THE HON'BLE JUSTICE G. SRI DEVI

AND

THE HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

L.A.A.S.Nos. 59 of 2019 and X.OBJ.No.39 of 2021

And

L.A.A.S.Nos. 62 of 2019 and X.OBJ.No.31 of 2021

COMMON JUDGMENT : (per Justice G. Sri Devi)

L.A.A.S.Nos.59 and 62 of 2019 are preferred by the Land Acquisition Officer aggrieved by the orders and decrees, both dated 24.09.2018 made in L.A.O.P.Nos.121 of 2012 and 1770 of 2017 respectively, on the file of the XXV Additional Chief Judge, City Civil Court, Hyderabad (for short "the reference Court"). Challenging the very same orders and decrees, the claimants therein have filed cross objections Nos.39 and 31 of 2021 respectively. By the impugned orders, the reference Court has enhanced the market value of the acquired property from Rs.15,000/- to Rs.35,000/- per square yard in both the impugned orders while confirming the structure value as awarded by the L.A.O.

2. Both the cases arise out of the acquisition of Ayodhya Hotel situated in premises Nos.11-5-425 and 11-5-427 situated at Mallepally Village, Asifnagar Mandal, Hyderabad District. Part of the acquired property i.e., admeasuring 36.24 square yards is the subject matter of L.A.A.S.No.62 of 2019 and the other part of the acquired property

i.e., admeasuring 212.85 square yards is the subject matter of L.A.A.S.No.59 of 2019. For the purpose of widening of the junction in order to ease the traffic congestion from Lakdikapul to Ayodhya junction, the L.A.O. has acquired the subject property by issuing draft notification under Section 4 (1) of the Land Acquisition Act (for short "the Act"), dated 30.10.2007 followed by draft declaration under Section 6 of the Act. After conducting due enquiry, the Land Acquisition Officer has passed an award on 13.02.2008 fixing the market value of the acquired property at Rs.15,000/- per square yard. The structure value was fixed at Rs.1,30,948.00 for part of the building consists of 36.24 square yards and Rs.33,04,917/- for part of the building consists of 212.85 square yards. Not satisfied with the compensation determined by the Land Acquisition Officer, the claimants filed protest petition and sought for reference under Section 18 of the Act seeking enhancement of the compensation. The reference Court, by the impugned orders has enhanced the market value of the acquired property from Rs.15,000/- to Rs.35,000/- per square yard while confirming the structure value as awarded by the L.A.O. Aggrieved thereby, the present appeals are filed by the Land Acquisition Officer and the Cross Objections by the claimants.

3. Heard learned Government Pleader for Appeals and Sri A. Giridhar Rao, learned Senior Counsel on behalf of the claimants. Perused the material available on record.

4. Learned Government Pleader mainly contended that the reference Court without there being any basis or cogent evidence has erroneously enhanced compensation from Rs.15,000/- to Rs.35,000/- per square yard. It is further contended that the properties covered by Exs.R2 to R8 are residential properties which were sold at Rs.25,000/- per square yard. Although, Ex.R5 reflects that the land was sold at Rs.89,777/- per square yard, the reference Court has rightly discredited the said transaction in view of the fact that the land sold therein was very small extent i.e., nine square yards. However, since the acquired property is commercial one, the reference Court ought not to have enhanced the compensation more than Rs.30,000/- per square yard. As regards the value fixed for the structures, it is contended that the L.A.O. has rightly fixed the value since the amount of rents being fetched by the building have not been proved by any document or atleast by income tax returns. Therefore, the reference Court has rightly upheld the said value fixed by the L.A.O.

5. On the otherhand, the learned Senior Counsel appearing on behalf of the claimants contended that the property itself is located at the busy commercial junction wherein hotel business was being run by name "Ayodhya Hotel". The property was thus commercial property abutting to two side double roads. The L.A.O. has fixed the value at Rs.15,000/- per square yard based on the sale transaction covered by Ex.R5 but the property therein is situated about 2 ½ kms., away from the acquired land which is in a by-lane and moreover it is a residential property. It is further contended that the property covered by Ex.R7 was adjacent to the acquired property even as per the admission of R.W.1 in his cross-examination. The property therein was sold at Rs.89,777/-per square yard. Since the acquired property was a corner property having two side double roads, it would definitely fetch at least double the value mentioned in Ex.R7. Therefore, the reference Court ought to have enhanced the market value at Rs.1,50,000/- per square yard. Merely because Ex.R7 is covered by nine square yards, the sale transaction ought not to have been discarded by the L.A.O. In this regard, relying on the decision of the Apex Court in *Ali Mohammed Beigh and others v. State of Jammu and Kashmir*[1] the learned Senior Counsel has contended that even if transaction covers a small extent which is comparable to the

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[1] (2017) 4 SCC 717

acquired land, it can be relied on to determine the market value. As regards the structures, it is contended that the building consists of ground + four floors having more than 42 lodging rooms and restaurant apart from three commercial shops and therefore, for the entire property, the reference Court ought to have awarded Rs.1,00,00,000/- keeping in mind that the claimants were forced to close down their hotel business thereby deprived of livelihood.

6. As seen from the record the acquired property is the building consists of ground+4 floors wherein the claimants used to run hotel business by name “Ayodhya Hotel”. Even as per the admission of R.W.1 coupled with Ex.R9 sketch, the acquired property is commercial one, a corner property having two side double roads located at a busy junction at Lakdi-ka-pool. One of the owners of the property i.e., claimant in L.A.O.P.No.121 of 2012, in his evidence as P.W.1 categorically deposed that by the time of acquisition of property, the claimants used to run a hotel business. Even as per Exs.R2, R3 and R8 the land which is residential in nature and 2 ½ kms. away from the acquired land that too in a by-lane, was sold not less than Rs.25,000/- per square yard. Therefore, even as per their own evidence, the L.A.O. has not justified in fixing the market value at Rs.15,000/- per square yard. Furthermore, as seen from the sale deed bearing No.2737 of 2006 which has been marked as Ex.R5 in

both the cases, an extent of nine square yards was sold at Rs.89,777/- per square yard. The said sale transaction was ignored by the reference Court merely because only small extent of nine square yards was sold. But the reference Court has lost the sight of the fact that the land covered by Ex.R5 is adjacent to the acquired land.

7. In *Ali Mohammed Beigh* (supra), the Apex Court has categorically held that "*When the lands are more or less situated nearby and when the acquired lands are identical and similar and the acquisition is for the same purpose, it would not be proper to discriminate between the land owners unless there are strong reasons.*"

8. In the instant case also, as per the evidence adduced by the parties, the acquired property is adjacent to the land covered by Ex.R5. Such being the case, the Reference Court is not justified in rejecting the sale transaction covered by Ex.R5 merely because a small extent of land was sold under Ex.R5. Furthermore, the acquired land is more strategically situated than the land in Ex.R5 because the acquired property is a corner property having two side double roads. It is common knowledge that the land having frontage on the highway would definitely have better value than lands farther away from highway. Therefore, as rightly contended by the learned

Senior Counsel for the claimants, the acquired property would definitely fetch more than Rs.89,777/- per square yard, which was the sale consideration in Ex.R5.

9. In *Bhule Ram v. Union of India*[2] the Apex Court has categorically held that *"the market value of the land is to be determined taking into consideration the existing use of the land, geographical situation/ location of the land along with the advantages/disadvantages i.e., from the distance from the National or State Highway or a road situated within a developed area."*

10. In the instant case, admittedly, the acquired property is located at busy junction having two side double roads. The very purpose of acquisition is to ease the traffic congestion by widening the junction, this itself speaks the potentiality of the acquired property. By the time of acquisition, the acquired property was being used by the claimants for running hotel business.

11. It is also came on record that the property consists of 400 square yards and though the land acquired is only 250 square yards i.e., the remaining 150 square yards, which became triangle shape and unfit for any use, the same has been kept vacant as the claimants were forced to close down their hotel business being run by them for

[2] (2014) 11 SCC 307

the last 4-5 decades, thereby they were deprived of their livelihood. For the reasons stated above and taking into account the consideration paid under Ex.R5, this Court is inclined to enhance the market value of the acquired property from Rs.35,000/- to Rs.1,10,000/- per square yard.

12. Coming to the value fixed by the L.A.O. for the structures, as observed above, the property consists of ground + 4 floors, having a restaurant and 3 commercial shops. The building also consists of 42 lodging rooms. That being the case, definitely the property might have fetched a considerable rent being it situated in a strategic location. Even as per the own admission of R.W.1, the acquired property is having main road on two sides which is substantiated by Ex.R9 sketch. The factum of acquisition of the property for widening of the junction itself shows that the acquired property is the commercial one which would fetch more rent. Since it is not denied that the claimants were running a hotel therein by name Ayodhya Hotel, merely because no rental receipts or income tax returns were filed by the claimants it cannot be a ground to undervalue the structures. Therefore, this Court is inclined to allow the cross objections by enhancing the value of the structures from Rs.1,30,948/- to Rs.10,00,000/- in L.A.A.S.No.59 of 2019 and from Rs.33,04,917/- to Rs.65,00,000/- in L.A.A.S.No.62 of 2019.

13. In the result, while dismissing the appeals filed by the L.A.O., the cross objections filed by the claimants are allowed in part enhancing the market value of the acquired property from Rs.35,000/- to Rs.1,10,000/- per square yard and value of the structures from Rs.1,30,948/- to Rs.10,00,000/- in L.A.A.S.No.59 of 2019 and from Rs.33,04,917/- to Rs.65,00,000/- in L.A.A.S.No.62 of 2019. The claimants are also entitled to all other statutory benefits. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

JUSTICE G. SRI DEVI

JUSTICE M.G. PRIYADARSINI

.09.2022
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