

THE HON'BLE SRI JUSTICE M.S. RAMACHANRA RAO

C.C.No.2304 of 2016

This Contempt Case is filed alleging willful and deliberate violation of the order passed by this Court dt.28-04-2016 in W.P.No.5727 of 2016.

W.P.No.5727 of 2016

2. In the said Writ Petition, the petitioner alleged that (i)the District Collector, Chittoor, (ii) the Tahsildar, Kuppam of Chittoor District and (iii) the Gram Panchyat, Kuppam had taken over petitioner's property of Ac.0.40 cents in Sy.No.53/6 and Ac.0.05 cents in Sy.No.53/9 of Chinakurabalapalli Village, Kuppam Mandal, Chittoor District without following due process of law in 2000 for establishing a drinking water filter point on an assurance that Ac.2.00 of land elsewhere will be provided to him by the then District Collector, Chittoor. But the said assurance was not implemented till 2016 compelling petitioner to file it seeking either the offered land of Ac.2.00 or compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act") for the land he had been deprived of.

ORDER DT. 28-04-2016 IN THE W.P.NO.5727 OF 2016

3. The said Writ Petition was allowed on 28-04-2016 and respondents were directed to forthwith initiate proceedings under the Act for acquisition of petitioner's above referred land and complete the said process of acquisition including payment of compensation within four (04) weeks from the date of receipt of copy of the order. Costs were also directed to be paid to petitioner by respondents within four weeks.

THE EVENTS IN THE CC

4. Notice before admission was issued to respondents in the Contempt Case on 02-12-2016.

5. Thereafter on 07-04-2017, time was sought by the learned Government Pleader for Assignment appearing for respondent Nos.1 and 2 to file counter. Sri G.Seshadri, learned Standing Counsel appearing for respondent No.3 also sought time for filing counter. Matter then came to be listed on 21-04-2017, on which date, the matter adjourned to 09-06-2017. It was next listed on 07-07-2017.

COUNTER AFFIDAVIT OF 3RD RESPONDENT

6. The 3rd respondent filed a counter in the meantime on 24-04-2017. In the said counter, he stated that after receipt of the order passed by this Court, 3rd respondent had gone through the order and 3rd respondent had passed a resolution on 16-03-2016 itself agreeing to pay compensation to the petitioner. He stated that he met the Tahsildar, Kuppam (2nd respondent) in May, 2016 and discussed about payment of compensation, that 3rd respondent paid costs of Rs.5,000/- to the petitioner on 09-06-2016, and he sent a letter on 09-09-2016 to the District Collector, Chittoor to process the proceedings under the Act for payment of compensation to petitioner. He further stated that the 3rd respondent sent a letter on 26-12-2016 to the District Collector through District Panchayat Officer requesting for processing of land acquisition proceedings and that on 27-12-2016, the District Panchayat Officer also sent a letter to process the proceedings and to pay compensation to the petitioner. He also stated that letter dt.14-02-2017 was issued by the District Collector, Chittoor to the Sub-Collector and District Panchayat Officer instructing to proceed with the process of land acquisition proceedings by approving the preliminary notification issued under Section 11 of the Act and that

the Sub-Collector issued Form No.6 and notice dt.09-02-2017 inviting objections. He stated that only the other respondents have to take steps for payment of compensation and that the 3rd respondent had done his best in the matter. He also tendered unconditional apology if he is found to have violated the order passed by this Court.

7. On 07-07-2017, this Court asked the learned Government Pleader for Assignment to report on the status of the land acquisition proceedings initiated to acquire petitioner's land and adjourned the matter for three weeks. It was later adjourned to 04-08-2017 and to 07-08-2017 for compliance.

8. On 04-09-2017 when the matter was next listed, it was stated by the learned Government Pleader for Assignment that award was likely to be passed by the competent authority within two weeks. Therefore, the matter was posted after two weeks directing the learned Government Pleader for Assignment to file counter-affidavit on behalf of respondent Nos.1 and 2. On 03-10-2017 matter was again listed and adjourned to 06-10-2017.

COUNTER AFFIDAVIT OF 2ND RESPONDENT'S SUCCESSOR

9. After 06-10-2017, the 2nd respondent-Tahsildar, Kuppam, who took charge from the 2nd respondent on 16-07-2017, filed a counter confirming the initiation of proceedings under the Act by issuing preliminary notification on 09-02-2017 under the Act and also stating that declaration under Section 19 of the Act was published on 02-07-2017. It was stated that award enquiry was being conducted by the Sub-Collector, Madanapalle-cum-Land Acquisition Officer (4th respondent in the Contempt Case, who was subsequently impleaded on 27-02-2018 *suo motu*). He also stated that petitioner had filed a petition before the

4th respondent on 21-08-2017 and sought payment of compensation and that an award No.23/2017 dt.6-9-2017 was passed by the 4th respondent awarding a sum of Rs.3,73,776/- to the petitioner and the said amount was deposited in the account of Writ petitioner on 06-10-2017.

COUNTER AFFIDAVIT OF 2ND RESPONDENT

10. On 12-10-2017, the 2nd respondent also filed a counter reiterating the same facts and stating that he had been transferred and relieved on 14-07-2017. He also tendered his unconditional apology for delay in complying with the orders of this Court.

LATER EVENTS PENDING CC

11. When the matter was listed on 06-10-2017, learned Government Pleader for Land Acquisition was directed to produce the copy of the actual award No.23 of 2017 passed on 16-09-2017 by the 4th respondent since copy of the said award had not been annexed to the counter-affidavit referred to above. The same was produced on 13-10-2017 and it was furnished to the learned counsel for petitioner, who took time to respond.

12. On 27-10-2017, the matter was next listed.

**THE CALCULATION SHEET GIVEN BY PETITIONER AND CONTENTIONS
RAISED THEREIN**

13. On that day, learned counsel for petitioner handed over calculation sheet to the learned Government Pleader for Revenue pointing out that the award passed by 4th respondent on 16-09-2017 was not in accordance with the provisions of the Act. In particular, he pointed out that the Sub-Registrar of Kuppam had given a certificate of market value of petitioner's land as Rs.13,06,800/- for Ac.0.45 cents

as on 09-03-2016, but the 3rd respondent deliberately ignored the same in spite of the mandate under Section 26(1) of the Act and fixed a mere Rs.1,44,315/- as the market value of the said land. He further pointed out that under the Act, to the market value determined, there ought to be an addition of some more amounts after multiplying market value with a factor specified in the First Schedule and in the present case, no such addition to the determination of the market value was done by the 4th respondent. He stated that there were sale transactions in the same survey numbers, to which petitioner was a party, under which land was sold for Rs.29,04,300/- per acre, and these transactions were also ignored deliberately by 4th respondent.

14. Learned Government Pleader for Land Acquisition sought time to go through the calculation sheet given by the petitioner.

15. Thereafter the matter was listed on 17-11-2017, 19-01-2018, 22-01-2018 and 29-01-2018, on which dates a cheque for Rs.3,73,776/- dt.28-01-2018 was handed over to the learned counsel for petitioner, who received the same without prejudice to the rights of petitioner to contend that the amount mentioned in the cheque does not represent the market value of the land, which the petitioner has been deprived of. The matter was then adjourned to 12-02-2018 and was heard on 20-02-2018.

THE IMPLEADMENT OF 4TH RESPONDENT –SUB-COLLECTOR SUOMOTO

16. After preliminary hearing in the matter, the Court felt that the award No.23/2017 dt.16-09-2017 passed by 4th respondent was *prima facie* in gross violation of the Court order. So the Court impleaded her *suo motu* as a party. The

4th respondent was directed to be appeared before this Court on 06-03-2018. She appeared before the Court on 06-03-2018 and sought time to file a counter.

COUNTER OF 4TH RESPONDENT

17. On 20-03-2018, 4th respondent filed her counter-affidavit explaining her stand, and her presence was dispensed with.

18. In the said counter, 4th respondent stated that after petitioner's land was taken in the year 2000, that petitioner was offered Ac.2.00 of land near Model Colony, Kuppam by the District Collector, but the petitioner did not accept the said offer and thereafter, W.P.No.5727 of 2016 was filed by petitioner had been allowed directing initiation of proceedings under the provisions of the Act for acquisition of petitioner's land.

19. It is asserted that respondents had initiated proceedings for acquisition of petitioner's land under the Act and passed award on 16-09-2017 fixing the market value at Rs.3,20,700/- per acre. She contended that this market value was fixed in terms of the Act by taking into consideration 24 sale deeds executed between 10-02-2014 and 28-02-2017. It is stated that out of 24 sale deeds, the value mentioned in 12 sale deeds which are showing the highest value during the said period were taken into account with a view to give maximum benefit to the petitioner and average value of the sale consideration in the said sale deeds was taken for arriving at market value for Rs.3,20,000/- per acre. It is stated that thereafter the said amount of Rs.3,20,000/- was multiplied with 1.25 factor value and Rs.4,00,875/- was arrived at, to which 12% additional market value and 100% solatium were added and ultimately, a sum of Rs.3,73,776/- was arrived at. It is asserted that petitioner is not entitled for interest on the compensation so payable

under Section 80 of the Act since petitioner's land was taken from him in the year 2000 without initiating proceedings under the Act and without filing of any requisition for initiation of such proceedings. It is stated that in the instant case, Gram Panchayat took away the land of petitioner directly without filing any requisition of the Revenue Department for application of the Land Acquisition Act, 1984, which was then in vogue. It is stated that though cheque was prepared on 05-10-2017 for a sum of Rs.3,73,776/-, petitioner refused to receive it and filed a memo with fictitious calculation sheet.

20. It is alleged that petitioner had relied on sale deeds executed by him and his henchmen to rely on market value of land in same survey numbers. It is asserted that petitioner sold the land under the sale deeds relied upon by him by dividing the same into plots in the alleged layout which had no approval from the competent authority; that he had sold the same to the prospective buyers as if it is non-agricultural land; therefore the sale deeds which were relied upon by petitioner on 09-03-2017 and 25-04-2016 cannot be taken into consideration.

21. It is asserted that petitioner has relied upon market value of the lands in the vicinity which are converted into non-agricultural lands whereas petitioner's land is only agricultural land and it was not converted as non-agricultural land.

22. It is stated that a cheque for a sum of Rs.3,73,776/- was handed over to the learned counsel for petitioner by GP for Assignment for the amount awarded to the petitioner, but the said cheque was not honoured by the Bank for a technical reason and therefore the said amount was transferred through RTGS to the petitioner's Savings Bank Account on 14-02-2018. It is admitted that petitioner received the amount by writing in Form-C and Form-CC specifically that he

received the said amount under protest without prejudice to his rights to contest his case for further amount.

23. It is also contended that taking of the land of petitioner by 3rd respondent Gram Panchayat was on the basis of oral consent of petitioner, that he kept quiet for long period of 16 years and started claiming land with retrospective benefits for which there is no sanction under the Act.

24. It is also contended that petitioner has a remedy of filing appeal before the Authority mentioned in section 64 of the Act, who can make a reference to the appropriate authority for enhancement of compensation and so he cannot maintain the Contempt Case since such alternative remedy exists.

25. It is also stated that 4th respondent joined as Sub-Collector, Madanapalle on 14-11-2016, much later even to the period allotted by the Court for implementing the order dt.28-04-2016 in W.P.No.5727 of 2016 and that she had acted without undue delay and followed the procedure laid down under the Act and completed the acquisition process by 16-09-2017. She claimed that she was not the Sub-Collector, Madanapalle when the orders were passed by this Court on 28-04-2016 in W.P.No.5727 of 2016 and she has not been impleaded at that point of time and the orders passed by the Court in the Writ Petition were brought to her knowledge at a later date and she acted promptly.

26. It is also stated that the Panchayat Raj Department took one month time to give requisition for initiating land acquisition proceedings under the Act and gave the same on 27-12-2016 in Form-1; report was submitted to the District Collector, Chittoor on 28-12-2016 requesting to direct the District Panchayat Officer, Chittoor for submitting requisition as per Rules framed under the Act for

further action; the Panchayat Raj Department authorized the District Panchayat Officer to file requisition for land acquisition of petitioner's land for providing drinking water filter point under N.T.R. Sujala Sravanthi to Kuppam Gram Panchayat vide Memo dt.05-01-2017; thereafter report for approval of preliminary notification under Section 11(1) of the Act was submitted to 4th respondent's office on 30-01-2017; due to conduct of elections to the A.P. Legislative Council during February and March, 2017, there was hindrance to the finalization of land acquisition proceedings; and so the delay in completion of proceedings was neither willful nor wanton.

27. It is further stated that 4th respondent had not committed any contempt much less willful disobedience of the order and if the Court comes to such conclusion, unconditional apology tendered by 4th respondent be accepted.

28. The matter was then heard on 03-04-2018, 04-04-2018 and 06-04-2018 when the learned counsel for petitioner and learned Government Pleader for Land Acquisition addressed the submissions. Thereafter orders were reserved.

CONTENTIONS OF COUNSEL FOR PETITIONER

29. Learned counsel for petitioner contended that the direction of this Court in the order dt.28-04-2016 in W.P.No.5727 of 2016 to forthwith initiate proceedings under the provisions under the Act for acquisition of Ac.0.45 cents of land in Sy.No.53/6 and 53/9 of Chinnakurabalapalli village of Kuppam Mandal, Chittoor District and complete the said process of acquisition including payment of compensation within four months, had not been complied by the respondents since admittedly the requisition for acquisition was submitted by the District Panchayat Officer, Chittoor at the instance of the 3rd respondent for the first time on

27-12-2016, the preliminary notification was issued in the Gazette on 09-02-2017, the declaration under Section 19 was published in the Gazette on 01-07-2017 and the award No.23 of 2007 had been passed by the 4th respondent on 16-09-2017. He pointed out that the compensation itself was transferred to the petitioner's account admittedly only on 14-02-2018 and thus there had been an inordinate delay in complying with the said order by the respondents. He contended that willfully and deliberately the respondents delayed the process of compliance with the order passed by this Court.

30. He contended that the award passed by 4th respondent is in gross violation of the provisions of the Act. According to him, as per the proviso to sub-section (1) of Section 26, the date for determination of market value of petitioner's land ought to be the date on which the notification had been issued under Section 11 of the Act, but the 4th respondent considered the average of sale transactions between 10-02-2014 and 28-02-2017, which is contrary to the statute.

31. He also pointed out that as per sub-Section (1) of Section 26, the *higher amount* among (a) market value specified in the Indian Stamp Act, 1899 for registration of sale deeds in the area where the land is situated *and* (b) the average sale price for similar type of land situated in the near vicinity, should be taken; that the Sub-Registrar, Kuppam had given a certificate dt.09-03-2016 showing the market value of land in Sy.No.53/6 and 53/9 as Rs.29,04,000/- (page 3 of the calculation memo filed by petitioner), but instead of the said amount, the lesser figure of Rs.3,20,000/- on the basis of average of 12 sale deeds between 16-06-2014 and 18-05-2017 had been arrived at, which is another clear violation of the Act.

32. He also stated that sale deeds were executed on 25-04-2016 and 09-03-2017 in respect of parcels of land in the same survey numbers at

Rs.29,09,300/- per acre and the Sub-Registrar, Kuppam had given another certificate dt.12-01-2017 that the land was being sold at Rs.630/- per sq. yd equivalent to Rs.30,49,200/- and this evidence has been deliberately ignored by the 4th respondent causing huge loss to the petitioner.

33. He also pointed out that the market value determined under sub-Section (1) of Section 26 of the Act is required to be multiplied by a factor specified in first schedule as per sub-Section (3) of Section 26 and the same needs to be added to the market value of the land as per the first schedule, but the 4th respondent did not do so.

34. He pointed out that the Award passed by 4th respondent is in gross violation of the provisions of the Act and that the 4th respondent has attempted to mislead the Court/played fraud on the Court by stating that she passed the award in conformity with the Act.

**CONTENTIONS OF THE GOVERNMENT PLEADER FOR LAND ACQUISITION FOR
4TH RESPONDENT**

35. Learned Government Pleader for Land Acquisition pointed out that though there is a delay in compliance with the order dt.28-04-2016 in W.P.No.5727 of 2016, the said delay is not willful and occurred due to circumstances explained in the counter-affidavits filed by respondent Nos.2 to 4.

36. He stated that if the petitioner is aggrieved by the award, he has a remedy of seeking a reference under Section 64 of the Act to the Authority constituted under Section 51 of the Act and that there is no willful disobedience of the above order passed by the Court by any of the respondents.

37. He stated that the award was passed in compliance with the provisions of the Act after taking into account average of 12 sale deeds between 10-02-2014 to 28-02-2017, that this is permitted by the Act and even the Sub-Registrar had given the value of the land as on 01-08-2015 as Rs.3,20,000/- per acre which was adopted by the 4th respondent.

38. He contended that the land continued to be agricultural land and the sale deeds relied upon by the petitioner cannot be considered since they dealt with land in the same survey number as non-agricultural land/plots on square yard basis and not as agricultural land.

39. He however did not deny that the 4th respondent had not taken the higher of the amounts among (a) the market value specified under the Stamp Act, 1899 and (b) the average sale price as required by sub-Section (1) of Section 26 of the Act; and (c) also the fact that the date for determination of market value, which was required to be the date of the notification under Section 11 i.e. 09-02-2017, was not taken into account and the market value as on 01-08-2015 at Rs.3,20,000/- per acre was taken into account on the basis of a certificate of the Sub-Registrar, Kuppam dt.11-10-2017. He also admitted that the amount arrived at after multiplying the market value with the factor fixed under first schedule was not added to the market value and that petitioner's contention in that regard is correct.

40. I have noted the contentions of both sides.

THE POINT FOR CONSIDERATION

41. The point for consideration is :

- (i) *Whether there has been a willful delay in implementation of the order dt.28-04-2016 in W.P.No.5727 of 2016 by the respondents?*

- (ii) *“Whether the 4th respondent had correctly arrived at the market value of the land and determined compensation payable to petitioner as per the Act and thus complied with the order dt.28-04-2016 in W.P.No.5727 of 2016?*

Or

Whether 4th respondent fixed the market value of the petitioner’s land in total violation of all legal norms and attempted to mislead this Court/ played fraud on this Court, warranting a finding that she willfully and deliberately violated the said order?”

THE CONSIDERATION BY THE COURT :

Point No.(i):

42. It is not in dispute that the Gram Panchayat, Kuppam had taken petitioner’s land of extent Ac.0.40 cents in Sy.No.53/6 and Ac.0.05 cents in Sy.No.53/9 of Chinnakuraballapalli village of Kuppam Mandal in the year 2000 for establishing a drinking water filter point on an assurance that Ac.2.00 of land elsewhere will be provided to him by the then District Collector, Chittoor. But the said assurance was not implemented till 2016 compelling petitioner to file W.P.No.5727 of 2016 in this Court seeking either the offered land of Ac.2.00 or compensation under the Act. Thereafter Ac.2.00 land more than 24 K.Ms. from Kuppam was offered, but the petitioner declined to take it saying it is unsuitable for cultivation.

43. This Court allowed the Writ Petition on 28-04-2016 holding that petitioner cannot be compelled to accept land which according to him is in the midst of thick forest and was uncultivable, that too 24 K.Ms. away from Kuppam Mandal Head Quarters. It directed the respondents in the Writ Petition to initiate proceedings forthwith under the provision of the Act for acquisition of his Ac.0.45 cents of land and complete the process of acquisition including payment of compensation in four (04) months. Costs of Rs.5,000/- were also directed to be paid.

44. Thus forthwith the respondents had to initiate proceedings for acquisition of petitioner's land under the Act and complete the process of acquisition including payment of compensation within four months from the date of the receipt of the copy of the said order.

45. According to 3rd respondent, on 16-03-2016 itself the Gram Panchayat, Kuppam, passed resolution agreeing to pay compensation to the petitioner i.e. even before disposal of the Writ Petition. Though survey by revenue authorities sought by the Gram Panchayat was done by 16-08-2016 and letter was sent to the 1st respondent on 09-09-2016 to initiate proceedings under the Act, the preliminary notification under Section 11 of the Act was not issued by the Government of Andhra Pradesh till 09-02-2017. No request was made by respondents at any point of time to extend the time granted by this Court for implementing the order passed in the Writ petition.

46. In my considered opinion, the 1st respondent has not acted 'forthwith' as directed in the order dt.28-04-2016 in W.P.No.5727 of 2016. Though notice is served on him, he has not chosen to file any counter on the steps taken by him to ensure that the order passed by this Court is implemented as directed.

47. True, it is the State Government which is to issue proceedings such as preliminary notification, declaration etc. under the Act but still the 1st respondent ought to have written to the State Government to expedite the process, but there is no evidence that he has done anything in that regard. It is unfortunate that the 1st respondent took no interest in the process of implementation of the court order quickly, particularly in a case where petitioner was deprived of his land in the year 2000 without any compensation.

48. However the 3rd respondent had initiated the proceedings by seeking survey and addressing the 2nd respondent by September 2016. So though there is some delay in the process, the 3rd respondent cannot be solely blamed for the delay in implementing the court order.

49. As regards the 2nd respondent, two counter affidavits and one additional counter affidavit were filed narrating the events, but since he cannot do much on his own without the initiative of the 1st respondent and the State Government, he cannot also be said to have willfully disobeyed or delayed the implementation of the order.

50. Therefore I hold on point No.(i) that there is undue delay in implementing the order passed by this Court on 24-08-2016 in W.P.No.5727 of 2016 but on that count, I am not inclined to punish respondent Nos.1 to 3 for willful disobedience or delay in implementing the said order. Suffice it to say that persons like 1st respondent holding high position ought to be more responsive to litigants like petitioner and ought to act diligently in implementing court orders.

Point No.(ii):

51. The 4th respondent has admitted in her counter affidavit that she joined as Sub Collector, Madanapalli on 14-11-2016 after this Court passed this order in W.P.No.5727 of 2016 on 28-04-2016.

52. Though award No.23/2017 was passed by her on 16-09-2017, copy of the same was not made available to the court or to the petitioner even on 06-10-2017 and only when the court directed it to be given, it was filed on 13-10-2017.

53. The plea raised by respondents that petitioner refused to receive the award copy, I do not accept. Even the cheque given initially to the petitioner for

presentation was a lapsed cheque which was dishonoured by the banker of the petitioner and thereafter, an RTGS transfer was made on 14-02-2018 at the intervention of the Court.

54. Since she was to pass the award under the Act, she is expected to follow the provisions of the Act and follow the principles governing payment of compensation while doing so.

55. In the award passed by her she states at page 5 that the higher among (i) market value as per Indian Stamp Act, 1899 *as on 01-08-2015* of Rs.3,20,000/- per acre and (ii) the average of 50% sale price for similar type of land in the nearest vicinity i.e Rs.3,20,000/- per acre was taken by her. The said average was apparently arrived at by her after considering 12 sale deeds between 10-02-2014 and 28-02-2017.

56. Under proviso to Section 26 (1), the date for determination of market value ought to be the date on which notification had been issued under Section 11 i.e. 09-02-2017. Why the 4th respondent took the market value as per Indian Stamp Act, 1899 as on 01-08-2015, contrary to the statute, is not explained by her.

57. Also clause (b) of sub Section (1) of Section 26 requires average sale price for similar type of land situated in the nearest vicinity area to be considered, but not 50% sale price of such transactions. But in page 5 of her award, she states that she considered the average of 50% sale price. This is not permissible.

58. The petitioner had produced market value certificate dt.09-03-2016 issued by the sub Registrar, Kuppam showing the market value as Rs.29,04,000/-. He has also produced another market value certificate

dt.12-01-2017 issued by the same officer showing the market value of plots sold in the same land at Rs.630/- per sq. yd. i.e. Rs.30,49,200/- per acre.

59. Learned counsel for the petitioner contended that there were transactions of sale in the same survey numbers on 25-04-2016 and 09-03-2017 for Rs.29,09,300/- per acre treating the land as plots and these were deliberately not considered. He contends that the potentiality of the land for non-agricultural use/plots for housing etc. cannot be ignored.

60. However in the counter affidavit, it is stated that petitioner's calculation memo is based on market value of the land shown in the vicinity where such land is converted into non-agricultural land, that the petitioner's land is only agricultural land and such transactions cannot be considered.

61. The principles for determination of compensation of land acquired under the Land Acquisition Act, 1894 are well settled.

62. In **Atma Singh v. State of Haryana**¹, these principles have been succinctly stated by the Supreme Court as under:

“ 4. In order to determine the compensation which the tenure-holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression “market value” has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his

¹ (2008) 2 SCC 568

land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. See **Kamta Prasad Singh v. State of Bihar**², **Prithvi Raj Taneja v. State of M.P.**³, **Administrator General of W.B. v. Collector, Varanasi**⁴ and **Periyar Pareekanni Rubbers Ltd. v. State of Kerala**⁵.

5. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. See **Collector v. Dr. Harisingh Thakur**⁶, **Raghubans Narain Singh v. U.P. Govt**⁷ and **Administrator General, W.B. v. Collector Varanasi**(5 *supra*). It has been held in **Kausalya Devi Bogra v. Land Acquisition Officer**⁸ and **Suresh Kumar v. Town Improvement Trust**⁹ that failing to consider potential value of the acquired land is an error of principle." (emphasis supplied)

63. In **Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others**¹⁰, the Supreme Court held that when several sale deeds are available with reference to similar lands, it is the general rule that highest of the sales, if they are bona fide sales, has to be considered and accepted and the

² (1976) 3 SCC 772

³ (1977) 1 SCCC 684

⁴ (1988) 2 SCC 150

⁵ (1991) 4 SCC 195

⁶ (1979) 1 SCC 236

⁷ AIR 1967 SC 465

⁸ (1984) 2 SCC 324

⁹ (1989) 2 SCC 329

¹⁰ (2012) 5 S.C.C 432

transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different value. It specifically held that it is not desirable to consider average consideration mentioned in various sale deeds placed before the authority for fixing fair compensation. It observed:

“ 17. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.”
(emphasis supplied)

64. In **Digamber and others Vs. State of Maharashtra and others**¹¹, the Supreme Court however held that acquisition of land is for functional purpose and that should also be relevant criteria for determining the market value and even sale instances of small plots of land can be relied upon if the acquired land has got non-agricultural potentiality.

65. These legal principles are not disputed by the learned Government Pleader for Assignment. He also does not dispute that the certificate dt.11-10-2017 given by the Joint Sub Registrar, Kuppam to the 3rd respondent, which is filed along with the counter affidavit of 2nd respondent itself shows that market value for the land in Sy. No.53/9 is Rs.29,04,000/-.

66. Instead of taking the higher figure between the market value as determined under the Indian Stamp Act, 1899 as on 09-02-2017 and the average of

¹¹ (2013) 14 S.C.C. 406

the sale price for similar type of land situated in the nearest vicinity, the 4th respondent has ignored the potentiality of the land for non-agricultural use which is proved by sale transactions of 25-04-2016 and 09-03-2017 on the alleged ground that the vendors therein are petitioner's henchmen (without any evidence of the same), and has taken into account market value as per the Indian Stamp Act, 1899 as on 01-08-2015 (which is contrary to proviso to section 26(1)). She relied on sale transactions not in the same survey numbers but in different survey numbers without even discussing the distance between the petitioner's land and the transactions in the other survey numbers, which she relied on.

67. The Government Pleader for Land Acquisition did not dispute the contention of the counsel for the petitioner that the market value determined under sub-Section (1) of Section 26 of the Act is required to be multiplied by a factor specified in first schedule as per sub-Section (3) of Section 26 and the same needs to be added to the market value of the land as per the first schedule, but the 4th respondent did not do so.

68. Thus it is clear that the 4th respondent deliberately and willfully did not follow the provisions of the Act while passing the award No.23 of 2017 dt.16-09-2017 with the sole intention of ensuring that petitioner does not adequate compensation as per the Act. She clearly attempted to mislead the Court by insisting that she followed the provisions of the Act while passing the award, though as explained above, she violated it.

69. Also the plea of the 4th respondent in her counter affidavit that petitioner has a remedy of seeking reference under Section 64 of the Act and he should be made to avail the said remedy, cannot be countenanced. It is like rubbing

salt on a wound and shows the callous attitude of the 4th respondent against the petitioner.

70. Consequently I hold that the 4th respondent attempted to mislead this Court/ played fraud on this Court, and that she willfully and deliberately violated the order dt.28-04-2016 in W.P.No.5727 of 2016. The point framed is accordingly answered against the 4th respondent.

71. Accordingly, I hold that 4th respondent guilty of willful disobedience of the order passed by this Court and that she is liable to be punished for contempt.

72. It is settled law that power conferred on the Court under Article 215 of the Constitution of India to punish contemnors necessarily includes all powers incidental and consequent to such power and the Court is entitled to give appropriate directions for remedying and rectifying things done in violation of its orders. (**Delhi Development Authority Vs. Skipper Construction Company Private Limited¹²**).

73. Therefore,

(i) the CC is allowed;

(ii) the award No.23 of 2017 dt.16-09-2017 of the 4th respondent is set aside and the 4th respondent is directed to strictly follow the provisions of the Act and the observations made in this order and determine afresh by passing a fresh award under Section 23 of the Act the compensation payable to petitioner under the Act. This exercise shall be completed within two months from the date of receipt of copy of this order.

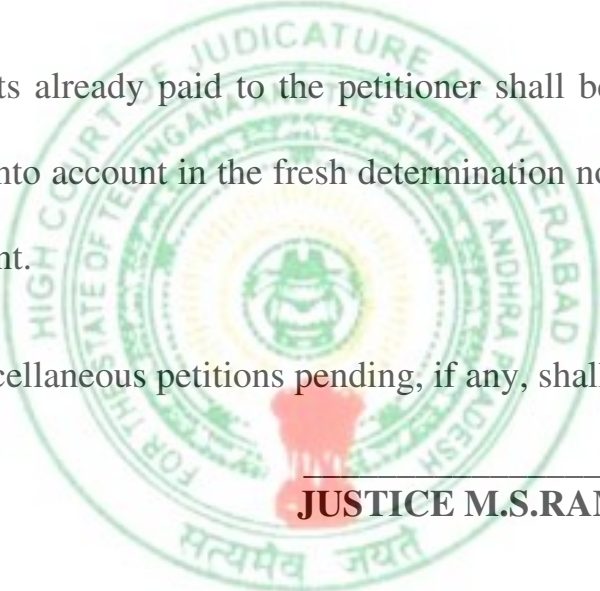
¹² (1996) 4 S.C.C. 622

(iii) the State of Andhra Pradesh shall then comply with the said award and pay the compensation to petitioner within six weeks from the date of receipt of a copy of the order.

(iv) the 4th respondent is also sentenced to fine of Rs.2,000/- (Rupees Two Thousand only) which shall be paid within four weeks from today and an entry in her service record about her conduct in willfully disobeying this Court's orders dt.28-04-2016 in W.P.No.5727 of 2016 shall be made. She is also warned to be more careful in future and not mislead this Court while implementing the directions given by it like she did in the present case.

(v) The amounts already paid to the petitioner shall be retained by him and shall be taken into account in the fresh determination now directed to be done by 4th respondent.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.



JUSTICE M.S.RAMACHANDRA RAO

Date: 30-04-2018

Vsv/Kvr