

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

+ L.A.A.S. Nos.171 and 176 of 2011

% Date: 30-10-2018

The Special Deputy Collector (Land Acquisition),
Telugu Ganga Project, Unit-1, Cuddapah
... Appellant/Referring Officer
Vs.

\$ Sannapureddy Jayamma (Died), Having died her LR
S.Pakkeera Reddy S/o Late Lakshmi Reddy,
Aged 81 years, Cultivation, R/o Siddavaram Village,
Porumamilla Mandal, Kadapa District
... Respondent/Claimant
(in LAAS No.171/2011)

Sannapureddy Pakkara Reddy S/o Lakshmi Reddy,
Aged 69 years, Cultivation, R/o Siddavaram Village
Porumamilla Mandal
... Respondent/Claimant
(in LAAS No.176/2011)

! Counsel for Appellant: Govt. Pleader for Appeals (AP)

Counsel for Respondents: Mr. P.Venugopal, Senior Counsel,
Rep. Mr. Ch.C. Krishna Reddy

< Gist:

> Head Note:

? Cases referred:

1) AIR 2001 Supreme Court 2951

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE Ms. JUSTICE J.UMA DEVI

L.A.A.S. Nos.171 and 176 of 2011

COMMON JUDGMENT: *(per V. Ramasubramanian, J.)*

These appeals are filed by the State under Section 54 of the Land Acquisition Act, 1894, challenging the enhancement of compensation granted by the Reference Court under Section 18.

2. Heard the learned Government Pleader for Appeals (Andhra Pradesh) for the appellant/Referring Officer and Mr. P.Venugopal, learned Senior Counsel, appearing for the respondents/claimants.

Facts in L.A.A.S. No.171 of 2011:

3. By a Notification dated 28-4-1992 issued under Section 4(1) of the Land Acquisition Act, the land of an extent of Ac.6.62 cents in Survey No.13/2 in Veerlapalli Village, Porumamilla Mandal, Kadapa District, was sought to be acquired for the purpose of excavation of Telugu Ganga Project Main Canal. It appears that the possession of the land was taken much earlier. According to the land owners, possession was taken on 05-02-1985. In view of the invocation of the emergency clause, the enquiry under Section 5A was dispensed with. Eventually, an award in Award No.2/1997 was passed on 25-6-1997 fixing the market value of land at Rs.23,150/- per acre. A supplementary award

was passed in Award No.3/1997 dated 20-9-1997 fixing separate compensation for fruit bearing trees, other trees and well and super structures. It appears that 447 sweet orange trees were valued at Rs.130/- per tree and 51 tamarind trees were valued at Rs.558/- per tree.

4. On a protest lodged by the land owners, a reference was made in L.A.O.P. No.851 of 1999. By a judgment dated 25-02-2002, the Reference Court confirmed the market value of land as fixed by the Land Acquisition Officer. However, the market value of the trees was enhanced to Rs.4,000/- per sweet orange tree, Rs.20,000/- per tamarind tree, Rs.70,000/- per cross wall and uddi, Rs.3,50,000/- for the compound wall and Rs.7,50,000/- for the well.

5. As against the enhancement so awarded, the State filed an appeal in A.S.No.1652 of 2002. The land owners also filed a cross appeal.

6. By a judgment dated 24-10-2005, this Court allowed the appeal and remanded the matter back to the Reference Court. After remand, the land owners filed an additional claim statement claiming more value for the trees and structures.

7. By a judgment dated 15-4-2010, the Reference Court enhanced the value of the trees, structures and wells. By this judgment, the value of sweet orange trees was fixed at Rs.5,000/- per tree, the value of tamarind trees was fixed at Rs.35,000/- per tree, the value of neem tree was fixed at

Rs.20,000/- per tree, the value of compound wall was fixed at Rs.5,00,000/-, the value of uddi and cross wall was fixed at Rs.1,00,000/- and the value of the well was fixed at Rs.7,50,000/-. The Reference Court also awarded additional market value at 12% per annum from the date of taking possession till the date of the award. Therefore, the State is before us.

8. Before proceeding to consider the award passed by the Land Acquisition Officer, it may be necessary to take note of one basic controversy in this case. According to the respondent/land owner, the possession of the land was taken on 05-02-1985. But according to the appellant/State, possession was taken only on 17-4-1992. A letter of the Executive Engineer, dated 20-6-1992, addressed to the Special Deputy Collector (Land Acquisition) informing him that the land in Survey No.13/2B has been taken possession of from Smt. S.Jayamma, is relied upon by the State.

9. In his award bearing No.2/1997, dated 25-6-1997, the Land Acquisition Officer took note of the sale transactions that had taken place over a period of 3 years from 28-4-1989 to 27-4-1992. There were no transactions in the years 1989 and 1990. There were also no transactions during the period from 01-01-1992 to 28-4-1992. A total of 7 transactions had taken place, consecutively on 17-7-1991 and 18-7-1991. These sale transactions indicated a market value ranging

from Rs.2,000/- to Rs.3,072/- per acre. The basic value as per the RoR 1-B Register was found to be Rs.1,170/- per acre.

10. Therefore, the Land Acquisition Officer adopted the rate of Rs.1,170/- per acre. While doing so, he also noted in his award that the Executive Engineer, Telugu Ganga Project had taken advance possession of the lands in Survey No.13/2 measuring Ac.6.62 cents, on 17-4-1992 itself. He also noted that there were no trees or structures in that field in Survey No.13/2.

11. However, another award bearing Award No.3/1997, dated 20-9-1997, was passed, in which it was noted that the notes of inspection of the Special Deputy Collector dated 06-7-1991 revealed the existence of – (i) 642 cheeni trees, (ii) 51 small tamarind trees, (iii) 6 small neem trees, (iv) one square well without revetment, (v) one incomplete uddi and (vi) a compound wall all around the field and partition wall running from east to west. A valuation report given by the Assistant Director of Horticulture, dated 29-3-1992, was available on record, which revealed the following:

Name of the trees	Number of trees	Estimated value
1. Cheeni trees	447 x 15 x 130	Rs.8,71,650/-
2. Tamarind trees	51 x 6 x 558	Rs.4,48,800/-
Total		Rs.13,20,450/-

Therefore, the award directed payment of compensation as aforesaid together with interest and solatium.

12. However, on a protest made by the land owner, a reference was made under Section 18. The reference, as can be seen from the Form of Reference, related to both the awards viz., Award Nos.2/1997 and 3/1997, dated 25-6-1997 and 20-9-1997. In the Form of Reference, the number of trees available in Survey No.13/2 was indicated as 642 cheeni trees and 51 tamarind trees.

13. By a judgment dated 25-02-2002, the Reference Court confirmed the market value of land as fixed by the Land Acquisition Officer. Insofar as cheeni trees are concerned, the number of trees were taken to be 642 and compensation was fixed at Rs.4,000/- per tree. The compensation for tamarind trees was fixed at Rs.20,000/- per tree. A compensation of Rs.70,000/- was fixed for uddi and cross wall, a compensation of Rs.3,50,000/- was fixed for compound wall and a compensation of Rs.7,50,000/- was fixed for the well. The Reference Court also directed additional market value to be paid at 12% per annum from the date of taking possession viz., 06-7-1991, till the date of the award viz., 25-6-1997.

14. As stated earlier, an appeal was filed against the judgment of the Reference Court, in A.S.No.1652 of 2002 by the Land Acquisition Officer. Cross-objections were filed by the land owner. This appeal was taken up along with another appeal in A.S.No.1288 of 2002. By a judgment dated

24-10-2005, a Division Bench of this Court remanded the matter back to the Reference Court for a fresh enquiry, with liberty to both parties to lead evidence in support of their cases afresh.

15. After remand, the land owner/claimant examined 6 witnesses as R.Ws.1 to 6. Out of these witnesses, 5 were the very same persons examined in the first instance. Similarly, the claimants filed 20 documents, out of which 9 were the same documents as marked earlier.

16. Insofar as the Land Acquisition Officer is concerned, he was examined as P.W.1 and the Awards bearing Nos.2/1997 and 3/1997 were marked as Exs.A-1 and A-3. The work order was marked as Ex.A-2.

First controversy- number of cheeni (sweet orange) trees

17. The first controversy that the Reference Court had to resolve, was about the number of sweet orange trees. To begin with, the first award, Award No.2/1997, dated 25-6-1997, proceeded on the basis that there were no trees. But the next award, Award No.3/1997, dated 20-9-1997, proceeded on the basis that there were 447 sweet orange trees. This was on the basis of the valuation report of the Assistant Director, Horticulture, dated 29-3-1992. But the very same Award No.3/1997 also noted that as per the notes of inspection dated 06-7-1991 of the Special Deputy Collector, there were 642 cheeni trees.

18. Therefore, when a reference was made of both the awards to the Reference Court under Section 18, the Form of Reference mentioned the number of cheeni trees to be 642. Hence, in the first judgment dated 25-02-2002 passed in L.A.O.P.No.851 of 1999, the Reference Court took note of 642 cheeni trees only.

19. But after the first judgment of the Reference Court dated 25-02-2002 was set aside by this Court in A.S.No.1652 of 2002 and the matter was remanded back to the Reference Court once again, the Reference Court fixed the total number of cheeni trees (sweet orange trees) at 845. This was on the basis of the notes of inspection marked as Ex.B-12 dated 20-01-1986, Ex.B-13 dated 29-9-1987 and Ex.B-14 dated 08-7-1991. Hence, the first question to be answered by this Court is as to whether the total number of sweet orange trees should be taken to be 642 or 845.

20. Both in his chief-examination and in cross-examination, R.W.1 by name S.Pakkira Reddy, husband of the land owner, repeatedly asserted that there were 642 sweet orange trees and that the same was corroborated by the notes of inspection dated 06-7-1991 of the Special Deputy Collector, Telugu Ganga Project. Exs.B-12 to B-14 were marked only through R.W.1. But he did not refer to any entry in any of these 3 exhibits Exs.B-12 to B-14 and deposed that there were 845 sweet orange trees.

21. R.W.2 was a Civil Engineer who prepared the estimates for the constructions. Therefore, he did not speak about the number of trees. R.W.3 was a retired Director of Horticulture. He spoke only about the yield and the value of trees and not about the number of trees. R.W.4 was a Senior Marketing Assistant Manager in the Market Yard. He was examined only to speak about the cost of sweet orange fruits. R.W.5 was a resident of the village who merely spoke about the total yield per tree. R.W.6 is the owner of another land acquired by the Government for Srisaillam Hydro Electric Power Project. He was examined to speak about the value of the trees and not about the number of trees.

22. P.W.1, who was the Deputy Tahsildar, asserted in the cross-examination that the number of sweet orange trees were 642.

23. Therefore, we do not know how the Reference Court came to the conclusion that there were 845 sweet orange trees – (i) without the claimant staking a claim for 845 sweet orange trees and (ii) without anyone speaking about the existence of 845 sweet orange trees. The witness through whom Exs.B-12 to B-14 were marked did not draw the attention of the Court to the relevant entry in any of these 3 exhibits, indicating the number of sweet orange trees as 845. Therefore, we are of the considered view that the fixation of number of sweet orange trees as 845, by the Reference

Court – (i) without any claim by the land owner and (ii) without any evidence on the side of the land owner, is completely wrong. The number of sweet orange trees for which the land owner claimed compensation was only 642 and hence we hold that the number of sweet orange trees for which the respondent is entitled to claim compensation is only 642.

Number of Tamarind and Neem trees

24. Insofar as the tamarind trees and neem trees are concerned, there is no dispute. The number of tamarind trees was 51 and the number of neem trees was 6.

Valuation of cheeni, tamarind and neem trees

25. Coming to the value of the trees, the first judgment of the Reference Court dated 25-02-2002 proceeded on the basis of the valuation of the Assistant Director of Horticulture, according to which the value of the sweet orange tree was about Rs.1,950/- and the value of tamarind tree was Rs.8,800/- per tree. The claimant himself prayed for the award of Rs.2,000/- per sweet orange tree and Rs.10,000/- per tamarind tree. The Reference Court noted that even according to R.W.1, every sweet orange tree will yield 1,000 fruits per year and the cost of each fruit was Rs.2/-. Therefore, the Reference Court found that the claim of Rs.2,000/- per sweet orange tree was reasonable.

26. But the Reference Court also found that as per Ex.B-9, the judgment of the Reference Court in another case L.A.O.P.No.226 of 1989, the value of each sweet orange tree was enhanced from Rs.1,950/- to Rs.3,705/-. But the Reference Court adopted the capitalisation method, taking the income per year per tree as Rs.270/- and by applying the multiplier of 16, the Reference Court arrived at the value of the sweet orange tree at Rs.4,320/-. After approximation, the Reference Court fixed the rate at Rs.4,000/- per tree.

27. While setting aside the first judgment of the Reference Court dated 25-02-2002, in A.S.No.1652 of 2002, this Court did not record any finding about the value of the sweet orange trees. But in the judgment passed after remand, the Reference Court again took note of Exs.B-7 to B-9, which were the certified copies of the judgment in L.A.O.P. Nos.343 of 1989, 1549 of 1988 and 266 of 1989, in which the rate of the sweet orange tree was enhanced from Rs.1,950/- to Rs.3,705/-. However, the respondent/claimant demanded Rs.12,000/- per sweet orange tree on the basis of the judgment of the Supreme Court marked as Ex.B-10. Actually, Ex.B-10 is a letter of the Registrar of the Supreme Court dated 21-3-2002 informing the Registrar of this Court that the Special Leave Petition filed against the judgment dated 28-6-2000 rendered in Appeal No.1358/1998 (reported in 2000 (4) ALD 620) was dismissed. As per this judgment, the

sweet orange trees of 3 years of age were allowed a compensation at the rate of Rs.1,035/- per tree and those trees of 6 years of age were allowed a compensation at the rate of Rs.270/- per tree. Thereafter, a multiplier of 16 was applied. On the basis of this Ex.B-10, the Reference Court held that a sum of Rs.5,000/- can be fixed as compensation per sweet orange tree, since the notification relating to Ex.B-10 was of the year 1986.

28. But unfortunately, the Reference Court lost sight of the fact that the value to be fixed per sweet orange tree depended upon the age of the sweet orange tree and not upon the year of notification. If the year of notification in one case is 1986 and the year of notification in the other case is 1992, the Reference Court cannot presume the growth of the sweet orange trees by 6 years in the case on hand. The age of the tree would vary from case to case. In fact, no basis was indicated by the Reference Court for fixing the value of the sweet orange tree at Rs.5,000/- per tree. The way in which the Reference Court arrived at the value of Rs.5,000/- per sweet orange tree is quite strange and it can be understood best if we extract the relevant portion of the award of the Reference Court:

“4(1) notifications were published in the year 1988 in those cases 16 multiplier is to be applied in fixing the market value in respect of land and trees, as per the citation reported in 2006 SCC page 326. Similarly our High Court also held in 2004 ALD 620 D.B that compensation for fruit

bearing cheeni trees was fixed at Rs.135/- for the tree of 3 years age and Rs.270/- for 6 years age is the reasonable compensation and multiplier 16 is applied. That citation is marked as Ex.B-10 and R.W.6 is examined who is party in that judgment. That notification was published in 1986 and this present notification is of the year 1992 and there is 6 years gap. In the citation reported in 2004 (2) SCC Page 283 escalation of prices at 15% per year is reasonable. By applying the citation the claimant is claiming Rs.12,000/- per each cheeni tree. As per the citation reported in 2002 (3) SCC 463 the claimant is entitled to claim more compensation after 24-9-1984 and the claimant proved that there were 845 sweet orange trees.

Previously he was granted Rs.4,000/- for each cheeni tree and the present claim is Rs.12,000/-. Relying on the above citations the value of cheeni tree is fixed at Rs.5,000/- and the claimant is entitled for 845 orange trees at that rate after deducting the amount received.”

29. The portion extracted above from the judgment of the Reference Court would show that there was virtually no basis for fixing the value of the sweet orange tree at Rs.5,000/-. As a matter of fact, there are any number of cases in which this Court fixed the rate of sweet orange tree only at Rs.4,000/- per tree. In the judgment dated 06-11-2013 rendered in L.A.A.S. Nos.53, 132, 175 and 210 of 2010, a Bench of this Court fixed the value of the sweet orange trees only at Rs.4,000/- per tree. Similarly, in the judgment dated 19-6-2018 rendered in L.A.A.S. Nos.472, 473, 427 and 428 of 2008, a Bench of this Court, to which one of us (VRS, J.) was a party, confirmed the valuation fixed by the Reference Court at Rs.4,000/- per sweet orange tree.

30. Therefore, when this Court has been consistently fixing the value of the sweet orange tree (a fully grown tree) at Rs.4,000/- per tree, it is not possible to agree with the reasonless finding of the Reference Court that the value could be fixed at Rs.5,000/- per tree. Hence we fix the value of the sweet orange trees at Rs.4,000/- per tree.

31. In so far as tamarind trees are concerned, the supplemental award bearing No.3 of 1997, dated 20-09-1997 fixed the value per tree at Rs.3,348/-. There was no dispute about the number of tamarind trees, which was fixed at 51.

32. In the first round, the reference Court, in its judgment dated 25-02-2002 passed in LAOP.No.851 of 1999 fixed the market value of tamarind trees at Rs.20,000/- per tree. After this judgment was set aside by this Court by judgment dated 24-10-2005 in A.S.No.1652 of 2002, the reference Court has fixed it at Rs.35,000/- per tree.

33. The reference Court decided to fix the market value of tamarind tree at Rs.35,000/- on the ground that according to RW.1, the annual yield was 1000 KGs and the cost per K.G. will be around Rs.15/- to Rs.20/-. The RW.4 deposed that the market value of tamarind tree per quintal in the year 1992 was Rs.1,600/- to Rs.2,000/-. The land owner took the average at Rs.18/- and applied a multiplier of 16 and claimed a sum of Rs.86,400/- per tree. The reference Court arbitrarily fixed the value at Rs.35,000/- per tree.

34. No rhyme or reason is stated by the reference Court to fix the market value of tamarind trees at Rs.35,000/- per tree. Merely because the land owner claimed a sum of Rs.86,400/- per tree, the reference Court cannot simply fix at Rs.35,000/- per tree.

35. It is seen from Ex.B.16, which is the report of the Assistant Director of Horticulture that in so far as tamarind trees are concerned, he took the following statistics. According to Ex.B.16, a tamarind tree may bear fruits for 100 years. The cost of cultivation was fixed at Rs.50/- per tree. The yield was taken to be 300 fruits per year and the value of the tree at bearing stage was fixed at Rs.600/-. Accordingly, the Assistant Director of Horticulture fixed the net value per tree at Rs.550/-, as per Ex.B.6. If a multiplier of 16 is applied, the value will come to Rs.8,800/- per tree (16 X 550). Since the total number of trees was 51, the Assistant Director of Horticulture indicated the compensation payable at Rs.4,48,800/-.

36. Unfortunately, the reference Court, in the first round of litigation, despite taking note of the fixation of the value at Rs.8,800/- per tree, arrived at the market value per tree as Rs.20,000/-. Therefore, we see no scope for the reference Court in the second round of litigation to increase the sum to Rs.35,000/- per tree.

37. The number of neem trees in the land was fixed as 6 and their value was fixed by the reference Court in the second round of litigation, by the judgment under appeal at Rs.20,000/- per tree. In the first round of litigation, the reference Court did not even take note of the existence of the neem trees. Though the supplemental award bearing No.3 of 1997 dated 20-09-1997 took note of the existence of the 6 neem trees (small), no compensation was fixed separately. Ex.B.6 also did not refer to neem trees. But, RW.3 is stated to have given oral evidence. Therefore, in the absence of anything else, we left with no alternative except to take the number of neem trees as 6 and their value at Rs.20,000/- per tree.

Valuation of Compound wall, Uddi and cross wall and well

38. The value of the compound wall is fixed by the reference Court at Rs.5,00,000/-. In the first round of litigation, the value of the compound wall was fixed at Rs.3,50,000/-. In the second round, the reference court thought fit to enhance it to Rs.5,00,000/- on the basis of Ex.B.5. As per Ex.B.5, the valuation of the compound wall was done at Rs.7,54,786/-. But this was based upon 1991-92 rates. The person, who prepared Ex.B.5, was also examined as RW.2. Since the year of the construction was not known and also since Ex.B.5 was based upon 1991-92 rates, we

think that the reference court was right in fixing the market value of the compound wall at Rs.5,00,000/-.

39. In so far as the uddi and cross-wall is concerned, the reference Court originally awarded Rs.70,000/- as compensation in the first round of litigation. In the second round, it was fixed at Rs.1,00,000/-. This was based upon Ex.B.4 and the evidence of RW.2. Therefore, we do not wish to disturb the said finding and accept the value of uddi and cross wall at Rs.1,00,000/-.

40. The value of the well was fixed at Rs.7,50,000/-both in the first round of litigation and in the second round of litigation by the reference Court. This was based upon Ex.B.6 and the evidence of RW.2. Ex.B.6 was an estimate for the rectangular well. The value indicated therein was Rs.14,90,421/-. But the estimate was prepared at 1991-92 rates. Even as per the oral evidence of RW.2, who prepared Ex.B.6, the age of the well was 10 years at the time of inspection. Therefore, the adoption of Rs.7,50,000/- as the market value of the well cannot be taken exception to.

41. Thus, we have covered (1) the controversy regarding the number of cheeni trees (sweet orange), (2) the value of the sweet orange trees, (3) the value of the tamarind trees, (4) the value of neem trees, (5) the value of the compound wall, (6) the value of uddi and cross-wall and (7) the value of the well.

Controversy regarding date of taking over possession

42. There is one more controversy which is little tricky. The controversy is about (1) the date on which possession was taken and (2) the formula to be adopted for the period from the date of taking over possession up to the date of passing of the award.

43. According to the respondent-claimant, the possession of the land was taken on 5-2-1985 itself and trial pits were dug up. But, according to the Land Acquisition Officer, the possession was taken only on 17-04-1992.

44. To prove that possession was taken on 05-02-1985, the M. Book No.32, was summoned and marked as Ex.B.11. It showed that the trial pits were dug up in the land on that date. But in cross-examination, RW.1 (husband of the land owner) claimed that the land was originally acquired in the year 1987 and that a notice under Section 9 (3) of the Act was issued on 28-06-1988. Since the originally alignment of the channel proved to be costlier the Government withdrew the proposal for acquisition. According to RW.1, after withdrawal of the original proposal for acquisition, he developed the land in order to get more income. However, the Special Deputy Collector, Telugu Ganga Project, surveyed the land again on 06-07-1991. It was at that time that the number of sweet orange trees was noted as 642, number of tamarind trees was noted as 51 and number of neem trees was noted as 6. More

particularly, RW.1 stated that the contractor started the work in January, 1992. The relevant portion of the examination-in-chief of RW.1 reads as follows:

“Originally, the land was acquired in the year 1987. The acquired land S.No.13/2 and the extent is 6-62 cents. On 28-6-98 the Government issued the notice U/S. 9 (3) of L.A. Act to attend for award enquiry under Ex.B.1. The Executive Engineer wrote a letter to Superintendent Engineer for clarifying the variation of the expenditure. The channel is runs to the land of the claimant of Rs.54,00,000/- and whereas it runs separate alignment, the expenditure is Rs.68,00,000/- (six eight lakhs). Subsequently, the Government withdraw the proposals for acquisition. Thereafter, I developed my land in order to get more income. On 6-7-91 the Spl. Dy. Collector, Telugu Ganga Project surveyed the land and they noted that 642 Orange trees in my village, 51 trees of tamarind, 6 neem trees and one well and a compound wall around the fields and also a field channel and a partition wall. Thereafter, my wife was not awarded any amount and the Government sent proposals to the Special Collector on 7-1-91 to approve the Draft Notification and Draft Declaration. Subsequently, the Engineering Department call for the tenders for excavation of the channel into my land. The contractor started the work in the month of January, 1992. The contractor dig the channel in my land when I visited my land on March, 1992. Then I raised objection for digging.”

45. From the very statement of RW.1 (husband of the landlady) extracted above, it is clear that what happened in 1985 could at the most be termed as an unauthorised entry into the land belonging to the respondent and the damage caused to the land. But, the same cannot be taken to be equivalent to taking over possession. If the singular act of the Deputy Executive Engineer unauthorisedly entering into the land on 05-02-1985 and digging trial pits can be equated to acquiring possession of the land, then the land owner could not have undertaken development of the land subsequently

and he cannot even claim compensation for the development he undertook after losing possession of the land. A singular act of unlawful entry into a land and causing damage by digging trial pits will not constitute the act of taking over physical possession of the land. By the very admission of RW.1, a proposal was moved in 1987 and it was dropped in 1988. According to RW.1, he later developed the land to get more income and it was at that time the Special Deputy Collector surveyed the land on 06-07-1991. Therefore, the reference Court was wrong in presuming that the possession of the land was taken over on 05-02-1985. In view of the specific statement made by RW.1 in his chief-examination that the contractor started the work only in the month of January, 1992, possession can be deemed, at the most, to have been taken only in January, 1992.

Compensation for the period between the date of possession and the date of notification under section 4(1)

46. The notification under Section 4 (1) of the Act was issued on 28-04-1992. Therefore, the question to be decided is as to what should be done for the period from January to April, 1992.

47. The reference Court directed additional market value to be paid at 12% p.a. from the date of taking possession till the date of the award. But, this is opposed by the learned Government Pleader, on the basis of the decision

of the Supreme Court in ***Siddappa Vasappa Kuri v. Special Land Acquisition Officer***¹.

48. The decision in ***Siddappa Vasappa Kuri v. Special Land Acquisition Officer*** arose out of a reference of a conflict to a Larger Bench of the Supreme Court. The facts led to the reference were as follows:

- 1) In ***Special Tahsildar (LA), P.W.D. Schemes, Vijayawada v. M.A. Jabbar (1995 (2) SCC 142)***, the Supreme Court held that even if possession had already been taken before the publication of the notification under Section 4 (1) of the Act, the additional amount payable under Section 23 (1A) of the Act, is to be calculated only from the date of publication of the notification under Section 4 (1) of the Act till the date of the award.
- 2) However, in ***Assistant Commissioner, Gadag Sub-Division v. Mathapathi Basavanneewa (1995 (6) SCC 355)***, authored by the very same learned Judge, who was party to the decision in ***M.A. Jabbar***, it was held that when the possession is taken earlier and notification is issued later, but the award is subsequently made, the owner is entitled to compensation from the date of taking over of possession till the date of the award, though possession was taken before the notification under Section 4 (1) of the Act.

¹ AIR 2001 Supreme Court 2951

3) In ***State of H.P. v. Dharam Das (1995 (5) SCC 683)***, the Supreme Court reversed the judgment of the High Court, which awarded interest at 12% p.a. on equitable grounds from the date of taking over possession till the date of deposit, but upheld an order of the High Court directing payment of additional amount under Section 23 (1A) of the Act from the date of taking over possession till the date of making award.

4) It is in view of the conflict between the aforesaid decisions that the matter in ***Siddappa Vasappa Kuri v. Special Land Acquisition Officer*** was placed before a Three Member Bench. By its decision, in ***Siddappa Vasappa Kuri v. Special Land Acquisition Officer***, the Supreme Court held that the view taken in ***M.A. Jabbar*** laid down the law correctly and that the views taken in ***Mathapathi Basavanneewa and Dharam Das*** were incorrect.

49. Therefore, it is clear that the respondent is entitled to additional market value only from the date of notification under Section 4 (1) of the Act. But this proposition emerging out of the decision in ***Siddappa Vasappa Kuri v. Special Land Acquisition Officer*** is actually in the context of Section 23 (1A) of the Act. Under Section 23 (1A), additional market value is awarded at 12% p.a. for the period commencing on and from the date of publication of the notification under Section 4 (1) of the Act up to the date of the award of the Collector or the date of taking possession,

whichever is earlier. There is an underlying presumption in Section 23 (1A) of the Act. This presumption is that the taking over of possession always happens only after the date of publication of the notification under Section 4 (1) of the Act, though it may take place either before or after the date of the award. But, we are confronted with a situation where possession was taken prior to the date of the notification under Section 4 (1). Unfortunately, even the Supreme Court did not notice the purport of Section 23 (1A), though in all the cases referred to in the preceding paragraphs, the Supreme Court was concerned with cases where possession was taken prior to the issue of the notification under Section 4 (1).

50. This is why our attention is drawn to Section 34 of the Act by Mr. P. Venugopal, learned senior counsel appearing for the respondent. Under Section 34 of the Act, interest is payable at 9% p.a. from the date of taking the possession till the date of payment or deposit. Section 34 of the Act reads as follows:

“34. Payment of interest. —When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited: Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.”

51. But we think that Section 34 also may not apply. Just as Section 23 (1A) of the Act presupposes the taking over of possession after the date of notification under Section 4 (1),

Section 34 presupposes payment of the compensation as per the award, before taking over possession. Section 34 uses the expression “such compensation”.

52. Therefore, if Section 23 (1A) and Section 34 of the Act are juxtaposed, it will be clear that the Act contemplates the following four steps in a sequential order, namely, (1) publication of notification under Section 4 (1); (2) passing of the award; (3) deposit of compensation and (4) taking over possession.

53. If the fourth step is taken even before the second step, then Section 23 (1A) applies. If the fourth step is taken before the third step, then Section 34 applies. This is how we have to understand the scheme of Sections 23 (1A) and 34.

54. The Land Acquisition Act, 1894 provides no clue as to what should be done in cases where the fourth step, namely that of taking over possession, is taken even before the first step namely that of the publication of the notice under Section 4 (1). Even if it be the Government, the entry into the land of a private person without the authority of law will constitute encroachment and will be violative of the property right and the human right guaranteed under Article 300-A of the Constitution. Therefore, the Government will be obliged to pay damages for unlawful entry.

55. But, while deciding the quantum of damages, the Court will be confronted with the two kinds of difficulties. If possession is taken before the issue of the notification under Section 4 (1) of the Act, the market value cannot be determined with reference to the date of taking over possession, as the same may be prejudicial to the interest of the land owner. The market value in 1992 when a notification under Section 4 (1) is issued will be much higher than the market value of the preceding years, if possession had been taken in the preceding years. But at the same time, the market value of the year 1992 cannot be applied with reference to the date of taking over possession, if possession had been taken a couple of years earlier. Therefore, the adoption of the date of notification under Section 4 (1) as the date for determining the market value of the land, benefits a land owner, even in cases where possession is taken before the date of notification under Section 4 (1). But the statute does not speak about the compensation payable in cases where possession is taken over even before the issue of notification under Section 4 (1). The statute cannot obviously recognise such a possession, as the same may tantamount to authorising an encroachment, even if it be by the Government.

56. But, fortunately, in the case on hand, the time gap between the date of taking over possession and the date of

notification under Section 4 (1) of the Act is not huge. While the taking over of possession even according to the chief-examination of RW.1 happened to be January, 1992, the date of notification under Section 4 (1) of the Act is 28-04-1992. Therefore, we do not wish to interfere with the ultimate conclusion of the reference Court in this regard, except with a change of the date namely the date 05-02-1985 in the impugned judgment shall be read as 01-01-1992.

57. In fine, our conclusions on the issues arising for consideration in L.A.A.S.No.171 of 2011 will be as follows:

- i) The date on which possession of the land was taken, will be taken as 01-01-1992 and not as 05-02-1985, as determined by the Reference Court. As a consequence, additional market value at 12% p.a. as fixed by the Reference Court under clause 8 of the decree will be calculated only from 01-01-1992 and not from 05-02-1985;
- ii) The number of Cheeni (Sweet Orange) trees for which compensation is payable, is fixed at 642, the number of tamarind trees is fixed at 51 and the number of Neem trees is fixed at 6.
- iii) The value of the Cheeni (Sweet Orange) trees is fixed at Rs.4,000/- per tree, the value of tamarind trees is fixed at Rs.20,000/- per tree and the value of Neem trees is fixed at Rs.20,000/- per tree; and

iv) The market value of the compound wall is fixed at Rs.5,00,000/-, the market value of the Uddi and cross-wall is fixed at Rs.1,00,000/- and the value of the well is fixed at Rs.7,50,000/-.

58. Accordingly, the L.A.A.S.No.171 of 2011 is allowed and the judgment and decree of the Reference Court in LAOP.No.851 of 1999 shall stand modified as per the above indicia.

Facts in L.A.A.S. No.176 of 2011:

59. By a Notification dated 25-9-1995 issued under Section 4(1) of the Land Acquisition Act, the land of an extent of Ac.2.93 cents in Survey No.14/3A in Veerlapalli Village, Porumamilla Mandal, Kadapa District, was sought to be acquired for the purpose of excavation of Telugu Ganga Project Main Canal. Possession of the land was said to have been taken long before the issue of notification under section 4(1) and the enquiry under Section 5A was dispensed with, by invoking the emergency clause.

60. The Land Acquisition Officer passed an award in Award No.1/1999-2000 on 10-11-1999 fixing the compensation at Rs.1,170/- per acre for the land. The claimants received the compensation under protest and hence a reference was made under Section 18.

61. By a judgment dated 25-02-2002 passed in L.A.O.P. No.438 of 2001, the Reference Court enhanced the value of

land to Rs.20,000/- per acre and fixed the value of the well at Rs.7,51,550/-.

62. Aggrieved by the judgment of the Reference Court, the Land Acquisition Officer filed an appeal in A.S.No.1288 of 2002. The claimants filed a cross appeal. By a judgment dated 25-10-2005, the High Court allowed the appeal and remanded the matter back to the Reference Court.

63. By a judgment dated 15-4-2010, the Reference Court enhanced the market value of land to Rs.1,92,000/- and fixed the value of well at Rs.7,51,550/-. The Reference Court also awarded additional market value at 12% per annum from the date of taking possession till the date of award. Therefore, the Land Acquisition Officer has come up with the above appeal.

64. It must be pointed out that the Land Acquisition Officer is on appeal. Unlike in the other appeal, only three issues arise for consideration namely:

- i) Whether the enhancement of the market value of the land from Rs.1,170/- per acre to Rs.1,92,000/- per acre was proper?
- ii) Whether the enhancement of the value of the well from Rs.1,41,375/- to Rs.7,51,550/- was proper? and
- iii) Whether the date of taking over possession is 21-06-1985?

65. On the first question, the argument is that when the value of the land in Survey No.13/2 is fixed at Rs.1,170/- per

acre, the value of the land in Survey No.14/3A could not have been fixed at Rs.1,92,000/- per acre.

66. It is seen from the award passed by the Land Acquisition Officer that a compensation of Rs.1,170/- per acre was arrived at merely on the basis of the estimate prepared by the Joint Collector and Special Collector and also on the basis of the PV statement submitted for approval to the Special Collector. It appears that no sale transactions took place in a period of 3 years preceding the date of notification under section 4(1) in the area concerned. Therefore, there was no data sale for guiding the LAO.

67. Interestingly, the award dated 10-11-1999 proceeds on the basis that a requisition for acquisition of certain lands in Survey Nos.1, 9 to 16, 18, 20 and 21 were submitted in 1987 by the Executive Engineer and it was later withdrawn in respect of Survey Nos.12, 13 and 14. A fresh requisition was sent on 27-11-1990, for acquisition of land in Survey Nos.12, 13 and 15. Thereafter, the land in Survey No.14/3A, which formed the subject matter of the present appeal, was separated and a notification was issued in September/October 1995. It was also recorded in the award that possession of the land was taken on 10-03-1988.

68. Therefore, there was virtually no basis for the Land Acquisition Officer to fix the market value of the land at Rs.1,170/- per acre.

69. The reference Court, in the first round of litigation, also fixed the market value of the land at Rs.20,000/- per acre only on an arbitrary basis. The judgment of the reference court in the first round dated 25-02-2002 shows that the land owner also did not file any sale deed of any comparable land in the locality to show what the market value of the land was. Therefore, in paragraph 9 of its judgment dated 25-02-2002 in the first round of litigation, the reference Court fixed the market value of the land at Rs.20,000/- per acre solely on the ground that there were contradictions between the evidence of the Land Acquisition Officer as PW.1 and the findings recorded in the award filed as Ex.A.1. Ex.A.1 award recorded a finding that the land was a rocky land. But, PW.1 (L.A.O.) admitted that there were commercial crops.

70. Merely on the basis of this single contradiction between the evidence of the Referring Officer as PW.1 and the award filed as Ex.A.1 and that too on the question of the nature of the soil, the Reference Court enhanced the compensation for land from Rs.1,170/- per acre to Rs.20,000/- per acre.

71. The judgment of the Reference Court in the first round was set aside by this Court in an appeal in A.S.No.1288 of 2002 dated 24-10-2005, on the ground that there was no valid and cogent material or any acceptable legal evidence.

72. After the remand, an additional claim statement was filed. The Referring Officer examined himself as PW.1 and marked the award as Ex.A.1. The land owner filed additional affidavit in lieu of continuation of chief examination as RW.1 and examined a Civil Consulting Contractor as RW.2. Seven documents were filed on the side of the claimant as Ex.B.1 to B.7.

73. It is relevant to point out that the land owner sought enhancement of compensation to Rs.6,40,000/- per acre in his additional claim statement, on the basis of capitalisation method. The land owner claimed that he was cultivating turmeric, cotton and other commercial crops, giving an average yield to Rs.40,000/- per acre as income and that therefore, by applying a multiplier of 16, he must be paid Rs.6,40,000/- per acre.

74. The Reference Court, in the second round of litigation, found from Ex.B.3-(A), which is a letter of the Deputy Collector, enclosing the notes of inspection dated 20-01-1986 that there were commercial crops. Therefore, the Reference Court proceeded to arbitrarily fix the average yield per year at Rs.12,000/- per acre as against the claim of Rs.40,000/- per acre and applied a multiplier of 16 to arrive at the market value of the land at Rs.1,92,000/- per acre.

75. It is seen from the notes of inspection marked as Ex.B-3-A that the total land of an extent of Ac.2.93 cents in

Survey No.14/3A, was classified as Government dry and was irrigated by well water. It was red soil and arable. The notes of inspection shows that there was Sajja crop in Ac.1.00, Jawar in Ac.0.20cents, turmeric in Ac.0.50 cents and cotton in Ac.1.25 cents. The remaining land was ploughed and kept ready for sowing. The notes of inspection Ex.B3-(A) also indicated that there was one square well with water existing in the land.

76. There was no indication in Ex.B-3-A about the yield per annum from the land.

77. None of the exhibits filed by the land owner gave a clue as to the annual yield from the commercial crops. Except the *ipse dixit* of the land owner as RW.1 that he was getting 35 to 40 quintals of dry turmeric, 20 quintals of sunflower seeds and 20 quintals of cotton, apart from groundnut, giving an annual income of about Rs.40,000/-, there was nothing on record to show the annual yield as well as the income from the yield. In other cases of similar nature, an Assistant Director of Horticulture (Retd) was examined to speak to the annual yield of the commercial crops in lands of similar nature.

78. Interestingly, the land owner, when he was examined-in-chief as RW.1 on 29-10-2001 in the first round of litigation, claimed that he was getting an annual income of Rs.15,000/- per acre and that he was seeking a

compensation of Rs.70,000/- per acre. The relevant portion of the chief-examination of RW.1 (land owner) on 29-10-2001 reads as follows:

“The market value fixed by the Government to the land is the basic value in the year 1920. There is no resettlement survey after 1920. There are lot of changes in the irrigation system and the cultivation measures to improve the yielding. The value of the land was increased nearly 1500 times. I claimed compensation of Rs.70,000/- per acre. I raised groundnut, turmeric and other commercial crops and thereby I am getting an income of Rs.15,000/- per acre per annum. Hence, I claimed compensation of Rs.70,000/- in the land.....”

79. Therefore, even if the Court had to go by the *ipse dixit* of the land owner, the compensation could have been fixed only at Rs.70,000/- per acre, as there was no evidence to the annual yield in terms of income per acre. But the reference court went on the basis of the improvised version of the chief-examination, after the order of remand in the first round of litigation.

80. The Reference Court did not notice the contradiction in the claim made by the land owner in his chief-examination on 29-10-2001 in the first round of litigation and the claim made in the affidavit in lieu of chief examination filed after the order of remand. The affidavit in lieu of chief-examination filed after the order of remand was also not supported by any documentary evidence. Therefore, the reference Court committed a grave error in arriving at a figure on the basis of the additional affidavit filed in lieu of chief-examination after

the order of remand, when it was not even supported by any document. In such circumstances, we are of the considered view that at the most the land owner could have been granted a compensation of Rs.70,000/- per acre as claimed by him in his chief-examination dated 29-10-2001. After all, the fundamental premise on which the law relating to fixation of compensation proceeds, is that the value should correlate to the amount that a willing purchaser would offer.

81. Coming to the market value of the well, it is seen even from Ex.A.1 award that a well was in existence in the land of an extent of Ac.0.10 cents. The value of the well was fixed by the Land Acquisition Officer at Rs.1,41,375/- under normal system and at Rs.3,52,000/- under mattu system. But after a clarification was sought, the Executive Engineer, Telugu Ganga Project sent fresh estimates on 11-02-1998 fixing the value of the well at Rs.2,49,300/- under normal system and at Rs.7,51,550/- under mattu system. Therefore, even in the first round of litigation, the value of the well was fixed at Rs.7,51,550/-.

82. After the order of remand, the reference Court again went by the estimation prepared by the Executive Engineer and fixed the value of the well at Rs.7,51,550/-. Hence, we do not think that the same calls for our interference.

83. Coming to the third question, which relates to the date of taking over possession, the learned senior counsel for

the land owner contended that advance possession was taken on 21-06-1985 when trial pits were dug. But as we have found in the other appeal, the digging of trial pits does not tantamount to taking over possession. If it did, the land owner could not have raised commercial crops after 21-06-1985. In fact, the land owner relied upon Ex.B.4 letter dated 01-12-1998 for fixing the value of the well as per the SSR rates of the year 1998-99. If possession had already been taken in 1985, the SSR rates of the year 1998-1999 would not apply.

84. In the Award No.1 of 1999-2000 dated 10-11-1999, the date of taking over possession was mentioned as 10-03-1988. The fact that the physical possession of the land was taken on 10-03-1988 is mentioned repeatedly in several places in the award. In fact, interest was calculated in the award from 10-03-1989, the date of expiry of one year from the date of taking over possession.

85. Even in the judgment dated 25-02-2002 passed in the first round of litigation in LAOP.No.431 of 2001, the date of taking over possession was recorded as 10-03-1988. The said finding was not upset by this Court in the first round of litigation. Therefore, the Reference Court committed a mistake in fixing the date of taking over possession as 21-06-1985 without even recording a finding as to how the date of 10-03-1988 mentioned in the award was wrong.

86. As pointed out earlier, a proposal was originally made in the year 1987, but it was withdrawn and a fresh requisition was made only in 1990. Therefore, the finding that possession was taken on 10-03-1988, appears to be more probable than the finding that possession was taken on 21-6-1985. Hence, we hold that the date of taking over possession was 10-03-1988.

87. In the result, we hold-

- 1) that the date of taking over possession was 10-03-1988 and not 21-06-1985 as fixed by the Reference Court;
- 2) that the compensation for land, as prayed for by the claimant in his chief-examination as Rs.70,000/- per acre, should be a reasonable compensation; and
- 3) that the market value of the well was rightly fixed as Rs.7,51,550/- by the Reference Court.

88. In view of the above, L.A.A.S.No.176 of 2011 is allowed and the judgment and decree of the Reference Court are modified as follows:

- 1) that the market value of the land is fixed at Rs.70,000/- per acre;
- 2) that the market value of the well as fixed by the Reference Court at Rs.7,51,550/- is approved as correct;
- 3) that the claimant is entitled to additional market value at 12% p.a. from the date of taking possession namely 10-03-1988; and

4) that the decree of the Reference Court on all other aspects stands confirmed.

There will be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. No costs.

V.RAMASUBRAMANIAN, J

Date: 30-10-2018

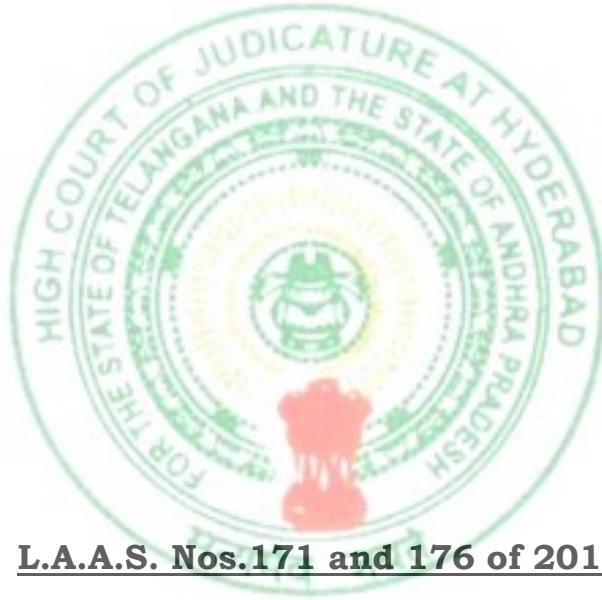
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J.UMA DEVI, J

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



L.A.A.S. Nos.171 and 176 of 2011

30th October, 2018.
(Ksn)