

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY
AND
THE HON'BLE SRI JUSTICE M.LAXMAN

I.A.NO.1 OF 2021
IN/AND
L.A.A.S No.483 OF 2007

COMMON JUDGMENT: *(Per Hon'ble Sri Justice M.Laxman)*

1. The appeal assails the order and decree dated 11.07.2006 in L.A.O.P.No.54 of 2004 on the file of the Court of the Senior Civil Judge at Sathupally (for short, reference Court), whereunder the reference was answered confirming the market value fixed by the Land Acquisition Officer.

2. The appellant herein is the claimant and the respondent herein is the respondent in the said LAOP.

3. The back ground of the facts show that the agricultural land of the appellant to an extent of Ac.1-09 gunta in Sy.No.47, situated at Rajerla Village, Sathupalli Mandal, Khammam District, was acquired for excavation of Bethupalli flood flow channel along with other lands. Notification under Section 4(1) of the Land Acquisition Act was issued on 16.11.1996. After award enquiry, the Land Acquisition Officer has passed an Award dated 06.03.1997 fixing the market value for various lands by categorizing them. The market value fixed for the land of the appellant was Rs.23,400/- per acre, apart from granting

other consequential benefits including the interest from the date of taking the possession of the land. The appellant claimed compensation @ Rs.1,50,000/- per acre, but the same was not accepted by the Land Acquisition Officer. Thus, the claimant sought reference.

4. Before the reference Court, the claimant to support his case, examined P.Ws.1 and 2 and relied upon Exs.A-1 and A-2. Ex.A-1 is the sale deed document No.1701/1995, dated 04.11.1995, covering an extent of land admeasuring Ac.0-10 guntas, which was sold for total amount of Rs.30,000/-. The market value comes to Rs.1,20,000/- per acre. To support such a sale transaction, the appellant examined P.W.2, the vendor of the document. Ex.A-2 is the village map showing the location of the appellant's land as well as the land under Ex.A-1. The respondent, to support his case, examined R.W.1, and no documents were marked.

5. The reference Court, after appreciating the evidence on record, discarded Ex.A-1 on the ground that it is for the smaller extent, and accordingly, confirmed the market value fixed by the respondent (Land Acquisition Officer). Challenging the same, the present appeal has been filed.

6. Pending the present appeal, the appellant filed I.A.No.1 of 2021 to receive the additional documents, including the documents already marked and the depositions, except copy of Award dated 06.03.1997, which is not part of evidence in the reference Court.

7. The Award is not in dispute from the respondent's side, since it is the foundation document for the present litigation. The Award is marked as Ex.A-3 and rest of the documents are rejected. Accordingly, I.A.No.1 of 2021 is partly allowed.

8. The contention of the learned counsel for the appellant is that the respondent, in his Award enquiry, though cited the various sale transactions which were executed immediate three years prior to the notification, in which the transaction under Ex.A-1 was shown at Sl.No.26 at page No.5, did not rely upon it to fix the market value on the ground that the market value thereunder was inflated in anticipation of the acquisition proceedings, since the possession of the land was taken well in advance prior to the notification.

9. It is also his contention that the land in Sy.No.41 and the land of the appellant in Sy.No.47 are having similar advantages and are situated very near to each other. The land covered under the transaction relied upon by the respondent pertaining

to Sy.No.57/2 is far away to the land acquired and the same is evident from the village map under Ex.A-2, whereas, the land of the appellant is very near to the highway leading from Sathupally to Vijayawada. It is also his contention that the reference Court also did not believe Ex.A-1 transaction as a genuine transaction and came to the conclusion that it relates to smaller extent and it cannot be relied upon. Finally, he has contended that the appellant is entitled for enhancement of the compensation as per the market value mentioned under Ex.A-1 sale transaction.

10. The learned Government Pleader for Appeals, appearing for the respondent, has contended that as per the own admission of P.W.1, he sold the land in Sy.No.57, which is referred at Sl.Nos.18 and 20 in the Award enquiry under Ex.A-3, for the sale price of Rs.23,300/- per acre, whereas P.W.1 contrary to the said recitals in the sale deed, claimed that he sold the land for the sale price of Rs.65,000/- per acre, and hence, his evidence cannot be taken into consideration.

11. It is also his contention that the sale transaction under Ex.A-1, which relates to the land in Sy.No.41, is not a genuine one and the sale price was inflated therein in anticipation of the acquisition proceedings. Further, it relates to smaller extent,

and hence, the same was not rightly relied upon by the respondent as well as the reference Court. According to the learned Government Pleader, the market value fixed by the respondent, as confirmed by the reference Court, is a fair market value with reference to its potentiality, fertility of soil and prevailing market value as on the date of the notification. Therefore, the appellant is not entitled for any enhancement.

12. A scrutiny of the evidence on record shows that the possession of the land in the present case was taken on 18.10.1988 which is anterior to the notification i.e., notification was issued on 16.11.1996. In his cross-examination, the appellant admitted about the sale transactions dated 05.07.1995 in respect of his own land in Sy.No.57. This means, by the date of the appellant own sales in respect of his own land in Sy.No.57, the possession of the land in Sy.No.47 was taken over and the appellant was very much aware of the acquisition proceedings. If really he had intention to inflate the sale price, he himself would have done so while executing the sale transactions relating to Sy.No.57 which were done on 15.07.1995. This conduct of P.W.1 shows that he never intended to inflate the market value relating to the lands in Sy.No.57 which he has sold in the year 1995. When he did not inflate the market value pertaining to the sale transactions of Sy.No.57, it can be

presumed that he never attempted to inflate the market value under Ex.A-1, which is relating to land admeasuring Ac.0-10 guntas in Sy.No.41, which was executed by P.W.2, who is a third party.

13. The evidence of P.W.2 shows that the sale price mentioned therein was genuine. Though there is evidence to claim the market value of Sy.No.41 @ Rs.1,20,000/- per acre, as reflected under Ex.A-1, the admission of the appellant in his cross-examination that he sold his own land in Sy.No.57 in the year 1995 @ Rs.65,000/- per acre cannot be ignored.

14. On scrutiny of Ex.A-2, the village map, the advantages of lands in Sy.Nos.41 and 47 are similar, whereas the land in Sy.No.57 is not similar to the land in Sy.No.47. The reason is that the lands in Sy.Nos.41 and 47 are near to the State highway leading from Sathupalli to Vijayawada. It is needless to say that the lands which are near to the road access would fetch more price than which are far away to the road access. Therefore, while fixing the market value, this disadvantage of the land cannot be ignored. At the same time, complete reliance on Ex.A-1, which relates to land admeasuring Ac.0-10 guntas to fix the market value, is also not safe and justified, in the light of the

admission of P.W.1 with reference to sale of land in Sy.No.57 which he owned.

15. In view of the above facts and circumstances, considering the advantage of land in Sy.No.47 when compared to land in Sy.No.57, and considering the sale transaction under Ex.A-1 in respect of land admeasuring Ac.0-10 guntas in Sy.No.41, and by giving some escalation to the sale transaction referred to by P.W.1 in respect of land in Sy.No.57, we are of the opinion that fixation market value of Rs.75,000/- per acre is just and fair in the facts and circumstances of the case. Accordingly, the market value in respect of the subject property is enhanced from Rs.23,400/- to Rs.75,000/- per acre.

16. The next question is what are the consequential benefits to be extended to the appellant in terms of the statute. Admittedly, in the present case, the possession of the land was taken over on 18.10.1988. The notification was issued on 16.11.1996 and there was no urgency clause invoked to take the possession of the land and Award was passed on 06.03.1997, on which date the Government gets right to take possession of the land under Section 16 of the Act. While dealing with the same set of facts, this Court in **Special Deputy Collector & Land Acquisition**

Office, SRSP L.A.Unit, Warangal v. Myakala Veera Reddy and Others¹, held as follows:

“30. At the cost of repetition, we say that the ratio/principle laid down in **R.L.Jain v. DDA**² which is of three-Judges Bench, is that the land owners are entitle for rent or damages towards use and occupation for the period the Government retains possession not under the Act and any possession prior to Section 4 (1) notification or invalid notification is not the possession under the Act.

31. The valid possession under the Act is either under Section 17 or Section 16 of the Act which can only be after notification but not simultaneous with notification under Section 4(1) of Act. This means, by issuance of notification under the Act, the invalid possession of the Government would not automatically become valid possession but it can only be done when proceedings reach the stage of either under Section 17 or Section 16 of the Act.

32. So, we are of the opinion that the benefit of 15% additional interest for retention of possession by the Government, which is not in terms of the Act, cannot be restricted to the date of notification, but it terminates when the Government gets right to take notional possession by following the procedure either under Section 17 or under Section 16 of the Act.

33. In the case on hand, the Government has not invoked any urgency clause in the subsequent valid notifications issued under the Act. This means, the Government gets no right to take notional possession under Section 17 of the Act. The only other provision is Section 16 of the Act, and such a

¹ Appeal Suit No.3864 of 2004, dated 21.03.2022

² (2004) 4 SCC 79

notional possession can only be taken after passing of the Award. This means, the Government has right to take notional possession immediately after passing of the Award under Section 11 of the Act.”

17. In the said case, this Court further held as follows:

“38. In **Tahera Khotoon’s** case (supra), the Apex Court held as follows:

‘15. It is also not in dispute that the Municipal Committee was in possession of the aforesaid property right from 1-1-1983 till the Notification was issued by the State Government on 10-1-1996. Keeping in view the observations made by this Court in *Madishetti Bala Ramul* {(2007) 9 SCC 650}, we direct the State Government to pay rents/damages at the rate of 15% **on the compensation awarded** from the date the land owners were dispossessed, namely, from 1-1-1938 till the date of issuance of the preliminary Notification i.e., 10-1-1996. The calculations shall be made by the State Government as expeditiously as possible and disburse the aforesaid amount to the appellants as early as possible, at any rate, within three months from the date of receipt of copy of this order.’

39. A close scrutiny of the above judgment would show that additional amount @ 15% per annum was ordered to pay on the compensation awarded.

40. In **R.L.Jain’s** case (supra), the Apex Court has given the clarification as to what constitutes compensation. The compensation constitutes market value of the land fixed under Section 23(1) of the Act, additional market value fixed under Section 23(1-A) of the Act and solatium granted under Section 23(2) of the Act. This means, the compensation embraces three components i.e., market value, additional market value and solatium. Therefore, the respondents/claimants are entitled for 15% additional interest in the form of rent or damages for use and occupation of the land from the date of invalid possession till the date of Award on the above said three components.”

18. In the present case, the Award was passed on 06.03.1997. Thus, the additional benefit of interest @ 12% per annum towards rent or damage for use and occupation of the land commences from the date of possession, which is anterior to the notification, and terminates with passing of the Award. Therefore, the claimants are entitled for the additional benefit of interest @ 12% per annum from 18.10.1988 to 16.03.1997.

19. In the result, I.A.No.1 of 2021 is partly allowed, as stated supra, and the appeal is partly allowed as follows:

- (i) The finding of the reference Court with regard to fixation of market value is modified enhancing the market value from Rs.23,400/- per acre to Rs.75,000/- per acre;
- (ii) The amount granted by the respondent/Land Acquisition Officer in the form of 12% additional interest from the date of taking possession (prior to the notification) is modified to that of granting 12% additional market value under Section 23(1-A) of the Act from the date of notification till the date of Award on the market value fixed under Section 23(1) of the Act;
- (iii) The grant of benefits under Section 34 of the Act by the respondent /Land Acquisition Officer or under Section 28 by the reference Court from the date of taking possession which is prior to the notification is modified by directing to pay such interest from the date on which the Government gets right to take notional possession either under Section 17 or under Section 16 of the Act. In the present case, the appellant/claimant is entitled for such interest from the date of Award till the date of deposit. Such interest is payable on three components i.e., market value, additional market value and solatium;

- (iv) The appellant/claimant is also entitled to additional interest @ 15% per annum on compensation i.e., market value, additional market value and solatium towards rent/damages for use and occupation of the land from the date of possession (prior to the notification) i.e., 18.10.1988 till the date of passing of Award i.e., 16.03.1997.

Miscellaneous petitions pending, if any, shall stand closed.

There shall be no order as to costs.

A.RAJASHEKER REDDY, J

M.LAXMAN, J

Date: 01.04.2022
TJMR