narayan Singh, Aged 60 years,
Occ: Retired Government Employee, R/o H.No.3-1-425/1,
Nimboliadda, Kachiguda, Hyderabad

… Respondents/Petitioners

L.A.A.S. No.278 of 2018:

1. M.Trilok Singh S/o Late Narayan Singh, Aged 70 years,
Occ: Retired Employee, R/o H.No.3-1-425/1,
Nimboliadda, Kachiguda, Hyderabad

2. M.Dalveer Singh S/o Late Narayan Singh, Aged 66 years,
Occ: Retired Government Employee, R/o H.No.3-1-425/1,
Nimboliadda, Kachiguda, Hyderabad

… Appellants/Claimants

Vs.

$ The Special Deputy Collector, Land Acquisition,
Greater Hyderabad Municipal Corporation,
Lower Tank Bund Road, Hyderabad

… Respondent/Referring Officer

! Counsel for Referring Officer: Government Pleader for Appeals (Telangana)

Counsel for Claimants: Mr. L.Ravichander, Senior Counsel, representing Mr. V.M.M. Chary

< Gist:

> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

L.A.A.S. Nos.586 of 2017 and 278 of 2018

Common Judgment: (per VRS, J.)

Both these appeals are filed under Section 54 of the Land Acquisition Act, 1894. While one appeal is by the Land Acquisition Officer challenging the enhancement granted by the Reference Court, the other appeal is by the claimants questioning the inadequacy of enhancement granted by the Reference Court.

2. Heard the learned Government Pleader for Appeals (Telangana) and Mr. L.Ravichander, learned Senior Counsel appearing for the claimants.

3. By a Notification under Section 4(1) of the Land Acquisition Act, 1894, approved by the District Collector on 10-9-2007, the land of a total extent of 3,364.44 square yards in T.S.Nos.13/2, 13/3 and 14/2, Lingampally Village of Himayathnagar Mandal was sought to be acquired for the purpose of widening of the road for Hussain Sagar Surplus Nala. A declaration under Section 6 was published in the District Gazette on 05-3-2008. It appears that a preliminary valuation was done by the Joint Collector in August, 2008 and the value of the land was fixed at Rs.11,680/- per square yard. But thereafter, another preliminary valuation was done in February, 2009 on the basis of capitalization method and

the value of the total extent of land of 3,364.44 sq. yards was fixed as Rs.2,94,040/-. This worked out to a little over Rs.80/- per square yard.

4. After the award was passed, the land owners filed a writ petition in W.P.No.27020 of 2011, seeking a declaration that the entire land acquisition proceedings commencing from the Notification under Section 4(1) dated 10-9-2007 were illegal. The said writ petition was allowed by a learned Judge of this Court by an order dated 02-7-2012. Though the challenge in the writ petition was to the entire proceedings, this Court did not interfere with the proceedings for acquisition, but set aside the award dated 27-02-2009.

5. The order of the learned Judge was taken on appeal in Writ Appeal No.1327 of 2012. But the Division Bench dismissed the appeal, though certain observations made by the learned single Judge against the officer who passed the award were directed to be deleted.

6. Thereafter, a fresh award was passed by the Special Deputy Collector on 17-12-2013. Under the said award, the market value of the land was fixed at Rs.11,680/- per square yard.

7. The land owners sought a reference under Section 18. The Reference Court, by a judgment dated 03-8-2017 passed in L.A.O.P. No.2130 of 2014 enhanced the compensation to Rs.24,175/- per square yard. Challenging the enhancement so granted, the Land Acquisition Officer has

come up with the appeal L.A.A.S. No.586 of 2017. Contending that the compensation should have been enhanced to Rs.40,000/- per square yard, the land owners have come up with the appeal L.A.A.S. No.278 of 2018.

8. It is seen from the judgment of the Reference Court that the claimants examined one witness as P.W.1 and filed eight documents as Exs.P-1 to P-8. The Land Acquisition Officer examined himself as R.W.1, but did not file any documents.

9. Ex.P-1 is the certified copy of the sale deed dated 19-01-2007. Ex.P-2 is the certified copy of the sale deed dated 13-6-2006. Ex.P-3 is the certified copy of the sale deed dated 18-02-2008. Ex.P-4 is the certified copy of the sale deed dated 25-6-2007. Ex.P-5 is the copy of the gift deed dated 10-11-2006. Ex.P-6 is the certified copy of the sale deed dated 06-12-2007. Exs.P-7 and P-8 are the market value certificates issued by the Joint Sub Registrar on 14-9-2016 and 16-9-2016.

10. Before the Reference Court, two issues were raised by the claimants. One related to the determination of market value of the property. The other related to the question as to whether compensation was payable in terms of Central Act 30 of 2013.

11. After analyzing Section 24 of Central Act 30 of 2013, the Reference Court came to the conclusion that since possession had already been taken and also since the award

had been passed on 17-12-2013, the provisions of the new Act will not apply. Though the claimants have raised this issue as one of the grounds of attack to the judgment of the Reference Court, the said contention was not pursued in the course of oral arguments. The focus before us in the course of arguments, was only on the determination of market value and the claimants wanted the market value to be fixed at Rs.40,000/- per square yard. Therefore, the question as to whether compensation is payable in terms of Central Act 30 of 2013 does not arise for consideration before us. On the next question relating to the determination of market value, the Reference Court found that two sale deeds taken into account by the Land Acquisition Officer, which were dated 06-02-2007 and 25-6-2007, reflected the market value of Rs.24,175/- per square yard and Rs.22,000/- per square yard respectively and that therefore the market value should be taken to be Rs.24,175/- per square yard.

12. Assailing the judgment of the Reference Court, it is contended by Mr. L.Ravichander, learned Senior Counsel – (i) that the total extent of land acquired by the Government was 3,598.90 sq. yards as per the Notification dated 10-9-2007 and not 3,364.44 sq. yards and (ii) that as per Exs.P-7 and P-8, the market value of the land was Rs.40,000/- per square yard. Therefore, the learned Senior Counsel contended – (i) that the compensation should be fixed for the total extent of 3,598.90 sq. yards, (ii) that the

market value should be fixed at Rs.40,000/- per square yard, (iii) that since possession was taken before payment, additional market value should be paid, (iv) that the interest on solatium should be paid, (v) that Income Tax cannot be deducted at source and (vi) that insofar as the excess land (3,598.90 – 3,364.44) of 234.54 sq. yards is concerned, the Government should actually initiate fresh proceedings under Central Act 30 of 2013. In support of everyone of his contentions, the learned Senior Counsel also placed reliance upon various decisions of this Court as well as the Hon'ble Supreme Court.

13. Per contra, it was contended by the learned Government Pleader for Appeals (Telangana) that all the documents relied upon by the claimants before the Reference Court, related to small extents of land, especially undivided shares of land in Apartment Complexes and that therefore those documents cannot be taken to be reflective of the true market value. According to the learned Government Pleader, when a vacant plot of land is developed into a site where residential apartments come up, the market value spirals up and that therefore the rate indicated in the documents conveying undivided shares of land in Apartment Complexes, cannot be taken to be a guiding factor. On the controversy relating to the total extent of land, the learned Government Pleader submitted that the very reference was only for the land of an extent of 3,364.44 sq. yards and that therefore the

scope of the reference cannot be enlarged now, to include an excess land.

14. We have carefully considered the above submissions. Two issues arise for our consideration and they are:

(1) Whether compensation is payable for the land of an extent of 3,598.90 sq. yards or for the extent of 3,364.44 sq. yards? and

(2) Whether the compensation fixed by the Reference Court is in excess or inadequate?

Issue No.1:

15. The controversy relating to the total extent of land need not detain us for long. This is for the simple reason that though the Notification under Section 4(1) dated 10-9-2017 indicated the extent of land to be 3,598.90 sq. yards, all proceedings subsequent thereto, indicated the extent of land acquired only as 3,364.44 sq. yards. It is seen from the copy of the award dated 17-12-2013 that the very requisition placed by the Assistant City Planner, Circle 3 of the Municipal Corporation of Hyderabad was for the acquisition of open plot of land measuring 3,364.44 sq. yards. The survey and sub division undertaken pursuant to the requisition also revealed the land available only as 3,364.44 sq. yards. The preliminary valuation, on the basis of which an award was passed in the first instance on 27-02-2009 fixing the market value at the rate of Rs.80/- per square yard, also

related only to the extent of 3,364.44 sq. yards. After the said award was set aside by this Court in W.P.No.27020 of 2011, a fresh award was passed on 17-12-2013. Even in the said award, compensation was fixed only for the land of an extent of 3,364.44 sq. yards.

16. The notice of award issued under Section 12(2) of the Act in Form 9, dated 04-02-2014 also clearly indicated the total extent only as 3,364.44 sq. yards. It is only after receipt of this notice that the claimants sought a reference under section 18. While doing so, the claimants did not point out that the award should have been for 3598 sq.yards. In fact, the extent of land acquired, never became an issue of controversy at any time. Interestingly, the very prayer made in the first writ petition filed by the claimants in W.P.No.27020 of 2011, indicated the total extent of land only as 3,364.44 sq. yards. The prayer in W.P. No.27020 of 2011 reads as follows:

> "... ... ... to issue a Writ, order or direction and more particularly one in the nature of Writ of *mandamus* declaring the land acquisition proceedings u/Sec.4 of the Land Acquisition Act, 1894 dated 10-9-2007 and all consequential proceedings including declaration and award issued by the respondents in respect of the petitioners property bearing T.S.Nos.11, 12, 13/2, 13/3, 14/2 admeasuring 3,364.44 sq. yards situated at Lingampally Village, Himayathnagar Mandal, Hyderabad as illegal, arbitrary, unconstitutional and contrary to the provisions of the Land Acquisition Act, 1894 (amended Act 68/1984) especially Secs.3(c), 5(A), (7), 11, 12 apart from being in contravention of the principles of natural justice and consequently set aside the said acquisition proceedings and

direct the respondents not to interfere with the petitioners over their property in any manner."

17. In the claim statement filed by the claimants before the Reference Court in L.A.O.P. No.2130 of 2014, the claimants never raised any dispute with regard to the extent of land. Therefore, it is not now open to the claimants to raise a dispute with regard to the total extent of land.

18. One more interesting fact is that the claimants, who have come up with an independent appeal in L.A.A.S. No.278 of 2018, have not chosen to value their appeal in respect of the land of the extent of 3,598.90 sq. yards. They have valued the appeal only in relation to 3,364.44 sq. yards. None of the grounds of appeal is also on the basis that the total extent of land acquired is more than what is stated. Therefore, we answer issue No.1 against the claimants and we hold that the dispute is confined only to 3,364.44 sq. yards and nothing more.

Issue No.2:

19. As we have pointed out earlier, an award was passed in the first instance on 27-02-2009 fixing the market value of land at around Rs.80/- per square yard. But it was a completely frivolous fixation, as the same was fixed on the basis of capitalization method. It was nobody's case that the land had standing crops or fruit bearing trees, so as to apply capitalization method. It was an open plot of land. The preliminary valuation done by the Joint Collector in

August, 2008 (six months before the first award) indicated the market value at Rs.11,680/- per square yard. In order to nullify the same, the Land Acquisition Officer adopted capitalization method and hence the first award dated 27-02-2009 was set aside by this Court in a writ petition.

20. Thereafter, the Land Acquisition Officer passed an award on 17-12-2013 fixing the market value at Rs.11,680/- per square yard. To arrive at the said value, the Land Acquisition Officer took note of about seven sale transactions, six of which were of a date prior to the date of Notification under Section 4(1). The seventh sale transaction was dated 13-3-2008. The particulars regarding these sale transactions were provided in a tabular column by the Land Acquisition Officer in his award dated 17-12-2013. This tabular column is reproduced as follows:

Sl. No.	Description of property premises No.	Document No. & Date	Value of the total transaction (inclusive of structure value)	Rate per sq. yard (inclusive of structure value)	Rate per sq. yard of land (excluding structure value
1	2	3	4	5	6
1	1-8-703 to 707	2170/07 25-6-2007	11,74,000/- 25 sq. yds	46,960/-	22,000/-
2	1-8-702/35 & 35/A	4307/07 6-02-2007	35,00,000/- 80 sq. yds	43,750/-	24,175/-
3	2-1-332/B 2-1-327	4298/06 10-11-06	44,00,000/- 200 sq. yds	22,000/-	19,682/-
4	2-1-390	184/07 19-1-2007	7,96,000/- 50 sq. yds	15,920/-	15,000/-
5	2-1-370	695/07 23-2-2007	11,32,200/- 50 sq. yds	22,644/-	4,356/-
6	3-4-910	2250/06 7-6-2006	8,50,000/- 4705 sq. yds	17,895/-	11,680/-
7	1-3-208	684/08 13-3-2008	3,86,500/- 8 sq. yds	48,312/-	37,040/-

21. As seen from the above tabulation, the valuation indicated in the last of the transactions could not have been relied upon, as it had taken place six months after the Notification under Section 4(1). Therefore, the Land Acquisition Officer could have chosen the rate indicated in anyone of the first six transactions, as the basis for arriving at the market value. But instead, he went by the Joint Collector's inspection report and accepted the value of Rs.11,680/- per square yard. Anyway the same tallied with the value indicated in the sale deed dated 07-6-2006, found at serial No.6 in the above tabulation.

22. Before the reference Court the land owners filed eight documents. Their claim for fixation of market value of the land at Rs.40,000/- per sq. yard was based upon Exs.P.7 and P.8, which were market value certificates, issued by the Sub-Registrar. But it is a settled principle that the market value/guideline value adopted by the Sub-Registrars is for the purpose of prevention of undervaluation of documents and for collection of appropriate stamp duty. In any case, these documents disclose that the market value adopted by the Sub-Registrar as on 01.06.2007 was Rs.30,000/- per sq. yard and it was Rs.40,000/- per sq. yard as on 01.06.2009 as well as on 01.06.2011. The date of notification under Section 4(1) was 10.09.2007. Therefore, these Exs.P.7 and P.8 do not support the claim of the land owners for fixation of market value at Rs.40,000/- per sq. yard.

23. Now let us take the remaining six documents, viz., Exs.P.1 to P.6. Out of them, Ex.P.5 is a gift deed dated 10.11.2006. Therefore, the same cannot be taken to be indicative of the market value. Ex.P.6 is a sale deed dated 06.12.2007. This transaction was three months after the date of notification under Section 4(1). Similarly, Ex.P.3 is a sale deed dated 18.02.2008, which is also subsequent to the notification under Section 4(1). Hence the same cannot also be looked into. That leaves us with Ex.P.1, P.2 and P.4. The extent of land sold under these sale deeds, the total sale consideration paid thereunder and the market value reflected in them, can be tabulated as follows:

Ex.No.	Date of sale	Extent of land	Total sale consideration In Rs.	Market value per Sq. Yard. In Rs.
Ex.P.1	19.01.2007	50 sq. yards + house building	7,96,000/-	Rs.15,920/- per sq.yard inclusive of the value of the building measuring 200 sq. ft.
Ex.P.2	13.6.2006	Undivided share of land 25 sq. yards out of 463 sq. yards.	7,20,000/-	Rs.28,800/- for land together with the constructed area of 1125 sq. ft.
Ex.P.4	25.6.2007	Undivided 25 sq. yards of land	11,74,000/-	Rs.46,960/-, which includes the value of the flat of a built up area of 1300 sq. ft.

24. As we have pointed out earlier, the date of issue of notification under Section 4(1) was 10.09.2007. The extent of land acquired was 3364.44 sq. yards. The extent of land covered by Exs.P.2 and P.4 are just 25 sq. yards and that too

undivided 25 sq. yards of land out of a larger extent together with a flat of a built up area of 1125 sq. ft. in one case and 1300 sq. ft. in another case. The total extent of land covered by Ex.P.1 was 50 sq. yards (not undivided share). Exs.P.1 and P.2 reflect a market value of Rs.15,920/- and Rs.28,800/- respectively, in respect of both land and constructed area. Under Ex.P.2 the constructed area of the flat was 1125 sq. ft. Under Ex.P.4 the built up area of the flat was 1300 sq. ft. Therefore, even if a value of Rs.500/- per sq. feet is accorded to the constructed area, all these documents will reflect a market value far below the one fixed by the reference Court. Therefore, the land owners should be happy that the reference Court did not place reliance upon the documents relied upon by the claimants.

25. This can be demonstrated by working out details. Let us take for instance Ex.P.4. It is a sale deed of undivided 25 sq. yards of land together with a flat of a built up area of 1300 sq. ft. The total sale consideration reflected in the document was Rs.11,74,000/-. Even if the value of the superstructure is taken to be Rs.500/- per sq. ft., the total value of the built up area would come to Rs.6,50,000/-. If this amount is deducted from the total sale consideration we will arrive at the total sale consideration paid for the land at Rs.5,24,000/-. If this is the value of undivided 25 sq. yards of land, the market value of the land would workout to a little less than Rs.21,000/- per sq. yard.

26. In fact Ex.P.4 is a sale deed that related to the sale transaction at Sl.No.1 of the data sales took note of by the Land Acquisition Officer. In the previous paragraph we have roughly taken the cost of construction of the flat at Rs.500/- per sq. ft. and arrived at the market value of the land at less than Rs.21,000/- per sq. yard. But the Land Acquisition Officer, in his Award, arrived at the market value of the land under this transaction (exclusive of superstructure) at Rs.22,000/- per sq. yard.

27. Similarly, Ex.P.6 is actually a sale deed dated 06.12.2007, registered as Doc.No.4307/2007. The property covered by the sale deed is 80 sq. yards of undivided share of land together with the 5th floor flat measuring 2700 sq. ft. along with a terrace area of 1000 sq. ft and two car parking areas. The total sale consideration paid was Rs.35,00,000/-, out of which Rs.15,00,000/- was accounted for the super built up area. Therefore, at Sl.No.2 in the tabulation containing data sales, mentioned in his award, the Land Acquisition Officer arrived at the market value of the land at Rs.24,175/-.

28. The reference Court was tempted to go by the market value of Rs.24,175/- per sq. yard indicated in the sale deed at Sl.No.2 of the tabulation contained in the award. But where the reference Court committed a mistake was that in column No.3 of the tabulation given by the Land Acquisition Officer in his Award, as against the transaction at Sl.No.2, he

wrongly indicated the date of sale as 06.02.2007. But actually the document mentioned at Sl.No.2 of the table given by the Land Acquisition Officer in his Award, related to Ex.P.6. It is dated 06.12.2007. The date of notification under Section 4(1) is 10.09.2007. Therefore, the transaction at Sl.No.2 of the tabulation of data sales mentioned in the award, could not have been taken by the reference Court.

29. If the market value indicated in the sale transaction at Sl.No.2 of the tabulation of data sales given by the Land Acquisition Officer in his Award is rejected, along with the document at Sl.No.7 of the same tabulation, on the ground that both of them were subsequent to the date of notification under Section 4(1), what was left was only five transactions. Out of the remaining five transactions, the best transaction that could go in favour of the land owners was the sale at Sl.No.1 of the tabulation dated 25.06.2007, which is nothing but Ex.P.4. The market value of the land indicated in this Ex.P.4 was only Rs.22,000/- per sq. yard.

30. As rightly contended by the learned Government Pleader for Appeals, the market value of the land indicated in a sale deed of undivided share of about 25 sq. yards together with a built up flat, cannot be compared with a vacant land of an extent of about 3364.44 sq. yards. For putting up a residential/commercial complex of flats, the developer had to undertake a lot of activities. Therefore, the market value of undivided share of 25 sq. yards in a developed plot cannot be

indicative of the value of an undivided plot of 3364.44 sq. yards.

31. Mr. L. Ravichander, learned Senior Counsel appearing for the claimants, while seeking the fixation of market value at Rs.40,000/- per sq. yard, broadly developed his contentions around four different propositions. They are – (1) that while determining the value of the property, the potentiality of the land to be used for near future has to be taken into account; (2) that cumulative increase of 10 to 15% per year of the market value shall be applied; (3) that it is not a universal rule that sale transactions relating to small extents of land shall not be considered while fixing the market value of large extents of land acquired for public purpose; and (4) that the claimants are also entitled to interest on solatium.

32. In support of the above propositions, the learned Senior Counsel also relied upon several decisions of the Supreme Court. But we do not think that we need to look into everyone of those decisions, insofar as the case on hand is concerned.

33. It is true that while determining the market value, the potentiality of the land had to be taken into account. But this proposition does not take the claimants any where, since we have sale deeds relating to lands, which were developed into residential complexes, both before and after the date of notification under Section 4(1). The land acquired in this case was an open plot of land. The sale transactions that were

taken into account, related to the lands on which flat complexes had come up. Therefore, the potentiality of the land was already inbuilt into the data sales, the documents relating to which, were filed as exhibits.

34. Insofar as the second proposition advanced by the learned Senior Counsel is concerned, the question of applying an increase of 10 to 15% per year does not arise in this case. We have sale deeds executed three months before and three months after the date of notification under Section 4(1). Therefore, there was no question of taking a sale transaction that took place long time before and applying an increase of 10 to 15%.

35. On the fourth proposition relating to interest on solatium, the law is well settled and the claimants are entitled to the same.

36. Insofar as the third proposition advanced by the learned Senior Counsel for the claimants is concerned, we should point out that we are not straight away rejecting the sale deeds Exs.P.4 and P.6. Ex.P.6 had to be rejected since the same related to a transaction that took place after three months of the notification under Section 4(1). Insofar as Ex.P.4 is concerned the market value works out only to Rs.22,000/- per sq. yard. The reference Court committed a mistake in going by Ex.P-6 (which co-related to the sale transaction at Sl.No.2 in the tabulation containing the data sales), thinking that it was dated 6-2-2007. It was actually

dated 06.12.2007 as seen from Ex.P.6. Therefore, this has to be rejected.

37. That leaves us only with Ex.P.4, which is the copy of the sale deed at Sl.No.1 of the tabulation contained in the Award. The market value of the land reflected therein is Rs.22,000/- per sq. yard. But this related to a fully developed land on which a residential complex had come up. Therefore, some deduction had to be made out of the said rate, not merely on account of the fact that it related to the sale of a small extent of land, but also due to the fact that it related to sale of an undivided share of land in a developed layout. The Supreme Court has permitted deduction towards development charges in the range of 10% to 30%. Even if we take a conservative approach and allow a deduction of 10% towards development charges, the market rate would come only to Rs.20,000/- per sq. yard.

38. Therefore, the appeal filed by the claimants seeking further enhancement of compensation is liable to be dismissed. The appeal filed by the Government is liable to be allowed.

39. Accordingly, L.A.A.S.No.278 of 2018 is dismissed. L.A.A.S.No.586 of 2017 is allowed and – (1) total extent of land acquired is determined as 3364.44 sq. yards; (2) the market value is fixed at Rs.20,000/- per sq. yard; (3) the claimants are held entitled to all statutory benefits including interest on solatium as well as additional market value under

Section 23(1A), if the same is applicable. It is made clear that as per the law laid down by this Court, income tax cannot be deducted at source from out of the compensation. There will be no order as to costs.

40. As a sequel, pending miscellaneous applications, if any, shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

15th November, 2018.
Ak/Js.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
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HON'BLE Ms. JUSTICE J.UMA DEVI

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(per VRS, J.)

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