

## **The Land Acquisition Officer Cum-Dswo, ... vs M/S. B.V. Reddy & Sons on 14 February, 2002**

**Equivalent citations: AIR 2002 SUPREME COURT 1045, 2002 (3) SCC 463, 2002 AIR SCW 773, 2002 (2) UPLBEC 1152, 2002 (2) SLT 44, (2002) 2 JCR 88 (SC), 2002 (3) SRJ 384, (2002) 2 JT 53 (SC), 2002 (1) LRI 387, 2002 (2) SCALE 162, 2002 (2) ALL CJ 1030, (2002) 1 LANDLR 544, (2002) 1 LACC 508, (2002) 1 ORISSA LR 540, (2002) 2 BLJ 468, (2002) 3 MAD LW 216, (2002) 2 UPLBEC 1152, (2002) 2 ANDHLD 47, (2002) 1 SUPREME 660, (2002) 2 RECCIVR 51, (2002) 2 ICC 851, (2002) 2 SCALE 162, (2002) 1 UC 628, (2002) 47 ALL LR 247, (2002) 2 ANDH LT 34, (2003) 1 ANDHWR 524, (2002) 2 CIVLJ 231, (2002) 2 RAJ LW 278, (2002) 2 SCJ 60**

**Bench: S.N. Phukan, S.N. Variava**

CASE NO.:

Appeal (civil) 9521-22 of 1995

PETITIONER:

THE LAND ACQUISITION OFFICER CUM-DSWO, AP

Vs.

RESPONDENT:

M/S. B.V. REDDY & SONS

DATE OF JUDGMENT: 14/02/2002

BENCH:

G.B. Pattanaik, S.N. Phukan & S.N. Variava

JUDGMENT:

With Writ Petition (Civil) No. 349 of 2001.

JUDGMENT PATTANAIAK,J.

These appeals are directed against the judgment of Andhra Pradesh High Court in Letters Patent Appeals Nos. 351 and 352 of 1989. The land in question measuring 3.42 acres was acquired for construction of houses for Tribals and Harijans by issuance of notification under Section 4(1) of the

Land Acquisition Act, published on 9.6.1976. A second Notification was issued under said Section 4 to acquire an extent of 1.06 acres by publication of Notification dated 27.12.1976. The Land Acquisition Officer determined the market value of the acquired land @ Rs.11,000/- per acre by his award dated 31.2.1977. Before the Land Acquisition Officer, the land owners had claimed compensation @ Rs. 25,000/- to Rs. 30,000/- per acre. On a reference being made under Section 18 of the Act, the Civil Court determined the market value of the acquired land at Rs.75,000/- per acre, but granted compensation @ Rs. 30,000/- per acre in view of Section 25 of the Act, as it stood prior to its amendment in the year 1984 and as the owners had claimed @ Rs.30,000/- per acre. On appeal being carried, the learned Single Judge also came to the conclusion that the market value of the land would be Rs.75,000/- per acre, but did not enhance the compensation in view of the un-amended provisions of Section 25 of the Act and in view of the fact that the owners had claimed only Rs.30,000/- per acre before the Land Acquisition Officer. The matter being carried to the Division Bench in Letters Patent Appeal, the Division Bench came to the conclusion that Section 25 being procedural in nature and the amendment having been made while the appeal was pending, the amended provisions of Section 25 of the Land Acquisition Act would apply and since under the amended provisions, there is no bar for awarding compensation more than the amount claimed by the claimants and the only embargo being that the amount shall not be awarded less than the amount awarded by the Collector under Section 11, the Court would be justified in enhancing the compensation if the market value is determined at a higher rate. On the question of determination of market value, the Division Bench, taking into consideration Exhibits B-3, B-4 and B-7, came to hold that the market value of the acquired land would be Rs. one lakh per acre. The appeals having been allowed with the aforesaid conclusions, the State is in appeal before this Court.

Mr. Guntur Prabhakar, the learned counsel appearing for the appellant contended that the Division Bench of the High Court committed serious error in holding that Section 25 is procedural in nature and thereby applying the amended provisions of Section 25 of the Act. According to him, the provisions of Section 25 mandates the parameters within which the Court is required to determine the amount of compensation and the act of awarding of compensation or curtailing, restricting or adding to such right can never be held to be procedural in nature. According to the learned counsel the language itself reveals that it is substantive in nature and it has been so held by this Court in the case of *Krishi Utpadan Mandi Samiti vs. Kanhaiya Lal and Others.*, Vol. 2000 (7) SCC 756. That being the position, the substantive right of the party would be governed by the un-amended provisions of Section 25 of the Act. Consequently, it is urged that the claimants having claimed only Rs. 30,000/- per acre, the Court will not be entitled to grant compensation beyond the amount claimed. According to Mr. Prabhakar, the Division Bench of the Andhra Pradesh High Court committed serious error of law, which has vitiated the ultimate conclusion.

Mr. P.P. Rao, the learned senior counsel appearing for the claimants-respondents on the other hand contended that the lawyer for the claimants without any authority from the claimants, made the application, even before the notice had been served on the claimants and in such an application, mentioned the claim at the rate of Rs.30,000/- per acre and such a claim cannot be held to be a claim made by the claimants, within the ambit of the un-amended provisions of Section 25(1) of the Act. Mr. Rao further contended that the very fact, the Parliament amended Section 25 of the Act and took away the earlier embargo with regard to the quantum of compensation, limiting the same to the

amount claimed by the claimants is indicative of the legislative intent. That being the position and the Court having determined the market value of the acquired land at Rs. one lakh per acre, there is no justification to deny that amount to the claimants, since under Article 31 of the Constitution, no person can be deprived of his property, save by the authority of law. Mr. Rao further submitted that the unamended provisions of Section 25 is ultra vires and such a prayer has been made in the writ petition filed by the claimants under Article 32 of the Constitution. Mr. Rao lastly submitted that in the peculiar facts of this case, even if this Court may declare the law and point out the error in the Division Bench Judgment of the Andhra Pradesh High Court, yet ends of justice would not require interference with the judgment of the Division Bench of the High Court in exercise of power under Article 136 of the Constitution. In support of this contention, reliance was placed on the decision of this Court in *Taherakhatoon vs. Salambin Mohammad*, 1999(2) S.C.C. 635.

Before embarking upon an inquiry as to the correctness of the contentions raised, it would be appropriate to notice the provisions of Section 25 of the Land Acquisition Act, as it stood prior to its amendment and the provisions of the Land Acquisition Act, as it stand subsequent to the amendment.

"Section 25, prior to its amendment by Act 68 of 1984:

'25. Rules as to amount of Compensation- (1) When the applicant has made a claim to compensation, pursuant to any notice given under Section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under Section 11.

(4)When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(5)When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed the amount awarded by the Collector."

Section 25 after the amendment:-

"Section 25. Amount of compensation by Court not be lower than the amount awarded by the Collector:- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."

At this stage it would be proper to notice the scheme of the Act itself. After publication of preliminary notification under Section 4 of the Act and causing public notice of the substance of such notification by the Collector, objections are entertained and heard, as provided under Section 5A of the Act. The Appropriate Government then becomes satisfied that the land is needed for public purpose and a declaration to that effect is made under Section 6 of the Act. Such declaration is the conclusive evidence that the land is needed for a public purpose. The Appropriate Government or the officer authorised by the Appropriate Government directs the Collector to take order for the

acquisition of the land, as provided under Section 7 and the Collector then cause the land to be marked and measured and also he is supposed to make a plan of the same. The Collector thereafter cause public notice to be given at convenient places on or near the land, stating that the Government intends to take possession of the land and that claims to compensation for all interests in such land may be made to him, as provided under Section 9. The notice under Section 9(1) must state the necessary particulars, as provided under sub-section (2) of said Section and the Collector then serves notice on the occupier of the land as well as on all such persons known or believed to be interested therein or would be entitled to act for persons so interested, or agents authorised to receive service on their behalf within the revenue district in which the land is situate. In case the person interested resides elsewhere and has no such agent, the notice is required to be sent to him by post in a letter addressed to him at his last known address, under sub-section (4) of Section 9. Section 11 confers power on the Collector to hold an inquiry with regard to the measurements made as well as inquiry to the valuation of the land on the date of Notification under Section 4(1) and thereafter it shall make an Award under his hand. Such Award of the Collector is required to be filed in the Collector's Office and under law is held to be final and conclusive evidence, as between the Collector and the persons interested on the question of true area and value of the land and apportionment of the compensation among the persons interested. We are not concerned with other provisions except Section 18 and Section 25. Section 18 entitles the person interested who has not accepted the award to make a written application to the Collector, requiring that the matter of determination of compensation be referred to a competent Court. Section 25 however, as it stood prior to its amendment by Act 68 of 1984, puts an embargo to the effect that if an applicant has made a claim to compensation, pursuant to any notice given under Section 9, then the amount awarded to him by the Court shall not exceed the amount so claimed and shall not be less than the amount awarded by the Collector under Section 11. The aforesaid provision contained in sub-section (1) of Section 25, thus limits the power of the reference Court on a reference being made under Section 18 to the quantum of compensation which could be awarded.

When these appeals had been listed before a Bench of two learned Judges of this Court, the decision of this Court in *Krishi Utpadan Mandi Samiti*, 2000 (7) SCC 756, had been placed before the Bench and it was contended that since the award in the case in hand is between 30th of September, 1982 and 24th of September, 1984, the compensation could be awarded under the amended provisions of Section 25. Since that decision *prima facie* supported the contention of the claimants-respondents and the Bench was of the view that the said decision requires re-consideration, the matter had been referred to a Bench of three learned Judges and that is how the matter has been placed before us. On the rival submissions made by the counsel for the parties, the following questions arise for our consideration:

- (1) Can the provision of Section 25 of the Land Acquisition Act be construed to be procedural in nature or is substantive?
- (2) If it is held to be substantive in nature, then can the amended provisions of Section 25 of the Act would apply to a case where the award of the Land Acquisition Collector had been made much prior to the amendment in question?

(3) Whether the Judgment of this Court in Krishi Utpadan Mandi Samiti's case can be held to be correctly decided?

(4) Whether at all it would be appropriate for this Court to lay down the law and yet not to interfere with the judgment of the Division Bench of Andhra Pradesh High Court with regard to the quantum of compensation awarded?

(5) Whether the petition under Article 32 can be entertained for deciding the validity of un-amended provisions of Section 25?

So far as the first question is concerned, on a plain reading of the same, it is difficult for us to hold that it is procedural in nature. On the other hand, it unequivocally limits the power of the Court on a reference being made to award compensation, more than the amount claimed by the claimants and less than the amount awarded by the Collector. In other words, the substantive right of a claimant who has made a claim to the compensation, pursuant to a notice under Section 9, cannot be more than the amount claimed and under any circumstances, would not be less than the amount which the Land Acquisition Collector has awarded under Section 11, since that award of the Collector is the offer that is made to the claimant. In course of the arguments, Mr. Rao, the learned counsel for the claimants submitted before us that sub-section (5) of Section 25, as it stood prior to its amendment gives sufficient power to the reference Court to entertain a claim if the claimant had omitted to make such claim pursuant to notice issued under Section 9 and determine the compensation on that. Consequently, Mr. Rao contends that there should not be any embargo on the power of the Court even if the claimant makes a claim pursuant to the notice issued under Section 9. We are unable to accept this submission inasmuch as sub-section (5) of Section 25 contemplates a situation where the claimant for sufficient reason had omitted to make a claim and the reference Court on being satisfied about the same may permit the claimant to make a claim. But the unambiguous and clear language of sub-section (1) of Section 25, as it stood prior to the amendment, makes it explicitly clear that if the claimant has made a claim pursuant to a notice under Section 9, then the Court would be incompetent to award any amount exceeding the said claim. In our considered opinion, sub-section (5) of Section 25 will be of no assistance to the claimants- respondents in the present case. Incidentally, we may deal with the submission of Mr. Rao that the amount claimed was by the lawyer and not by the claimant himself and therefore, cannot be held to be claim by the claimants, pursuant to notice under Section 9 of the Act. On examining the records of the case, we do not find any justification to entertain this submission, inasmuch even in the application made for reference under Section 18, the claimant had not taken such a stand. It would, therefore, be futile for us to entertain this contention and hold that the claim made by the claimants through his lawyer cannot be held to be a claim by the claimants. This Court in the very case of Krishi Utpadan Mandi Samiti, 2000(7) SCC 756, on which the learned counsel for the respondents had placed reliance, considered the provisions of Section 25 and held that the said provision can never be held to be procedural and it is substantive in nature. We approve of the said conclusion and hold that the provision of Section 25 of the Land Acquisition Act is substantive in nature.

Coming to the second question, it is a well settled principle of construction that a substantive provision cannot be retrospective in nature unless the provision itself indicates the same. The

amended provision of Section 25 nowhere indicates that the same would have any retrospective effect. Consequently, therefore, it would apply to all acquisitions made subsequent to 24.9.84, the date on which Act 68/1984 came into force. The Land Acquisition (Amendment) Bill of 1982 was introduced in Parliament on 30th of April, 1982 and came into operation with effect from 24th of September, 1984. Under the amendment in question, the provisions of Section 23(2) dealing with solatium was amended and Section 30(2) of the amended Act provided that the provisions of sub-section (2) of Section 23 of the Principal Act as amended by clause (b) of Section 15 shall apply and shall be deemed to have applied, also to and in relation to any award made by the Collector or Court or to any order passed by the High Court or Supreme Court in appeal against any such award under the provisions of the principal Act, after the 30th April, 1982 and before the commencement of the Act. It is because of the aforesaid provision, the question cropped up as to whether in respect of an award passed by the Collector between the two dates, the amended provision will have an application or not and that question has been answered by this Court in the Constitution Bench decision in Union of India and anr. Vs. Raghubir Singh, 1989(2) S.C.C. 754. Sub-section (2) of Section 30 has at all no reference to the provisions of Section 25 of the Act. In that view of the matter, question of applicability of the amended provisions of Section 25 of the Act to an award of the Collector made earlier to the amendment and the matter was pending in appeal, does not arise. In our considered opinion, the amended provisions of Section 25 of the Act, not being retrospective in nature, the case in hand would be governed by the unamended provisions of Section 25 of the Act.

Coming to the third question, we find that on a review application being filed, this court relying upon the case of Union of India vs. Raghubir Singh, 1989(2) SCC 754, held that the amended provisions would be applicable under which there is no restriction that the award would only be upto the amount claimed by the claimant. In Raghubir Singh's case, the Constitution Bench was dealing with sub- section (2) of Section 30 which had got absolutely no relevance or connection with the provisions of Section 25 of the Land Acquisition Act. For the reasons already indicated, we have no hesitation to come to the conclusion that the enunciation of law made by this Court in Krishi Utpadan Mandi Samiti's case, in para (17) of the Judgment relying upon the case of Union of India vs. Raghubir Singh, is not correct and to that extent the aforesaid case must be held not to have been correctly decided.

Coming to the next question as to whether this Court would interfere with the impugned judgment of the Division Bench of the Andhra Pradesh High Court or not, the answer would depend on the provision of law which was under

consideration and whether there was any ambiguity in the law which is being decided for the first time. It is no doubt true that in Teherakhatoon vs. Salambin Mohammad, 1999(2) S.C.C. 635, this Court has held that even if the special leave has been granted under Article 136, unless and until, it is shown that a substantial and grave injustice will be caused if no interference is made out, the Court may refuse to interfere with the judgment under challenge. This principle would mainly depend upon the facts of each case which comes up for decision before the Court. To the case in hand, it is difficult for us to apply the aforesaid principle. On the date the land was notified for acquisition under Section 4(1) of the Act, the un-amended provision of Section 25

was in force and it was made known to all concerned that the reference Court will have no power to award the amount in excess of the amount claimed by the claimants. Not only the language of the Statute was clear and unambiguous, but also the question was not res- integra, in view of the decision of this Court in Dadoo Yogendrenath Singh vs. The Collector, AIR 1977 SC 1128. Until the statutory rigour contained in sub-section (1) of Section 25 stood obliterated by the amended provisions of Section 25 and until all restraints and embargoes placed for the Court stood totally liberated, the reference Court had no jurisdiction to award the amount in excess of the amount claimed by the claimant. Such being the position of law, we are unable to persuade ourselves to agree with the submission of Mr. Rao to hold that it would not be in the interest of justice to interfere with the judgment of the Division Bench of the Andhra Pradesh High Court. In our considered opinion, the High Court had no jurisdiction on the law as it stood, to award any amount in excess of the amount claimed and in the case in hand in excess of Rs.30,000/- per acre and, therefore, the principles enunciated in the decision of this Court in Teherakhatoon vs. Salambin Mohammad, 1999(2) S.C.C. 635, cannot be applied to the case in hand.

So far as the last submission is concerned, we are afraid that the validity of unamended provision of Section 25 of the Land Acquisition Act which was there on the statute book since inception can at all be examined at a point of time when that provision no longer subsists since, 24.9.84, the date on which Act 68/1984 came into force. We, therefore, decline to entertain the petition under Article 32 at the behest of the claimants. In the net result, therefore, these civil appeals are allowed. The Judgment of the Division Bench of the Andhra Pradesh High Court is set aside and it is held that the claimants-respondents would be entitled to compensation for the acquired land @ Rs.30,000/- per acre, which they claimed pursuant to service of notice under Section 9. The writ petition filed by the claimants stands dismissed.

.....J. (G.B. PATTANAİK) .....J. (S.N. PHUKAN) ..J. (S.N. VARIAVA) February 14, 2002.