

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

LAAS.NOs.590, 602, 646, 738 OF 2006 AND 760 OF 2011

COMMON JUDGMENT: {Per the Hon'ble Sri Justice Ramesh Ranganathan}

These five appeals are preferred by the claimants, under Section 54 of the Land Acquisition Act, 1894 ("the Act" for brevity), aggrieved by the order passed by the Senior Civil Judge, Nuzvid, Krishna District (hereinafter called, "the Reference Court") in LA.OP.No.61 of 1996 and batch. It would suffice, for the disposal of all these five appeals, if the facts in LAAS.No.590 of 2006, (which is preferred against the order passed in LA.OP.No.61 of 1996) are noted.

A notification was issued under Section 4(1) of the Act on 08.09.1994 to acquire an extent of Acs.3.88 cents in R.S.No.58/3, 6 and 7 of Bommuluru Village, Bapulapadu Mandal, Krishna District. An enquiry, under Section 5-A of the Act, was held on 01.10.1994, possession of the subject land was taken on 12.11.1994, and a declaration under Section 6 of the Act was issued on 01.12.1994. Thereafter, an award was passed on 22.05.1995 fixing the market value of the subject lands at Rs.80,000/- per acre. On a reference being sought by the appellants herein, under Section 18 of the Act, the matter was referred to the Reference Court in OP.Nos.60, 61, 62, 63 and 64 of 1996, the award passed in which are under challenge in LAAS.Nos.646, 590, 738, 602 and 760 of 1996 respectively. As against the appellants claim of Rs.6,00,000/- per acre, the

Reference Court enhanced the compensation from Rs.80,000/- per acre, awarded by the Land Acquisition Officer (LAO), to Rs.1,05,000/- per acre. Aggrieved thereby, the present five appeals were filed.

In his award dated 22.05.1995, the LAO noted that the land owners had attended the enquiry, and had given their statements; the lands proposed for acquisition were demarcated, measured and mapped; he had inspected the land under acquisition on 16.09.1995 for passing an award; market value proposals were submitted to the Collector, Krishna for fixing the market value; the Collector had fixed the market value at Rs.40,000/- per acre basing on the registration statistics obtained from the Sub-Registrars Office, Kanumolu for a period of three years preceding the date of the notification issued under Section 4(1) of the Act; the Collector had, thereafter, reconsidered the market value, vide his proceedings dated 24.03.1995, on the ground that it had been recorded as Rs.79,500/- in the year 1988 by the then Joint Collector, Krishna in his proceedings dated 04.08.1988; and the market value could not be less in the year 1995 as compared to the market value in the year 1988.

The LAO, thereafter, noted that the lands, located nearby the lands under acquisition, were being sold at Rs.80,000/- and above per acre; however, registration of the documents were being made as per the basic value recorded in the Sub-Registrar's Office; as such the market value of lands, nearby the lands under acquisition, were not being shown at more than Rs.40,000/- per acre; there were several industries like Govardhana Paper Mills, Vijetha Rubber Industries, Babu Oil Refineries etc. located at

Hanuman Junction on Eluru Road in the limits of Bommuluru Village; besides these industries, Rajarajeswari Paper Mills, FCI Godowns, K.P.Poultry Products etc. were also located at Hanuman Junction – Nuzvid Road; the value of the land at Hanuman Junction, Bommuluru and surrounding villages had abnormally increased; the then Joint Collector, Krishna had considered all these facts and, keeping in view the sales which had occurred in the year 1987, had fixed the market value of the lands under acquisition at Rs.79,500/- in the year 1988; however there was no documentary evidence to fix a higher rate; and, considering all these aspects, the market value of the lands under acquisition was proposed to be fixed at Rs.80,000/- per acre by placing it before the negotiation committee.

While the Joint Collector had fixed the market value of the subject lands in the year 1988 at Rs.79,500/-, the LAO had increased the market value by a measly sum of Rs.500/- per acre for lands which were notified for acquisition, under Section 4(1) of the Act, six years thereafter on 08.09.1994.

The Reference Court, in its award passed under Section 26 of the Act dated 16.12.2004, observed that the acquired lands were surrounded by several industries like paper mills, rubber industries, FCI godowns, poultry farms; the value of the lands at Hanuman Junction, Bommuluru and surrounding villages, had abnormally increased as observed by the LAO in the revised market value proceedings; page No.2 of the revised market value proceedings disclosed that the Joint Collector, Krishna had considered all these facts and, keeping in view the sales which had occurred in the year 1987, the market value of the lands under

acquisition had been recorded as Rs.79,500/- per acre in the year 1988; considering the market value, which was fixed at Rs.80,000/-, the claimant had received the amount under protest; and had, thereafter, sought a reference.

The Reference Court, thereafter, observed that, in order to prove their claim, the claimant had examined himself as P.W.1 and had marked Exs.A1 to A14; on his behalf, P.Ws.2 and 3 were examined; the LAO had examined himself as R.W.1 and had marked the award as Ex.B1; the claimant had deposed that the Government had not considered sale transactions relating to several items in the vicinity; the acquired site was a highly potential area, abutting the National Highway, and was nearer to the industrial area; the lands were having high potential; the value fixed by the LAO was not just and proper, and was so fixed only to safeguard the interests of the Government; P.Ws.2 and 3 had also supported the contention of P.W.1, and had deposed that the value of the lands in the vicinity was far higher; reliance was placed on Ex.A1-sale transaction dated 17.01.1994 in R.S.No.58/2 for an extent of 290 square yards for Rs.15,080/-; Ex.A5-sale transaction dated 30.04.1998 in R.C.No.58/7 related to an extent of Ac.0.10 cents which was sold for Rs.17,908/-; Exs.A11, 12 and 14 were sale transactions relating to survey Nos.140/3 and 140/2; these transactions were prior to acquisition of the subject lands; they were, however, not near to the acquired lands; and, hence, the transactions covered under Exs.A10, 11, 12 and 14 were not being considered.

The Learned Senior Civil Judge, thereafter, observed that the sale transactions covered under Ex.A9 dated 15.05.1996 in

R.S.No.18/3 of Bommuluru Village for Rs.6,00,000/-, related to the year 1996; it was subsequent to the acquisition proceedings and was, therefore, not considered; the sale transactions of Exs.A1 and A5 were taken into consideration to fix the market value; the Government had fixed the market value per acre at Rs.80,000/-; fixation of the market value had not been explained by the LAO; the LAO had not relied on any sale transaction, at the relevant time or place, in fixing the market value; the evidence of R.W.1 showed that there were several industries near the acquired land such as Govardhana Paper Mills, Vijetha Rubber Industries, Rajarajeswari Paper Mills, K.P. Poultry Products etc; the value of the lands at Hanuman Junction, and surrounding villages, had abnormally increased; the transaction under Ex.A9 was for a small extent; the award passed by the LAO disclosed that reliance had not been placed on the sale transactions in the vicinity of the acquired land during the year 1995 or prior to the acquisition or on the date of the acquisition of the lands; the market value assessed by the LAO was not reasonable; the sale items covered under Exs.A1 to A4 was also not considered; and, in the above circumstances, he was of the view that the market value could be enhanced from Rs.80,000/- to Rs.1,05,000/- i.e. by Rs.25,000/- per acre. The claimants were held entitled to payment of compensation at Rs.1,05,000/- per acre, besides solatium at 30%, additional market value at 12% and interest under Section 28 of the Act on the enhanced amount. Aggrieved thereby, the present appeals are preferred.

Sri S.Subba Reddy, learned counsel appearing on behalf of the appellants, would submit that there is no bar for taking into

consideration sale transactions, subsequent to the issuance of notification under Section 4(1) of the Act, as they reflect the periodic increase in the market value of the lands under acquisition; Hanuman Junction was even then a busy commercial area where several industries were located; the subject lands were also located near the National Highway; and, if the sale transactions in Ex.A9 dated 15.05.1996 in Survey No.98/3 or in Ex.A13-sale deed dated 04.09.1997 in Survey No.140/3 were to be taken into consideration, the claimants would be entitled for compensation at Rs.6,00,000/- per acre in terms of Ex.A9, or atleast at Rs.4,82,000/- per acre as per Ex.A13. Learned counsel would rely on **Himmat Singh v. State of Madhya Pradesh¹**; **Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona²**; **Udho Dass v. State of Haryana³**; and **Mohinder Singh v. State of Haryana⁴**.

The market value, for the lands under acquisition, should be determined on the basis of its value as on the date of the notification issued under Section 4(1) of the Act. In **Chimanlal Hargovinddas²**, the Supreme Court held:-

“The following factors must be etched on the mental screen:-

- (1).....
- (2)
- (3)
- (4)

(5) **The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Sec. 4 of the Land Acquisition Act (dates of Notifications under Secs. 6 and 9 are irrelevant).**

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under sec. 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

¹ (2013)16 SCC 392

² (1988)3 SCC 751

³ (2010)12 SCC 51

⁴ (2014)8 SCC 897

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate,(2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) **proximity from time angle,**

(ii) **proximity from situation angle.**

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.....” (emphasis supplied)

In the present case the notification, under Section 4(1) of the Act, was issued on 08.09.1994. While the sale transactions, subsequent to the notification issued under Section 4(1) of the Act, have been relied upon in stray instances where the possibly exists of its indicating the periodic increase in the market value of the lands under acquisition, it must also be borne in mind that the subsequent increase, in the market value of the land, may well have been caused as a result of the market value determined for the lands under acquisition. Reliance placed on the subsequent sale transactions may be justified only if there is no evidence on record reflecting sale transactions just prior to the date of the notification issued under Section 4(1) of the Act.

On the factors to be taken into consideration in determining the market value of the land, as on the date of the notification

issued under Section 4(1) of the Act, the Supreme Court In **Udho Dass**³, observed:-

“.....While dealing with the question of the potential value of the land acquired this Court in **P. Rama Reddy's** case (supra) observed that several matters had to be kept in mind; they being :-

- "(i) **the situation of the acquired land vis-a-vis the city or the town or village which had been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;**
- (ii) **the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;**
- (iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;
- (iv) absence of statutory impediments or the like for using th acquired land for building purposes;
- (v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;
- (vi) **benefits or advantages or educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land;**
- (vii) and lands around the acquired land or the acquired land itself being in demand for building purposes, to specify a few.....” (emphasis supplied).

Thereafter, in **Himmat Singh**¹, the Supreme Court held:-

“.....Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. **Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.**

The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-à-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positive Factors	Negative factors
(i) smallness of size	(i) largeness of area
(ii)proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed

	locality
(vi) level vis-à-vis land under	(vi) some special disadvantageous acquisition factors which would deter a purchaser
(vii) special value for an owner of an adjoining property to whom it may have some very special advantage	

Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.....” (emphasis supplied).

As noted hereinabove, the Joint Collector, Krishna had fixed the market value of the subject lands at Rs.79,500/- per acre in the year 1988. It defies reason that, more than six years thereafter, the Land Acquisition Officer should consider it just and proper to increase the market value of the lands under acquisition by a meagre sum of Rs.500/- per acre, and fix the market value of the subject lands, as on 08.09.1994 when the Section 4(1) notification was issued, at Rs.80,000/- per acre.

The Reference Court relied on Exs.A3 and A5 in arriving at the market value of the lands under acquisition at Rs.1,05,000/- per acre. The award passed by the Reference Court does not also indicate the basis on which the learned Senior Civil Judge was satisfied that increase in the market value of the land, by Rs.25,000/- per acre, would suffice. While by Ex.A1 sale deed dated 17.01.1994 an extent of 290 square yards, in Survey No.58/2, was sold for Rs.15,080/- i.e. at Rs.2,51,680/- per acre, Ex.A3-sale deed dated 28.11.1987 related to the sale of an extent of Ac.0.22 cents of land in Survey No.58/7 on 28.11.1987 for Rs.28,600/- i.e. at Rs.1,30,000/- per acre. Similarly, Ex.A5-sale deed related to the sale of an extent of Ac.0.10 cents in Survey

No.58/7 on 30.04.1988 for Rs.17,908/- i.e. at Rs.1,79,080/- per acre. It is only these sale transactions, under these three sale deeds, which relate to lands located in close proximity to the lands under acquisition in Survey No.58/3, 6 and 7 of Bommuluru Village. The other sale transactions in Exs.A6, 7, 10 to 12 and 14 relate to lands in different survey numbers located at a considerable distance away from the lands under acquisition.

The market value of the lands under acquisition must, therefore, be determined on the basis of Exs.A1, 3 and 5 alone. As noted hereinabove, Ex.A3-sale deed is dated 28.11.1987 and Ex.A5-sale deed is dated 30.04.1988 (seven years and six years prior to the date on which the notification, under Section 4(1) of the Act, was issued on 08.09.1994). While an annual increase, at a reasonable percentage, can be added to the value of the lands, as reflected in these sale deeds, to arrive at the market value of the lands under acquisition as on 08.09.1994 (the date of notification under Section 4(1) of the Act, 1894), it is unnecessary for us to do so as Ex.A1-sale deed is dated 17.01.1994 which is just eight months prior to the date on which the notification, under Section 4(1) of the Act, was issued on 08.09.1994.

Learned Government Pleader for Appeals would submit that Ex.A1-sale deed cannot be taken as the basis to determine the market value of the subject lands, as it related to a sale deed of a house site of an extent of 290 square yards, whereas the total extent of lands under acquisition is Acs.3.88 cents. We cannot, however, lose sight of the fact that the subject lands were also acquired only for the purpose of providing house sites to the weaker sections of society. While the extent of land, sold under

Ex.A1, is no doubt small, as compared to the lands under acquisition of Acs.3.88 cents, sufficient deduction for development can be provided in order to arrive at the market value of the lands under acquisition. In **Mohinder Singh**⁴, the Supreme Court held:-

“.....This Court in the decision in **Charan Dass vs. H.P. Housing and Urban Development Authority [(2010) 13 SCC 398]** observed that any deduction made should be based on the situation of the land and the need for development and where the acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 40% would not be justified.

In **Kasturi and others vs. State of Haryana [(2003) 1 SCC 354]** wherein the question had arisen as to whether the deduction of development charges at the rate of 20% in regard to the acquired lands was justified or not, and after taking the various factors into consideration it was held that a cut of 20% to the development charges which was lower than the normal 1/3rd was understandable and could be justified.

In our view, the High Court on the facts of the case was justified in taking into consideration the size of the plots which were exhibited for the purpose of comparison with the size of the plot acquired, but we are unable to uphold the cut of 40% which has been imposed by the High Court since the acquired lands are already within developed municipal limits and the deduction of 1/4th the market value made by the Reference Court is appropriate and liable to be restored.....”

Sri S. Subba Reddy, learned counsel appearing on behalf of the appellant-claimants, would request this Court to take into account the additional evidence, now sought to be placed before us, in support of his submission that the actual extent set apart for development, in the subject lands, was less than 20%. This application, to receive additional evidence, was filed only after final arguments in these appeals commenced. It would be wholly inappropriate for us, at this stage of the proceedings, to take into account evidence, the genuineness which the learned Government Pleader for Appeals has no opportunity to verify.

While the learned Government Pleader for Appeals would suggest a deduction of 50% towards development, Sri S.Subba Reddy, learned counsel for the appellant-claimants, would submit, not without justification, that the Supreme Court in **Mohinder**

Singh⁴, after referring to its earlier judgments in **Charan Dass v. H.P. Housing and Urban Development Authority⁵** and **Kasturi v. State of Haryana⁶**, was satisfied that a deduction of one-fourth ($1/4^{\text{th}}$) of the market value towards development would be a justifiable deduction.

Following the judgment of the Supreme Court in **Mohinder Singh⁴**, one-fourth ($1/4^{\text{th}}$) of the market value as reflected in Ex.A-1 sale deed can be deducted towards development of the area for the purposes of providing house sites. If Ex.A1 is taken as the basis, then from the market value reflected therein of Rs.2,51,680/- per acre, deduction of one-fourth ($1/4^{\text{th}}$) thereof towards development, i.e., of Rs.62,920/-, would result in the market value being determined at Rs.1,88,760/- per acre as on 17.01.1994 when Ex.A-1 sale deed was executed. Considering the fact that Ex.A1-sale deed was executed eight (8) months prior to the date of the notification issued under Section 4(1) of the Act on 08.09.1994, we consider it appropriate to enhance the market value of the lands under acquisition from Rs.1,05,000/- per acre as fixed by the Reference Court to Rs.2,00,000/- (Rupees two lakh only) per acre. The order under appeal is modified, and the market value for the lands under acquisition is fixed as Rs.2,00,000/- (Rupees two lakh only) per acre on which the appellants shall be entitled for all statutory benefits.

⁵ (2010)13 SCC 398 : (2010)4 SCC (Civ) 933

⁶ (2003)1 SCC 354

All the five appeals are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, J)

(N.BALAYOGI, J)

8th August 2018
RRB

