THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

L.A.A.S.Nos.97 OF 2018 and 11 of 2021

COMMON JUDGMENT: (Per Hon'ble Dr.SA,J)

Since the facts of the case and the issue involved in both these appeals are identical, both these appeals are taken up together and are being disposed of by this common judgment.

2. Aggrieved by the order and decree, dated 22.12.2017, passed in L.A.O.P.No.4 of 2011 by the Principal Senior Civil Judge, Mancherial, (for short, 'Reference Court'), the claimants filed L.A.A.S No.11 of 2021, under Section 54 of the Land Acquisition Act, 1894 (for short, 'the Act'), seeking enhancement of compensation and the beneficiary/Singareni Collieries Company Limited filed L.A.A.S No.97 of 2018, seeking to set aside the impugned order.

3. We have heard the learned counsel for both sides and perused the record. For convenience of discussion, the parties are hereinafter referred to, as per their array before the Reference Court in L.A.O.P.No.4 of 2011.

4. The facts of the case, in brief, are that the Land Acquisition Officer/Revenue Divisional Officer, Mancherial, has acquired an extent of Acs.4.23 guntas of dry-cum-wet land of Claimant No.1 situated in Survey No.740/1 and an extent of Acs.4.00 of dry-cum-wet land of Claimant No.2 in Survey No.740/2 situated at Pegadapally Village, Jaipur Mandal (now Mancherial District) for the purpose of installation of 500 Megawatts Power Plant at Pegadapally Village, out of the total extent of Acs.718.34 guntas of patta land, by fixing the market value of the land of Rs.1,15,000/- per acre with statutory benefits. The Land Acquisition Officer also awarded compensation of Rs.4,40,248/- for fruit bearing trees, Rs.35,264/- for non-fruit bearing trees and Rs.39,595/- for structures, with statutory benefits for both the claimants. Notification under Section 4(1) of the Act was issued and approved by the District Collector, Adilabad, on 16.09.2008 and publication was made on the same day. Aggrieved by the award of the Land Acquisition Officer fixing the market value at Rs.1,15,000/- per acre, the claimants filed protest petition dated 26.04.2010 to refer the matter to the Civil Court. On the basis of the Reference made by Land Acquisition Officer under Section 18 of the Act, the Reference Court registered the same as L.A.O.P No.4 of 2011 and the Reference Court, basing on the oral and documentary evidence on record, enhanced the compensation for the acquired lands from Rs.1,15,000/- per acre to Rs.2,40,000/- per acre. Aggrieved by the same, the claimants filed L.A.A.S No.11 of 2021, seeking enhancement of compensation and the beneficiary/Singareni Collieries Company Limited filed L.A.A.S No.97 of 2018, seeking to set aside the impugned order.

5. Learned counsel for the appellant in L.A.A.S No.97 of 2018/beneficiary would contend that the order under challenge is contrary to law, against material evidence and probabilities, excess of jurisdiction, illegal and beset of material irregularity. There are so many material irregularities in appreciating the oral and documentary evidence on record by the Reference Court. The Land Acquisition Officer had rightly fixed the market value of the subject land at Rs.1,15,000/- per acre with all statutory benefits. However, the Reference Court was pleased to enhance the same to Rs.2,40,000/- per acre with all statutory benefits. The enhanced compensation of Rs.2,40,000/- per acre is without any documentary evidence. The Reference Court ought to have noticed that the land in O.P.No.4 of 2011 is on the highway of Jaipur Village and the land in the instant case is behind the lands of Jaipur Village and thereby fetches less value. The Reference Court adopted high quantity of yield and high rates for the yield for capitalizing the trees. The Reference Court had also took high yield in relation to fruit bearing and non-fruit bearing trees existing over the subject land and erroneously fixed excess amount. Further, excess amount was granted in relation to mango tree and also other trees such as Sapota and Jack fruit. The enhancement from Rs.1,15,000/- per acre to Rs.2,40,000/- per acre is excessive and ultimately prayed to set aside the impugned order and allow the L.A.A.S.No.97 of 2018 as prayed for.

6. Learned counsel for the appellants in L.A.A.S No.11 of 2021/claimants would contend that the land acquired is situated near NH-16, connecting Nizamabad and Jagdhalpur and it is a fertile land. The land owners claimed a compensation of Rs.9,68,000/- per acre with all statutory benefits and there is ample oral and documentary evidence on record to substantiate the same. The Reference Court, while answering Reference, has granted meager compensation of Rs.2,40,000/- per acre with all statutory benefits. Further, the Reference Court had indicated in Clause-14 of the decree that the land owners are entitled for interest @ 9% for the first year from 21.01.2011 and thereafter, @ 15% till the deposit or payment of the amount on the enhanced market value, which is patently erroneous. The Reference Court had also not granted any compensation with regard to the value of the wood and only granted meager compensation in relation to the standing fruit bearing trees. There are several documents to grant compensation as prayed by the land owners, which was not considered by the Reference Court and ultimately, prayed to enhance the compensation from Rs.2,40,000/- per acre granted by the Reference Court to Rs.9,68,000/- per acre with all statutory benefits.

7. In view of the above submissions made by the learned counsel for both sides, the points that arise for determination in these appeals are as follows:

1. Whether the Reference Court is justified in enhancing compensation from Rs.1,15,000/- per acre to Rs.2,40,000/- per acre for the acquired lands?
2. Whether the impugned order and decree, dated 22.12.2017, passed in L.A.O.P.No.4 of 2011 by the Principal Senior Civil Judge, Mancherial, is liable to be set aside?

POINTS:

8. As seen from the material placed on record, before the Reference Court, the claimants, in order to prove their claim that they are entitled for enhancement of compensation, examined PW.1 and got marked Exs.P1 to P19. On behalf of the Land Acquisition Officer and beneficiary, RWs.1 and 2 were examined and got marked Exs.R1 to R10. PW.1/claimant No.1 had categorically stated in his evidence that the subject land is one and half or two kilometers away from the NH-16 connecting Nizamabad and Jagdhalpur. There was mining operation for the last 25 years nearby the acquired land. Ex.P1 is form No.7, Notice under Section 9(3) and 10 of the Act, dated 24.01.2009. Ex.P2 is the letter addressed by the Revenue Divisional Officer, dated 06.02.2010. Ex.P3 is the certified copy of Award proceedings No.A/649/2008, dated 26.04.2010. Ex.P4 is the form No.9, dated 26.04.2010. Ex.P5 is the attested copy of apportionment statement. Ex.P6 is the certified copy of declaration of Jaipur Village lands acquisition proceedings No.B6/2533/2008, dated 30.07.2008. Ex.P7 is the copy of Form No.8 with Award, dated 05.11.2009. Ex.P8 is sketch map showing the location of Sy.No.740 at Pegadapalli Village, dated 22.02.2016. Ex.P9 is the certified copy of registered sale deed No.8570/2007. Ex.P10 is the attested copy of letter of Divisional Forest Officer, Mancherial to Revenue Divisional Officer, Mancherial. Ex.P11 is (8) photos with Compact Dist. Ex.P12 is the attested copy of G.O.Ms.No.357 Revenue (L.A) Department, dated 22.03.2006. Exs.P13 to P19 are certified copies of letters and representations.

9. Though PW.1 stated that the subject land is one and half or two kilometers away from the NH-16, except such self serving statement of PW.1, there is no other oral or documentary evidence on record to substantiate the same. The land owners claimed compensation placing reliance over Ex.P7, which is certified copy of the Form No.8 with Award, dated 05.11.2009. In the instant case, the Land Acquisition Officer, has fixed the compensation payable at Rs.1,15,000/- per acre besides granting other statutory benefits and interest thereon. The land owner had placed emphasis on Ex.P9, which is a certified copy of the registered sale deed No.8570/2007, wherein, an extent of 600 square yards of house plot was sold @ Rs.100/- per square yard. However, the land in question is agricultural land and not a house plot. The character of the land in question and the land covered under Ex.P9 are distinct and therefore, the Reference Court rightly did not place reliance over Ex.P9. Ex.P7 is award dated 05.11.2009 whereby, the land, which is adjacent to the land in question was acquired and compensation of Rs.2,40,000/- per acre with all statutory benefits and interest thereon was paid. Admittedly, the land in question is not abutting the NH-16 or any other permanent roads. As per the evidence on record, the subject land is situated within the vicinity of the land covered under Ex.P7-copy of Form No.8 with Award, dated 05.11.2009. Further, there are no sale deeds to demonstrate sale transactions and also to substantiate that the market value of the land in question, by the date of notification, was Rs.9,68,000/- per acre. The other documents are only corresponding Government Orders and notifications etc., and all those are not helpful to determine the compensation payable. Registered sale transactions are relevant for the purpose of determining the compensation payable. No such document, within the vicinity where the land in question is situated is available, except Ex.P9. Under these circumstances, it is not appropriate to place reliance over Ex.P9 to assess the market value of the subject land. The Reference Court was pleased to place reliance on Ex.P7-Form No.9, dated 26.04.2010, where the land in vicinity was acquired and a compensation of Rs.2,40,000/- with all statutory benefits and interest thereon was paid. Considering Ex.P7 as well as the potentiality of the land acquired, the Court below was pleased to fix compensation of Rs.2,40,000/- per acre. In view of these circumstances, the Reference Court is justified in fixing fair and reasonable compensation at Rs.2,40,000/- per acre. Therefore, there is no legal infirmity or any circumstances to vary the fixation of compensation by the Reference Court.

10. As far as the grant of compensation in respect of fruit bearing trees is concerned, the Reference Court had taken trees and yield into consideration and was pleased to grant Rs.23,30,000/- for mango trees, Rs.14,08,000/- for ber fruit trees, Rs.36,000/- for sapota trees, Rs.40,000/- for custard apple trees, Rs.36,000/- for Amla trees, Rs.8,000/- for sweet orange trees, Rs.4,88,000/- for soap nut trees, Rs.7,20,000/- for drumstick trees and Rs.3,42,000/- for palm trees. The Reference Court has taken the age of tress and yield into consideration and rightly fixed the compensation in respect of those trees. In the circumstances of the case, no interference is warranted with regard to the same.

11. It is contended by the learned counsel appearing on behalf of the claimants that the Reference Court had not awarded interest on solatium. As seen from the Clause No.14 of the decree, the Reference Court granted interest on the compensation granted @ 9% for the first year from 21.01.2011, i.e., the date of taking possession and thereafter, @ 15% till the deposit or payment of the amount, as the case may be, on the enhanced market value. However, it is evident from Clause No.17 of the decree that though the Reference Court held that the claimants are entitled to 30% solatium on the enhanced market value, but did not grant any interest thereon. In view of the settled legal position, the claimants are entitled for interest over the 30% solatium as indicated below, i.e., @ 9% for the first year from 21.01.2011, i.e., the date of taking possession and thereafter, @ 15% till the deposit of said solatium.

12. With the above modification of the impugned order dated 22.12.2017 to the extent of granting interest on solatium, both these appeals are disposed of.

Miscellaneous Petitions, if any, pending in both these appeals shall stand closed. There shall be no order as to costs.

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Dr. SHAMEEM AKTHER, J

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NAGESH BHEEMAPAKA, J

Date: 20.12.2022
PNS/MD