

Special Deputy Collector & Anr. Etc vs Kurra Sambasiva Rao & Ors. Etc on 29 April, 1997

Equivalent citations: AIR 1997 SUPREME COURT 2625, 1997 (6) SCC 41, 1997 AIR SCW 2584, (1997) 5 JT 580 (SC), (1997) 3 SCR 1107 (SC), 1997 (4) SCALE 326, 1997 (5) JT 580, (1997) 3 CURCC 75, 1997 BLJR 1 651, (1997) 1 BLJ 682, (1997) 3 MAD LW 163, (1997) 2 RAJ LW 305, (1997) 6 SUPREME 150, (1997) 4 ICC 99, (1997) 4 SCALE 326, (1997) 3 APLJ 23, (1997) 3 CIVLJ 794, (2000) 2 LANDLR 266, 1997 WLN(UC) 1 505, (1997) 2 LACC 472

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:

SPECIAL DEPUTY COLLECTOR & ANR. ETC.

Vs.

RESPONDENT:

KURRA SAMBASIVA RAO & ORS. ETC.

DATE OF JUDGMENT: 29/04/1997

BENCH:

K. RAMASWAMY, S. SAGHIRAHMAD, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NOS. 3795-3814 OF 1997 [Arising out of SLP (C) No.15841/95 and SLP (C) No. 11355- 373/96 (CC-702) O R D E R Delay condoned.

Substitution ordered.

Leave granted.

This batch of appeals relates to the acquisition of the lands of 97 acres 42 cents of land situated in the outskirts of the Tenali town of Guntur District in the State of Andhra Pradesh. The lands were acquired for the development of the colony for the weaker sections-middle income group persons etc. The notification under Section 4(1) of the Land Acquisition Act was published on December 9, 1980. The Land Acquisition officer awarded compensation Rs. 22,940/- per acre for levelled up land and Rs. 21,700/- per acre for unlevelled land. On reference, the Subordinate judge, Tenali by his award and decree, dated February 26, 1991 award uniform compensation at the rate of Rs. 1,00,000/- per acre. On appeal by the appellants as well as the claimants respondents, the High court by judgment and decree dated March 23, 1994, further enhanced the compensation to Rs. 23.50 per sq. yard; thus it allowed the appeals of the respondent-claimants and dismissed those of the appellants. Thus, these appeals by special leave and cross appeals by the respondent-claimants for further enhancement of compensation. They are disposed of by common order.

The High Court, after rejecting the entire evidence adduced by the claimants relied only on a sale deed, Ex. A- 12 dated May 19, 1978 relating to a piece of land of an extent of 250 sq. yard with a thatched house. It worked out compensation at the rate of Rs. 48/- per sq. yard; on that basis, it gave margin of deduction of 50% of the awarded compensation, namely, at the rate of Rs. 23.50 per sq. yrd. The question for consideration is; whether the principle laid down by the High Court is correct in law? The Land Acquisition officer in his award had referred to the topographical features of the land thus.

"The lands under acquisition form a compact block surrounded on the north by Tenali-Guntur Railway Track, on the east by lands owned by South Central Railways. On the south by lands which abut the Tenali-Guntur highway road and also built up area in T.S. No. 22 (in the case for T.S. No. 27) and on the and 29 which fall in the compact block have already been acquired.

The beneficiaries have raised a few huts here and there. R.S. No. A-250 also forms part of the block and it is under acquisition for house sites for weaker sections separately under a separate scheme.

All the lands in the block under acquisition barring a few levelled up fields are similar because of the following reasons (1) All the lands are more or less equally inaccessible from the township.

(2) All the lands (excepting few levelled up fields) are read as wet paddy fields similar in soil fertility and productivity.

(3) Excepting the few levelled up plots to level each of the under acquisition, similar levelling up cost is required to be incurred which works out to approximately Rs. 60,000/- per acre in the most conservative estimate. All the lands under acquisition have equal potentiality or otherwise of being used as house sites.

In between the block of lands under acquisition, there is a channel running in North-south direction and it touches the Guntur Narakodur Tenali Road. The channel is now not in use.

A metal road has been formed along with the channel by the side of T.S. 15 to make a cross from truck road to the built up area in T.S. Nos. 23 and 22.

T.S. No. 142 and T.S. Nos. 12, 13, 14 and 16 which are not under acquisition field in between the lands under acquisition and the Guntur-Narakodur Tenali Road.

Unless these fields are developed into Township, there is no prospect of the lands under acquisition features of a township.

Only a few fields stand classified in accounts as semi-dry and all others stand classified as wet. Notwithstanding the variation in classification, all the lands under acquisition executing a few levelled up plots are wet paddy fields on ground. The few lands which were not grown with paddy were cultivated with dry crops like banana, sugar and chillies. To make the lands under acquisition suitable for house sites, the levels have to be raised by about 2 to 3 feet to make them fit for building purposes. There can be no two opinions about the difficulty that is presently being experienced by persons who purchase Agricultural lands in Tenali Town in getting earth rooted to those lands for levelling them up. From the experience of the Municipality which understood levelling work for provision of houses to weaker sections of the society, it can be said with certainty that the cost involved in levelling up these lands to make them fit for residential purposes would be not less than Rs. 60,000/- per acre.' On the basis of the above factual material collected, the land Acquisition officer passed his award. The question arises: whether the acquired lands possessed of potential value for being used as building sites? The High Court has found, as pointed out by Shri Sudhir Chandra, learned senior counsel for the claimants, that the lands are possessed of potential value for being used for building purpose. It is well settled legal position that the claimants stand in the position of plaintiffs. Burden of proof is always on the claimants to prove by adduction of cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determined by the land Acquisition officer, which is only an offer. If the award is accepted without protest, it binds the parties. It is the bounden duty of the court to evaluate the evidence on the basis of the human conduct, even if no rebuttal evidence is produced by the Land Acquisition Officer, to assess the market value applying the relevant tests laid down by this Court in the role of decisions. In *Periyar and Pareekanni Rubbers Ltd. V/s. State of Kerala* [(1991) 4 SCC 195], this Court considered the entire case law as on that date, on the principle of determination of market value and the relevant test laid in that behalf. The burden of proof that the amount awarded by the land Acquisition Officer/Collector is not adequate is always on the claimant. The burden is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the land

Acquisition officer/Collector or that the land Acquisition Officer/Collector proceeded on a wrong premise or applied a wrong principle of law. The object of the enquiry in a reference under Section 18 of the Act is to bring on record the price which the land under acquisition was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of the sale transaction, the nature of the land, its suitability, nature of the use to which the lands are put to on the date of the notification, income derived or derivable from or any other special distinctive feature which the land is possessed of and the sale transactions in respect of lands covered by the same notification, are all relevant factors to be taken into consideration in determining the market value. It is, therefore, the paramount duty of the courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the lands. In that process, though some guess work is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. Even in the absence of oral evidence adduced by the land Acquisition officer or the beneficiaries the judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding stars in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which other everyone contributes by direct or indirect taxes.

Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification under Section 4 (1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The court is therefore, enjoined with the bounden duty of public function and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition.

The best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; nature of the consideration and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired land. In that case, the features required to be present are ; it must be within a reasonable time of the date of the notification; it must be a bonafide transaction; it should be a sale of land similar to the land acquired or land adjacent to the land acquired; and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired land as on the date of the notification published under Section 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Sect 51-A of the act only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-a-vis this land. The marking of the certified copy in person is not admissible in evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. This principle has been repeated in a catena of subsequent decisions of this Court.

In *Basant Kumar & Ors. V/s. Union of India & Ors.* [1996 (11) SCC 542], this Court pointed out that doctrine of equality in determination of the payment of same compensation to all claimants covered by the same notification, is not a good principle. Treating the entire village as one unit and uniformly determining compensation on that basis is not sustainable in law. The Court must always determine market value prevailing as on the date of notification under Section 4 (1) of the Act and not what was claimed by the parties. Even estimate of claimant is not decisive. The status of the claimant is irrelevant. It was reiterated that while determining the compensation under section 23 (1), the Court should sit in the arm chair of a prudent willing purchaser in the open market and see whether he would be willing to offer the same price as is proposed to be fixed by the Land Acquisition Officer as market value for the same or similar lands possessed of all the advantageous features. This test should always be kept in mind in analysing the evidence and the Court should answer affirmatively taking into consideration all the relevant factors. If feats of imagination are allowed the sway, the land Acquisition Officer/collector would overstep judicial decisions/quasi-judicial orders and would land in misconduct amenable to disciplinary law. In that case, the compensation as fixed by the Land Acquisition officer was reduced. In *Special Land Acquisition Officer, Dharwad V/s. Tajar Hanifabi (Smt.)* [(1996) 10 SCC 627], the question related to determination of the market value in respect of 6 acres of land. When the land in fact was used for agricultural purpose, no prudent and willing vendee would offer the market value

on square foot basis. Thus determination of compensation on the basis of square foot basis on the foot of a small sale transaction was held to be a wrong principle of law and according to the determination of compensation was reduced from Rs. 1,96,20/- per acre to 45,000/- per acre.

In *Agricultural Produce Market Committee V/s. Land Acquisition Officer and Asstt. Commissioner & Anr.* [(1996) 10 SCC 629], same view was reiterated. It was held that when a total 7 acres and odd of land was sought to be acquired no prudent purchaser in the open market would offer to purchase the open land on square foot basis that too on the basis of a few small sale transactions. This court pointed out that such fixation of the market value was illegal and accordingly reduced the market value.

It would thus be settled law that the court is enjoined to determine the market value on an objective assessment of the conditions prevailing in the open market; the nature of the user of the land to which the land was put on the date of the notification, the income derived therefrom and all other relevant attending circumstances. The market value so determined should be just, adequate and reasonable. In other words, it must be just equivalent to what the land is capable of fetching in the open market from a willing and prudent buyer. Therefore, the court is required to sit in the arm chair of a bona fide willing and prudent purchaser in the open market and seek an answer to the question whether in the conditions prevailing in the market he would offer the same market value as the court has proposed.

The High Court has relied upon the oral evidence adduced by the claimants in support of the Claim. It is not in dispute, as even pointed out by the Land Acquisition Officer, that there is colony and railway shed etc. near the acquired lands. But the question is: whether on the date of the notification, the lands possessed of potential value and were fit for use as building site? On the basis of the evidence adduced before the Land Acquisition Officer and the contents of the award which is always part of the record and material evidence, it is difficult to accept the contention of Shri Sudhir Chandra that the lands possessed of potential value for being used for building purpose. Except a small fraction of land, the lands are agricultural lands. To make them fit for construction, even according to the conservative estimate, an amount of Rs. 23.50 per acre to level up the same. It would be figment of imagination to believe that a prudent builder would do that. The High Court, therefore, is clearly in error in treating the lands as fit for building purpose and on that basis determining the compensation after giving the deduction.

The question, therefore, arises: what is the market value the lands were capable to fetch? In a reference under Section 18, as held earlier, the burden of proof always is on the claimants to establish that the lands are possessed of advantageous features and are, therefore, capable of fetching higher market value than what is determined by the Land Acquisition Officer in his award under Section 11. In view of the fact that the High Court itself has rejected all the sale deeds except Ex. A-12 which we are now constrained to reject, and as no other evidence is available, we cannot allow the appeals and dismiss the reference. The Court, instead of indulging into feats of imagination, should sit in the arm chair of a prudent willing purchaser in the normal conditions of the market and seek answer to the question whether he would be willing to offer the amount

proposed by the court, after taking into consideration all the features of the land existing as on the date of the notification. In view of the material collected by the Land Acquisition officer himself as referred in the award, we think that after taking into consideration all the relevant factors, the reasonable compensation should be Rs. 50,000/- per acre. The compensation is accordingly awarded.

The question then is: whether the claimants are also entitled to an additional amount under Section 23(1-A)? The notification under Section 4(1) of the Act was issued on December 9, 1980. The possession was taken on June 20, 1981. The Amendment Act 68 of 1984 was introduced on the floor of the House on April 30, 1982. Thus it is clear that possession was taken prior to the introduction of the Amendment Act. However, award under Section 11 was made on June 19, 1982, i.e., after the introduction of the bill but before the Act came into force. It would be beneficial to refer to the transitional provisions contained in Section 30(1) (a) of the Amendment Act which reads as under:

"30. Transitional Provisions. - (1) The provisions of sub-section (1-A) of Section 23 of the principal Act, as inserted by clause (a) of Section 15 of this Act, shall apply, and shall be deemed to have applied, also to, and in relation to,-

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People, in which no award has been made by the Collector before that date;"

In *K.S. Paripoornan V/s. state of Kerala & Ors.* [(1994) 5 SCC 593] the Constitution Bench considered the effect of the transitional provisions in section 30 (1) (a). The right to additional amount 12 per cent per annum on enhanced compensation was held to be part of the component of determination of compensation. If the proceedings were pending as on the date the notification under Section 4(1) came into force, the provisions of the Amendment Act 68 of 1984 would apply. By operation of the transitional provision in Sections 30(1) (a), the claimant is entitled to additional amount @ 12 per cent per annum to be paid from the date of the notification under Section 4(1) till the date of deposit into court and where the possession was already taken, from the date of the notification till taking of possession. Similar view was reiterated in special Tahsildar (LA) P.W.D. Schemes, *Vijaywada V/s. M.A. Jabbar* [(1995) 2 SCC 142] and *Khanna Improvement Trust V/s. Land Acquisition Tribunal & Ors.* [(1995) 2 SCC 142]. Accordingly, the respondent-claimants are entitled to payment of additional amount @ 12 per cent per annum from the date of the notification till date of the taking possession as mentioned herein above.

Payment of additional amount under Section 23(1-A) is a substantive right. Under those circumstances, by operation of the transitional provisions in Section 30(1)(a), the claimants are entitled to the additional amount at 12% per annum under Section 23 (1-A) from the date of notification under Section 4(1) till that date of taking possession. Instead of Rs. 1,00,000/- per acre, they are entitled to compensation at the rate of Rs. 50,000/- per acre in respect of all acquired lands with solatium at 30% on the enhanced compensation and interest @ 9% for one year from June 20, 1981 and on expiry thereof, @ 15% till date of deposit into the court; and additional amount.

Consequently, the award and decree of the reference Court stand modified. The judgment of the High court stands set aside.

The appeals are accordingly allowed. As a result, the cross appeals of the respondent-claimants stand dismissed. No costs.