

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CITY CIVIL COURT APPEAL No.16 OF 1995

ORDER: (Per Hon'ble Sri Justice T. Amarnath Goud)

This appeal is filed challenging the order dated 27.07.1994 in O.P.No.8 of 1986 on the file of the Court of I Additional Judge, City Civil Court, Hyderabad (for short, the Court below).

2. An extent of land 143.55 square yards in H.No.5-9-7/1/2, situated at Saifabad, Hyderabad, belonging to the appellants, was proposed to be acquired for the purpose of road widening. Accordingly, the Special Deputy Collector (Land Acquisition), Municipal Corporation of Hyderabad, the respondent, issued draft notification and submitted draft declaration proposals under Sections 4(1) and 6 of the Land Acquisition Act, 1894 (for short, the Act) to the Collector, Hyderabad District, by his letter dated 19.06.1982 for approval. The Collector approved the proposals vide his memo dated 02.08.1982. Thereafter a notification has been published in Hyderabad District Gazette Extraordinary No.27 dated 09.08.1982. The notices under Section 9(1) and 10 of the Act were issued on 04.10.1982 calling for objections from the interested persons. In response to the same, the petitioners filed their claim on 19.01.1983 seeking compensation @ Rs.1,300/- per square yards stating that the subject land is located in the prime area of Saifabad facing the main cement road from Secretariat to Public Gardens, which is situated nearby to Reserve Bank of India and that the prevailing market value of the lands in the locality at the

time of notification was about Rs.1,200/- to Rs.1,300/-. They filed certified copies of registered sale deeds No.6821/1979 dated 19.11.1979 (Ex.A.2) and 8943/1980 dated 16.11.1979 (Ex.A.3) in support of their case. They have also requested the respondent to summon the valuation extracts register from the Assistant Registrar's Office, Mozam Jahi Market, pertaining to the lands located on the main road of Saifabad locality.

3. With regard to document No.6821 of 1979 dated 19.11.1979, the respondent stated that it pertains to sale of property bearing municipal door No.5-9-7/2 with large extent of land measuring 4,165 square yards for a total sale consideration of Rs.10,00,000/-. The property therein is situated opposite to "Panch Sheel Hotel" abutting the road leading from Accountant General's Office, Hyderabad to Ravindra Bharathi, but the sale amount of Rs.10,00,000/- referred in the document includes the cost of both land and building with fixtures and fittings, etc. With regard to document No.5943 of 1980 dated 16.11.1979, the respondent stated that it pertains to sale of land with mulgi bearing door No.6-1-70/1, situated at Saifabad locality on the main road. The respondent held that sale price mentioned in both the said documents include the cost of land and buildings, but the subject land is a vacant open land. He also held that the subject land is situated within the Master Plan road boundary notified in the year 1975 in Andhra Pradesh Gazette Part-I, Extra-ordinary No.289 dated 30.01.1975, in which, under the building regulations, no permission will be granted for construction of any residential or

commercial buildings over such land and that due to the same, the subject land has automatically lost its potential value and even if the appellants desire to sell in the open market, no purchaser will come forward to buy such land.

4. The respondent, in his Award, referred to as many as 13 sale deeds, in which document No.6821 of 1979 dated 19.11.1979 is shown as item No.3, and rejected 11 sale deeds on the ground that the sale amounts referred to in the documents include the cost of both land and building with fixtures and fittings, etc. In fixing the compensation amount, the respondent relied upon item Nos.8 and 10. The item No.8 is the sale deed No.4180/1980 dated 06.06.1980 in respect of open plot situated adjacent to the Accountant General's Office new building for a total sale consideration of Rs.28,500/- which works out to Rs.91.48 ps per square yard. Item No.10 is the sale deed No.5873/1981 dated 15.10.1981 (Ex.B.10) in respect of open plot bearing No.7 situated adjacent to the Accountant General's Office new building for a total sale consideration of Rs.36,000/- which works out to Rs.89/- per square yard. He held that plot No.7 situated in the same locality at a distance of about two furlongs from the subject land. Accordingly, by his Award dated 29.03.1985, the respondent fixed the compensation @ Rs.90/- per square yard.

5. Being dissatisfied with the compensation, the appellants filed a representation before the respondent to refer the matter to the civil Court. Accordingly, the respondent referred the matter under

Section 18 of the Act to the Court below and the same was numbered as O.P.No.8 of 1986.

6. The appellants filed claim petition seeking to enhance the compensation by taking into consideration the commercial importance of the subject land.

7. The respondent filed a counter affidavit contending that the basing on the sale deeds for the last 3 years from the date of notification i.e., from 5-10-1979 to 7-7-1982, the compensation was awarded. The Court below clubbed two other similar OPs i.e., OP.No.205 of 1986 and O.P.No.438 of 1983 with the present OP and conducted joint trial.

8. Before the Court below, the appellants filed Exs.A.1 to A.8, sale deeds pertaining to the adjacent lands for enhancement of compensation. Ex.A.1 is the sale deed dated 02.09.1985, Ex.A.2 is the sale deed dated 19.11.1979, Ex.A.3 is the sale deed dated 16.11.1979, Ex.A.4 is the sale deed dated 22.12.1985, Ex.A.5 is the sale deed dated 30.12.1985, Ex.A.6 is the sale deed dated 18.12.1975, Ex.A.7 is the sale deed dated 01.01.1975 and Ex.A.8 is the sale deed 30.01.1982. The Court below considered all the sale deeds and rejected Exs.A.1 and A.4 as they subsequent to notification and acquisition. With regard to Exs.A.2, A.3 and A.8, the Court below concurred with the finding of the respondent that the sale consideration under the said sale deeds includes land cost as well as construction cost including fixtures and fittings therein. The Court below rejected Exs.A.5, A.6 and A.7 on the ground that

the sale deeds have been executed beyond three years of the notification. However, the Court below, enhanced the compensation from Rs.90/- to Rs.135, by its order dated 27.07.1994. Challenging the same, insofar as OP.No.8 of 1986 is concerned, the petitioners are before this Court.

9. Sri M.V.S. Suresh Kumar, learned Senior Counsel appearing for Sri Aravala Srinivasa Rao, learned counsel for the appellants, would submit that the subject land is a prime property and is situated opposite to the very prominent land mark in Hyderabad i.e., Ravindra Bharathi. He would further submit that the Court below did not take into consideration the fact that a property known as 'stone house' situated nearby to the subject land was sold at Rs.1,500/- per square yard. He would further submit that the lands sold at a higher rate under Exs.A.1 to A.8 are abutting to the subject land and hence, the compensation should be enhanced. He relied on a decision of the Hon'ble Supreme Court in **Bhule Ram V/s Union of India**¹, wherein the Hon'ble Supreme Court held as follows:

"The market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/location of the land along with the advantages/disadvantages i.e. distance from the National or State Highway or a road situated within a developed area etc. In urban area even a small distance makes a considerable difference in the price of land. However, the court should not take into consideration the use for which the land is sought to be acquired and its remote potential value in future."

¹ Civil Appeal No.6251/2010 dated 28.03.2014

10. Learned Government Pleader for Appeals (Telangana State) would submit that the documents relied upon by the petitioners include the cost of both land and building with fixtures and fittings, etc., but the subject land is an open land. He would further submit that the market value of the open plots in the area of Saifabad was prevailing at that time was Rs.80/- to 100/-. He placed reliance on Ex.B.10 under which plot No.7 situated adjacent to the Accountant General's Office new building was sold for a consideration @ Rs.89/- per square yard and argued that the respondent has awarded compensation as per the market value prevailing at that time. He relied on a decision of a Division Bench of this Court in **U.M. Ramudu V/s RDO-cum-LAO, Adoni (AP)**², wherein this Court held that 'market value under Section 23 of the Land Acquisition Act cannot be fixed on the basis of the rates mentioned in the Basic Valuation Registers maintained for the purpose of detection of undervaluation and collection of proper stamp duty'.

11. The point that arises for consideration in this appeal is:

"Whether the appellants are entitled for enhancement of compensation and, if so, to what extent?"

POINT:

12. It is necessary to refer the evidence of the witnesses. Smt.Marriyam Begum, first appellant, was examined as P.W.1. In her deposition, stated that the acquired land is near the Reserve Bank of India, Secretariat, Nizam Club, Assembly and that the market rate in that area was more than Rs.2,200/-. She relied on

² 2016 (6) ALD 205 (DB)

document No.4923 of 1985 (Ex.A.1) relating to Door No.5-9-11 and also the document No.6821 of 1979 (Ex.A.2) relating to Door No.5-9-7/21, which are adjacently located to the subject land.

13. Smt.Faiyunnisa Begum, who is the neighbouring plot owner and claimant No.2 in OP.No.8/1986, was examined as P.W.2. She also deposed in the similar lines of P.W.1 and relied on Exs.A.1 and A.2. She also relied on Ex.A.10, the certified copy of report of Engineer-cum-Commissioner in E.A.No.8/1983 in E.P.No.4/1963 on the file of the Chief Judge, City Civil Court, Hyderabad.

14. R.W.1, who was working as Surveyor in MCH, deposed that the properties covered under Exs.A.1 and A.3 include land and building. He relied on Exs.B.3 and B.7 and deposed that Ex.B.3 land is situated 350 yards away from the subject land and B.7 land is situated opposite to Telephone Bhavan and is away from the main road.

15. Admittedly, the land sold under Ex.B.10, relied upon by the learned Government Pleader, is situated adjacent to the Accountant General's Office, whereas the subject land is situated on the main road of Saifabad which is opposite to Ravindra Bharathi and hence the subject property has better appreciation than the property sold under Ex.B.10.

16. The exhibits relied upon by the learned counsel for the appellants pertain to the immovable property with land and building. In earlier days during 1979 to 1982, the priority was

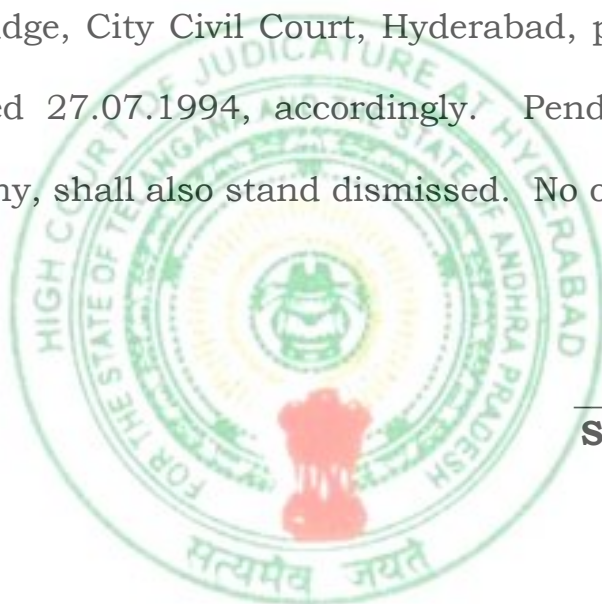
given to the constructed structures/houses rather than open land, if sale transaction pertains to immovable property with land and building.

17. In other words, in those days, the land was not considered to be valuable compared to the building in the land. Moreover, the land affected was only open land abutting road side. The appellants have not placed any exhibits to arrive at a price in respect of the land only. The market value certificate, issued by the Joint Sub-Registrar-II, Hyderabad, placed before this Court by the learned counsel for the appellants shows that the market value per square yard was Rs.800/- during the year 1982. The same has no relevance to the facts of the case and hence it cannot be considered, as the market value and the payment of compensation altogether stand on a different footing and on different situations.

18. As per the ratio laid down by the Hon'ble Supreme Court, it is the duty of the party to lead evidence in support of his case, in absence of which the Court is not under a legal obligation to determine the market value merely as per the prayer of the claimant. In the present case, the appellants did not file any exhibits to arrive the market price of the subject land, but in the sale deeds relied by them, include the cost of both land and building with fixtures and fittings. It is to be noted that compensation cannot be fixed by guessing the value of open land without any basis.

19. In the absence of evidence to appreciate the arguments of the learned counsel for the appellants, this Court cannot, in its own guess and fix the price of the open land during the period 1979-1982. In the matters of this nature, it is not proper for this Court to guess as to how much the price of the land would have been in the process of acquisition and to decide the entitlement of compensation to the appellants. Therefore, the appeal fails and is liable to be dismissed.

20. The appeal is dismissed, confirming the order of the Court of I Additional Judge, City Civil Court, Hyderabad, passed in O.P.No.8 of 1986 dated 27.07.1994, accordingly. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.



SANJAY KUMAR, J

T.AMARNATH GOUD, J

Date: 25.07.2018
TJMR