

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

C.C.C.A. No.117 OF 2008

JUDGMENT:

Claimant Nos.6 to 17 in L.A.O.P. No.74 of 2001 on the file of learned I Senior Civil Judge, City Civil Courts, Hyderabad, are the appellants herein.

2. Aggrieved over the order dated 02.01.2007 in the said L.A.O.P., whereby and whereunder, reference under Section 30 of The Land Acquisition Act, 1894 (for short 'the Act'), was answered, holding that respondent Nos.2 to 6 herein, who are claimant Nos.1 to 5, alone are entitled to compensation awarded by the Land Acquisition Officer, which was enhanced from Rs.2,906/- per square yard to Rs.4,500/- per square yard in L.A.O.P. No.75 of 2001, which was also disposed of on the same day.

3. In fact, a common order was passed in both the L.A.O.Ps., by the learned Senior Civil Judge, before whom, claimant No.3 viz., B. Hari Rao examined himself as PW.1 and marked Exs.A-1 to A-69, representing himself and other claimant Nos.1, 2, 4 and 5, as one set. Claimant Nos.6 to 17 as other set, neither chosen to examine any of them as witnesses nor did they file any documents to establish their right or title over the property that was acquired by respondent No.1 herein viz., the Special Deputy Collector, Land Acquisition, MCH, Hyderabad, who is sole respondent in the O.Ps.

4. Heard Sri M.D. Mohapatra, learned counsel for the appellants, and Sri P. Suresh, learned counsel for respondent Nos.2 to 6.

5. For the sake of convenience, the parties are hereinafter referred to as they were arrayed in the O.P. before the Court below.

6. A few relevant facts are necessary to advert, to adjudicate upon the controversy in the present appeal.

7. The Municipal Corporation of Hyderabad (MCH) made a request to the erstwhile Government of Andhra Pradesh to acquire an extent of 33.72 square yards in premises No.3-6-784/2 to 7 situate abutting the road leading to Durga Temple, Himayathnagar to Lingampally crossroads, Narayanguda, for road widening and construction of flyover bridge. In the said context, a draft notification was published on 26.12.1998 and invoking the urgency clause, taken advance possession on 03.06.1999. The sole respondent viz., the Special Deputy Collector, Land Acquisition, Municipal Corporation of Hyderabad, Hyderabad, conducted due enquiry having issued notices to the concerned and passed Award bearing No.G/518/199 dated 30.11.2000 fixing the market value at Rs.2,906/- per square yard and also valued the structure as per the recommendations made by the Engineering Department of MCH, Hyderabad. Since there was dispute *inter se* with regard to title of the property, respondent No.1 referred the dispute to the Civil Court under Section 30 of the Act.

8. It appears, the claimants also made an application to refer the matter to the Civil Court as the market value fixed by the Land Acquisition Officer was inadequate and unjust. Thus, it occasioned, referring the case both under Sections 18 and 30 of the Act. That is how, the learned Senior Civil Judge, disposed of both the L.A.O.Ps. by a common order.

9. L.A.O.P. No.74 of 2001 relates to the reference under Section 30 of the Act, whereas, L.A.O.P. No.75 of 2001 concerns with reference under Section 18 of the Act.

10. Before the reference Court, claimant Nos.6, 8 to 13, 14, 16 and 17 filed their statements mentioning that Survey Nos.111/2, 115/1, 135/1, 135/2, 136/1, 1367/2 are patta lands belonging to one Syed Wali Ullah Hussaini, who was working as Awal Talukdar, Basheerabad. The extent being Acs.3-24 guntas purchased by him under two registered sale deeds. These claimants are legal heirs of the said Syed Wali Ullah Hussaini. In fact, one Syed Akber Hussain was pattadar of a total extent of Acs.9-36 guntas of the said survey numbers and he was liable to pay land revenue to the Government to a tune of Rs.1,333/-. After his demise, even his legal heirs failed to pay the land revenue to the Government and, therefore, the father of the claimants, Syed Wali Ullah Hussaini, cleared the entire arrears of land revenue, upon which, an extent of Acs.3-11 guntas and Ac.0-13 guntas were sold to him under two different sale deeds by the legal heirs of Syed Akber Hussain. That is how, the source of title is

claimed by the appellants herein i.e., claimant Nos.6 to 17. They, in fact, based on an entry made in Town Survey Land Register (TSLR), reflecting Syed Wali Ullah Hussaini as owner of the said extent. According to them, the first set of claimants, who are respondent Nos.2 to 6 herein, failed to produce any document to show source of title of Smt. Ram Dulari Devi, from whom, their father purchased the property. Therefore, sought to grant compensation only to them.

11. Claimant Nos.1 to 5, who are respondent Nos.2 to 5 herein, filed their claim statement stating that one late P. Anand Rao has purchased the property under acquisition from Smt. Dulari Devi alias R.D. Chand under a registered sale deed dated 10.02.1959. The said Anand Rao, raised constructions in a portion of that land with the municipal sanction granted by the Municipality and sold the land and un-finished structures to himself and B. Babu Rao and B. Sunder Rao and they formed into a registered partnership firm i.e., Taj Mahal Hotel under registered document No.2460. Sometime thereafter, Anand Rao retired from the partnership firm by relinquishing all his rights in favour of Babu Rao and Sunder Rao and they became owners of the entire property and they being join family members, their children also executed a memorandum of understanding under which late Sunder Rao relinquished his right in the property in favour of claimants, who are legal heirs of late B. Babu Rao and having been in possession and enjoyment of the said extent, claimed that they are entitled for compensation and even requests to enhance the

compensation to Rs.20,000/- per square yard, as fixation of value of the land by the Land Acquisition Officer was very meagre.

12. The learned counsel for the appellants (claimant Nos.6 to 17) would submit that reference Court totally went wrong in appreciating the evidence on record and comprehending the case set out by the claimants as rival claims. The learned counsel would submit that claimant Nos.1 to 5 failed to show as to how Smt. Ram Dulari Devi could acquire the property and her source of title. The learned counsel also would submit that there has been a title deed in favour of Syed Wali Ullah Hussaini, who purchased the land under acquisition and other extents under two different registered sale deeds, and, therefore, the right of claimant Nos.6 to 17 ought to have noted by the reference Court and ought to have allowed rejecting the right claimed by claimant Nos.1 to 5 and sought to set aside the order passed by the reference Court. Yet another submission made by the learned counsel is that no opportunity is afforded to claimant Nos.6 to 17 to lead their evidence. Still, further, the learned counsel would submit that some of the claimants in L.A.O.P. were not served with notices. The learned counsel also places reliance on the case details in O.P. No.74 of 2001 and points out the (interlocutory applications - M.Ps.) at serial Nos.36, 38, 39 and 43 to show that the case was advanced and posted for cross-examination of PW.1 by posting the matter to 03.11.2006 and allowed the application 01.11.2006; for further examination of PW.1 in chief and later, after cross-

examination of PW.1, closed it; and, thereafter, only one chance was given to claimant Nos.6 to 17, who are appellants herein, and, thereafter, posted for arguments. Thus, what all the learned counsel intends to submit is that no adequate opportunity was given to claimant Nos.6 to 17 to lead their evidence.

13. Learned counsel for claimant Nos.1 to 5 would strongly resist the request contending that there is no procedural infirmity at all, and, in fact, arguments were tendered by the appellants herein through their counsel as could be gathered from the entries in the very same case sheet. The learned counsel also would submit that claimant Nos.1 to 5's continuous possession was taken note of and, therefore, possession was pursuant to the purchase made by late Anand Rao, their father, from Smt. Ram Dulari Devi, way-back in 1959 itself. It is also his submission that claimant Nos.6 to 17 have not made any effort at all to lead any evidence to rebut the evidence let in by claimant Nos.1 to 5. In which event, the order passed by the Court below cannot be viewed as tainted with any illegality. Thus, he supports the order under challenge.

14. Perused the material on record.

15. When looked at the submissions of the learned counsel for claimant Nos.6 to 17, it is clear that the case details filed by him and referred to certain entries would indicate that PW.1 was cross-examined on 08.11.2006, and, thereafter, the claimants side was

closed, listing it to 20.11.2006 for respondent side, and, thereafter, on 01.12.2006, arguments were heard and again on 07.12.2006, arguments were heard and on 02.01.2007, orders were pronounced even viewing that the respondent refers to the Special Deputy Collector, Land Acquisition, MCH, Hyderabad, still when PW.1's evidence was closed on 08.01.2006, certainly, claimant Nos.6 to 17 ought to have made an attempt to lead their evidence. From 08.11.2006, on which day, PW.1's cross-examination was done, it was listed to 20.11.2006, there was ample time for leading evidence by claimant Nos.6 to 17. Thereafter, even before orders were pronounced on 02.01.2007, claimant Nos.6 to 17 could have filed an application for reopening and leading evidence on their behalf which they did not avail of. Therefore, that submission of the learned counsel is without any merit.

16. Turning to the submission made on merits, it is no doubt true, reference Court made an observation that TSLR contains the title of Syed Wali Ullah Hussaini as owner, but, it is clear from the findings recorded by the Court below and the evidence on record that the names of claimant Nos.1 to 5 have been shown as possessors by virtue of the registered sale deeds, under Exs.A-1 and A-2 dated 10.02.1959 and 12.09.1962, respectively. Even Ex.A-64 sanction plan for construction accorded by the Municipal Corporation of Hyderabad, certainly, substantiate the case of claimant Nos.1 to 5. The other documents filed also would show their possession.

Thus, when Exs.A-1 and A-2 registered extracts of the sale deed are taken into consideration, certainly, it cannot be said that claimant Nos.1 to 5 were not successful in substantiating their case. To rebut the same, claimant Nos.6 to 17 have not taken any pains to lead evidence by filing title deeds of Syed Wali Ullah Hussaini through whom they claimed the title.

17. During the course of arguments, the learned counsel for claimant Nos.1 to 5 has also submitted that the claimant Nos.6 to 17 have filed L.G.C. (S.R.) No.4345 of 2006 and it was dismissed on 04.12.2007 and even they filed O.S. No.1206 of 2008 on the file of V Senior Civil Judge, City Civil Court, Hyderabad, to declare the sale deed executed by Smt. Ram Dulari Devi in favour of Anand Rao as null and void and even that suit was dismissed on 07.03.2017 and they preferred regular first appeal. These events were not disputed by the learned counsel for claimant Nos.6 to 17. But, however, he would plead that since regular first appeal is still pending, he makes a request to remit the matter to the Court below for disposal afresh by giving opportunity to claimant Nos.6 to 17.

18. The present appeal relates to the year 2008. In fact, adequate opportunities were afforded to claimant Nos.6 to 17, they cannot plead ignorance of the day-to-day proceedings in O.P. No.74 of 2001. After closure of cross-examination of PW.1 and the evidence of claimant Nos.1 to 5, the O.P. was disposed of three months thereafter. In such an event, certainly, it cannot be said that

no opportunity was afforded to claimant Nos.6 to 17 to lead evidence. Even on merits, when Exs.A-1 to A-68 favours the case of claimant Nos.1 to 5, it cannot be said that the findings recorded by the reference Court, based on the oral and documentary evidence let in by claimant Nos.1 to 5, suffers from legal infirmity as the findings recorded are supported by process of reasoning and in accordance with the evidentiary rule. There is no merit in the appeal.

19. Therefore, the present appeal is dismissed. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in the present appeal stand dismissed.

February 28, 2018.

PV

A. SHANKAR NARAYANA, J

