

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

+ I.A.Nos.1 & 2 of 2011 (LAAS MP Nos.658 & 659 of 2011)
in/and L.A.A.S.No.366 of 2007 **and** L.A.A.S.No.585 of 2007

% Date: 15-02-2018

L.A.A.S.No.366 of 2007:

V.Kishan Rao, S/o.Laxmikantharao, Aged 47 years,
Occ: Agriculture, R/o.Kamanpur Village & Mandal,
Karimnagar District ... Appellant/Claimant No.41

Vs.

\$ 1. LAO & Spl. Deputy Collector,
L.A. Unit, S.C. Co., Ltd., Godavarikhani
2. The General Manager, Singareni Collieries Co. Ltd.,
Godavarikhani ... Respondents/Respondents
3. Bollapalli Narsaiah S/o.Ellaiah & 68 others
... Respondents/Respondents/Claimants
(R.3 to R.71 are not necessary parties to this appeal)

L.A.A.S.No.585 of 2007:

General Manager, Singareni Collieries Co. Ltd.,
Godavarikhani ... Appellant/Respondent No.2

Vs.

\$ 1. Bollapalli Narsaiah S/o.Ellaiah & 69 others
... Respondents/Claimants
71. LAO & Spl. Deputy Collector, L.A. Unit,
S.C. Co. Ltd., Godavarikhani, Karimnagar District
... Respondent/Respondent

! Counsel for Appellant/Claimant No.41: Mr. Y.Rama Rao
Counsel for Singareni Collieries Co. Ltd.: Spl. GP for
Addl. AG (Telangana)

< Gist:

> Head Note:

? Cases referred:

1. 2013(1) Decisions Today (SC) 300
2. 2014(5) ALD 531 (DB)

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

I.A.Nos.1 & 2 of 2011 (LAAS MP Nos.658 & 659 of 2011)
in/and
L.A.A.S.No.366 of 2007
and
L.A.A.S.No.585 of 2007

Common Judgment: (per V.Ramasubramanian, J.)

While LAAS No.366 of 2007 is by claimant No.41, LAAS No.585 of 2007 is by the Singareni Collieries Company Limited for whose benefit the land was acquired in terms of the provisions of the Land Acquisition Act, 1894. Both these appeals are filed under Section 54 of the Land Acquisition Act, questioning the correctness of the judgment of the Reference Court under Section 18.

2. Heard Mr. Y.Rama Rao, learned counsel appearing for the claimant and the learned Special Government Pleader appearing for the Singareni Collieries Company Limited.

3. By a Notification issued under Section 4(1) of the Act on 08-3-1990, the lands of the extent of about 101.30 acres in Survey Nos.83, 85/2&3, 86 to 91, 95 to 99/A&B, along with the structures, wells and trees in Mulkalapalli Village of Kamanpur Mandal were acquired for the purpose of construction of residential quarters for the workmen of Singareni Collieries Company Limited. The possession of the lands was taken by invoking the emergency clause, on 06-6-1990 itself.

4. After taking note of 8 sale transactions that had taken place within three years immediately before the date of the Notification under Section 4(1), the Land Acquisition Officer (LAO) passed an award bearing Award No.3/1992, dated 29-3-1992, fixing the compensation at Rs.8,500/- per acre for dry lands and Rs.12,000/- per acre for dry cum wet lands. He also fixed the value of wells at Rs.13,950/- per well and a sum of Rs.77-60 ps. per tappable sendhi tree, Rs.8/- per untappable sendhi tree and 0.25 ps. per bush.

5. The land owners sought reference and the reference was taken on file in O.P.No.26 of 2001. Before the Reference Court, there were 70 claimants. A claim statement was filed by claimants 1 and 2 which was adopted by claimants 3, 7 to 10, 12, 13, 41 to 49 and 62 to 64. Claimants 18 and 20 filed separate claim petitions which were adopted by claimants 4 to 6, 11, 14, 15, 17 to 27, 29 to 31, 33, 35 to 37, 39, 40, 50 to 55, 57, 58, 60, 61 and 65.

6. Before proceeding further, it must be recorded here that the appellant in LAAS No.366 of 2007 was the 41st claimant before the Reference Court. He did not file an independent claim statement, but he adopted the claim statement filed by claimants 1 and 2. Similarly, he did not get into the witness box. Only four persons were examined on the side of the claimants. Out of them, P.W.1 alone was one of the 70 claimants. Other three witnesses were not claimants but third parties.

7. The claimants filed five documents as exhibits. Exs.A-1 to A-3 were the certified copies of the registered sale deeds dated 20-01-1986, 09-5-1988 and 21-4-1988. The estimation of the wells belonging to claimant No.1 and claimant No.7 were filed as Exs.A-4 and A-5.

8. The Special Deputy Tahsildar was examined as R.W.1. The Estate Manager of Singareni Collieries Co. Ltd., was examined as R.W.2. The Deputy General Manager of the Company was examined as R.W.3. The copy of the award was filed as Ex.B-1. The certified copies of three sale deeds on the basis of which the LAO passed the award were marked as Exs.B-2 to B-4. The Village Plan was marked as Ex.B-5. The estimates of the wells were marked as Exs.B-6 and B-7.

9. On the basis of Ex.A-1, which related to the sale of a land in Survey No.87, the Reference Court came to the conclusion that the market value of the land could be fixed at Rs.20,000/- per acre. Exs.A-2 and A-3 were rejected by the Reference Court on the ground that both of them related to Kalvacherla Village, which is only a village adjoining Mulkalapalli Village, in which the acquired lands were situate. The Reference Court also fixed the market value of dry cum wet land at Rs.25,000/- per acre.

10. Contending that the award of compensation at Rs.20,000/- per acre for dry lands and Rs.25,000/- per acre for dry cum wet lands is on the higher side, the LAO has come up with LAAS No.585 of 2007. On the contrary,

contending that the market value of the lands was Rs.1,20,000/- per acre, the 41st claimant has come up with the appeal LAAS No.366 of 2007.

11. It is relevant to point out that LAAS No.585 of 2007 filed by the LAO came up for hearing way back in the year 2008. Though what came up for hearing was only the miscellaneous application for stay, a Division Bench of this Court took the appeal itself for consideration and allowed the appeal of the LAO by judgment dated 18-4-2008, reducing the compensation for dry lands to Rs.16,000/- per acre and for dry cum wet lands to Rs.20,000/- per acre. 69 out of 70 claimants, who were parties in the reference before the Reference Court, admitted the judgment dated 18-4-2008 in LAAS No.585 of 2007 and have kept quiet. But the 41st claimant alone, came up with an application for review in LAAS MP No.1 of 2018 on the ground that notice was not served on him before the appeal was allowed. Though we could have rejected the review application on the short ground that the appellant in LAAS No.366 of 2007 did not independently prosecute his claim before the Reference Court but chose to ride only on the back of claimants 1 and 2, we did not stand on technicalities and allowed the review application, despite the fact that the judgment in LAAS No.585 of 2007, dated 18-4-2008, had attained finality in respect of 69 persons. It must be pointed out at the cost of repetition that the appellant in LAAS No.366 of 2007 did not

file an independent claim statement and did not get into the witness box before the Reference Court. He simply adopted the claim statement filed by claimants 1 and 2 and he chose to go by the evidence let in by the 1st claimant. Therefore, the appellant had no case independent of the 1st and the 2nd claimants. Despite this hurdle, we allowed the review application only on account of the fact that his own independent appeal was also on file in this Court. Keeping this factor in mind, let us now proceed to analyse whether he has a claim for further enhancement over and above the one ordered by the Reference Court.

12. Let us first take up the appeal of Singareni Collieries Co. Ltd., in LAAS No.585 of 2007. The main ground on which Singareni Collieries Co. Ltd., has come up with the above appeal is that the LAO could not have relied upon Ex.A-1, dated 20-01-1986. According to the learned Special Government Pleader, the LAO rightly took note of the sale deeds Exs.B-2 to B-4 and fixed the market value at Rs.8,500/- per acre for dry lands and Rs.12,000/- per acre for dry cum wet lands.

13. But we do not agree. The sale deed Ex.A-1, dated 20-01-1986, was executed at least four years before the date of the Notification under Section 4(1) viz., 08-3-1990. Therefore, it was not a document cooked up for the purpose of seeking enhanced compensation. The land covered by Ex.A-1 was in Survey No.87 of Mulkalapalli Village itself.

The lands acquired were in Survey Nos.83, Part of 85, 86 to 91 and 95 to 99. In other words, the land covered by Ex.A-1, was actually a part of the very land acquired. Therefore, the Reference Court was right in taking note of the value at Rs.20,000/- per acre as reflected in Ex.A-1.

14. The Reference Court was right in rejecting Exs.A-2 and A-3, since they related to lands located in another village viz., Kalvacherla Village. The Reference Court was also right in rejecting Exs.B-2 to B-4, for two reasons viz., (a) that the lands covered by Exs.B-2 to B-4 were in Survey No.130 and (b) that it is reasonable to expect the LAO to take the best of the transactions available on record. The best of the transactions available on record was the one indicated in Ex.A-1. While Exs.B-2 and B-3 relate to Survey No.103, Ex.A-1 related to Survey No.87 which itself was acquired.

15. Therefore, the LAO was right in taking the market value at Rs.20,000/- per acre on the basis of Ex.A-1. The grievance sought to be made out by the Singareni Collieries Co. Ltd., in their appeal LAAS No.585 of 2007 is therefore unjustified, hence LAAS No.585 of 2007 is dismissed.

16. Coming to the appeal LAAS No.366 of 2007 filed by the 41st claimant, the claim of the appellant is for compensation at Rs.1,20,000/- per acre. Unfortunately, the appellant never went to the witness box to state the basis on which he made a claim for Rs.1,20,000/- per acre. Four

persons were examined on behalf of all the 70 claimants. Ultimately only five documents came to be marked on the side of the claimants. Three of them were sale deeds about which we have already made a discussion while dealing with the other appeal, Exs.A-2 and A-3 related to lands in another village and hence the appellant could not have relied upon Exs.A-2 and A-3. Exs.A-4 and A-5 were the estimation of wells belonging to claimant Nos.1 and 7. In the appellant's land, there was no well and hence he is not concerned with the same.

17. In other words, the only piece of evidence let in before the Reference Court on behalf of the appellant in LAAS No.366 of 2007, which had the correlation to the market value of the land acquired from him was Ex.A-1 and hence the Reference Court rightly took note of Ex.A-1 alone.

18. However, the appellant has now come up with two applications in LAAS MP Nos.658 and 659 of 2011 seeking to file two additional documents under Order XLI, Rule 27 CPC. The first is a sale deed dated 17-02-1990. This sale deed relates to the sale of a land in Survey No.200 in Kalvacherla Village. The land of the extent of about 423.5 square yards was sold under the said sale deed on 17-02-1990 for a total consideration of Rs.10,600/- at the rate of Rs.25/- per square yard.

19. But this additional document No.1 sought to be marked as additional evidence, cannot be taken into account

for the very same reasons on which we have rejected Exs.A-2 and A-3. As we have indicated earlier, Exs.A-2 and A-3 relate to lands in Kalvacherla Village. The present additional document No.1 also relates to a land in Kalvacherla Village. Therefore, additional document No.1 is not of any use to the appellant.

20. The 2nd additional document sought to be filed by the appellant is an opinion given by a so-called expert, called “Sagar Earth Science Allied Services”. This report is prepared in January 2011, after four years of the filing of the above appeal. This report is on the purported availability of coal and clayey top soil potential in Survey No.88/A,B&C, Mulkalapalli Village.

21. This report cannot be taken into account, for the simple reason that the appellant ought to have taken such a report even before the Reference Court and examined the expert, so that the beneficiary Company or the LAO could have cross-examined the expert. The date of 4(1) Notification, to recollect, was 08-3-1990. The award was passed in March, 1992. The reference was disposed of in December, 2006. The above appeal was filed in 2007 and the expert report is taken in January, 2011. Therefore, the 2nd additional document sought to be filed for establishing that there was valuable subsoil mineral in the land of the appellant which was acquired by the respondents, cannot be taken note of.

22. Relying upon the judgment of the Supreme Court in ***Threesiamma Jacob v. Geologist Dept. of Mining & Geology***¹, it was contended by Mr. Y.Rama Rao, learned counsel for the appellant, that wherever there is subsoil mineral, the land owner could be taken normally to be the proprietor of the minerals and that therefore the appellant is entitled to a valuation of the same.

23. But even in the claim statement filed by claimants 1 and 2, which came to be adopted by the appellant herein, there was no whisper about the availability of subsoil mineral. Therefore, naturally no evidence was let in on this aspect before the Reference Court. Today the appellant is seeking to lead additional evidence without a pleading. Hence, the judgment is of no assistance to the appellant.

24. Relying upon another judgment in ***Singareni Collieries Co. Ltd. v. Devaraj Venkateshwar Rao***², it was contended by the learned counsel for the appellant that another property acquired for the very same purpose, was valued at Rs.90,000/- per acre and that this Court awarded a compensation of Rs.one lakh per acre and that therefore the appellant should have the benefit of the same.

25. But it is seen from the said decision that the land that formed the subject matter of acquisition in that case was in Adrial Village of Manthani Mandal in Karimnagar District. The land in respect of which the present case is concerned,

¹ 2013(1) Decisions Today (SC) 300

² 2014(5) ALD 531 (DB)

was in Mulkalapalli Village. Therefore, for the very same reasons that we rejected the sale deed relating to Kalvacherla Village which is also adjoining village, the said judgment will also have no application to the case on hand.

26. It is relevant to note that when a vast extent of land is acquired from several adjoining villages, compensation cannot be and need not be fixed at uniform rates for the lands comprised in all the villages merely because the two villages are located adjacent to each other. If compensation is to be awarded at a uniform rate, no independent awards need to be passed and no independent enquiries need to be conducted. Therefore, the said judgment is of no assistance.

27. Therefore, the claim of the appellant in LAAS No.366 of 2007 for enhancing the compensation to Rs.1,20,000/- per acre cannot be sustained. If that is so, then the question that arises is as to what should be correct amount of compensation.

28. We have already approved in the appeal filed by the Singareni Collieries Co. Ltd., the rate of Rs.20,000/- per acre accepted by the Reference Court. But one small mistake was committed by the Reference Court. The Reference Court went by Ex.A-1 to arrive at the market value as Rs.20,000/- per acre. While doing so, the Reference Court forgot one aspect. The date of Ex.A-1 was 20-01-1986. The date of Notification under Section 4(1) was 08-3-1990. A period of four years had

passed from the date of Ex.A-1. Therefore, the Reference Court ought to have made a provision for enhancement of the market value year after year. This lacuna in the judgment of the Reference Court, needs to be corrected.

29. The learned Government Pleader expressed serious reservations, on the ground that when 69 out of 70 claimants have accepted the compensation fixed by this Court in LAAS No.585 of 2007, this will open the flood gates.

30. But the flood gates theory cannot deter the Court from fixing appropriate amount of compensation. If a land owner is entitled as a matter of right to a particular compensation, the Court should not get intimidated by the fact that every other person would follow. Therefore, we are of the considered view that the compensation as fixed by the Reference Court should be enhanced appropriately, by granting an increase year after year from the date of Ex.A-1.

31. The market value as reflected by Ex.A-1 dated 20-01-1986 was Rs.20,000/- per acre. If we take that there would have been a 10% increase every year, there would have been a 40% increase in the year 1990, when the Notification was issued on 08-3-1990. Therefore, the amount of compensation should have been fixed by the Reference Court at Rs.28,000/- per acre. Accordingly, LAAS No.366 of 2007 is allowed insofar as the appellant is concerned and the compensation payable to the appellant is fixed at Rs.28,000/- (Rupees twenty eight thousand only) per acre. He will be

entitled to all other statutory benefits as applicable in accordance with law. The miscellaneous petitions, if any, pending in these appeals shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.AMARNATH GOUD, J.

15th February, 2018.
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