Supreme Court of India
Special Deputy Collector & Anr. ... vs Kurra Sambasiva Rao & Ors. Etc on 29 April, 1997
Bench: K. Ramaswamy, S. Saghirahmad, G.B. Pattanaik

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. 3795-3814OF 1997 [Arising out os 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 batchof 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 theweakersections-middleincome group persons etc. The notification underSection 4(1) of theland Acquisition Act was publishedon December 9,1980. TheLand 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 hisaward and decree, dated February 26,1991 award uniformcompensation atthe rate of Rs.1,00,000/- per acre. On appeal by the appellantsas well as the claimants respondents, the High court by judgment and decree dated March 23,1994,furtherenhanced 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 leaveand cross appeals by the respondent-claimants for further enhancement of compensation. They are disposedof by common order.

The High Court, after rejecting the entire evidence adducedby theclaimants relied only on a saledeed, Ex. A- 12 dated May 19,1978 relatingto a piece ofland of an extent of 250 sq. yardwith a thatchedhouse. It worked out compensation at the rate of Rs. 48/- per sq. yard; onthat basis, it gavemarginof deduction of 50% of the awarded compensation, namely, at the rate of Rs. 23.50per sq.yrd. The question for consideration is; whether the principle laid down by the HighCourt is correct in law? Theland Acquisition officer in his award had referred to the topographical features of the land thus.

> "The landsunder acquisition form a compact block surrounded on the north by Tenali-Guntur Railway Track, onthe east by lands owned bySouth Central Railways. On the south by landswhich abut the Tenali-Guntur highway roadand 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.
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> The beneficiaries have raised a few huts here and there. R.S. No. A-250 also formspart ofthe block and it is under acquisition for house sites for weakersections separatelyunder aseparate scheme. All the lands in the block under acquisitionbarringa few I velled up fields are similar because ofthe following reasons (1) All the landsare more or less equally inaccessible from the township.
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> (2) All the lands (excepting few levelled up fields) are read as wet paddy fields similar in soil fortility and productivity. (3) Excepting the few levelled on plots to level each of the under acquisition, similar levelling up cost is requiredto beincurred which works out to approximately Rs. 60,000/-per acre in the most conservative estimate. All the lands under acquisition have equal potentiality or otherwiseof being used as house sites.
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> In between the blockof lands under acquisition,there is channel running in North-south direction and it touches theGuntur Narakodur Tenali Road. The channel is now not inuse.
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> A metal roadhas been formed along with the channel bythe side ofTS. 15 to make across from truck road to the built up area in T.S. Nos. 23 and 22.
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> T.S. No. 142 and T.S.Nos. 12, 13, 14 and 16 which are not under acquisition fieldin between the lands under acquisitionand the Guntur-Narakodur Tenali Road. Unless these fields are developed into Township, there is noprospect of the lands under acquisition features of a township.

Onlya few fields stand classifiedin accounts as semidry and all others stand classified as wet. Notwithstanding the variation inclassification, all the lands under acquisitionexecuting a few levelled up plots are wet paddy fields onground. 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 to3 feetto make themfit for building

purposes. There can be no two opinions about the difficulty that is presently being experienced by personswhopurchase Agricultural lands in Tenali Town ingetting earth rooted to those lands forlevelling themup. From the experience of the Municipality which understood levellingwork for provisionof houses to weaker sections of the society, it can be said withcertainty thatthe cost involved in levelling up these lands to makethem fit for residential purposes would be not less than Rs. 60,000/- peracre.' Onthe basis of the above factual material collected, the land Acquisition officer passed his award.The question arises:whether the acquired lands possessedof potential value for being used as building sites? The High Court has found, as pointed out by Shri Sudhir Chandra, learned senior counselfor the claimants, that the lands arepossessed of potential value for being used for building purpose. It is well settled legal position that the claimantsstand in the position of plaintiffs. Burden of proof is always on the claimants to prove byadduction of cogent and acceptable evidence that the lands are capableof fetching higher compensation than what is determined bythe land Acquisition officer, whichis only an offer. If the award is accepted withoutprotest, it binds theparties. It is the bounden duty of the court to evaluatethe evidence onthe basis of the human conduct, even if no rebuttalevidence is produced by theLand Acquisition Officer, to assess themarket value applying the relevant tests laid down by this Court inbead role of decisions. InPeriyarand PareekanniRubbersltd. V/s. State of Kerala [(1991) 4 SCC 195], this Court considered theentire case law as onthat date, on the principle of determination of market value andthe relevant test laid in that behalf. The burdenof proof that the amount awardedby the land AcquisitionOfficer/Collector is not adequate is always on the claimant. Theburden is to adduce relevant and material evidence to establish that the acquired landsare capable offetching highermarket value than the amount awarded by the land Acquisition officer/Collector or that the land Acquisition Officer/Collector proceeded ona wrongpremiseor 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 acquiredland which is the subject of the sale transaction, the nature of the land, its suitability, nature ofthe useto which the lands are put to on the dateof thenotification, income derivedor derivable from or any other special distinctive feature whichthe land is possessed of and thesale transactions in respect of lands covered by thesame notification, are all relevant factors to be takeninto consideration in determiningthe market value. It is, therefore, theparamount dutyof thecourts of facts to subjectthe evidence to very close scrutiny, objectively assess the evidence tenderedby 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 wouldfurnishguidance to arrive at the market value of the acquired lands. it is equallyrelevant to consider the neighbourhoodlands as are possessed ofsimilar potentiality or anyadvantageous features or any special circumstances available ineach case. The Court is required to take into account all the relevant considerations. The Court isrequired 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 thatprocess, thoughsome guess workis involve, feats of imagination should be eschewedand mechanical assessment of the evidence should beavoided. Even in the absence oforal 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 genuinesale transactions are guiding star in evaluating the evidence. Misplaced sympathiesor 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 adequatemarket 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 whethera hypotheticalwillingvendor would offer the lands and a willing purchaser in normal human conduct would be willingto buyas a prudent man in normal human conduct would be willing to buy as aprudentman 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 anxiousbuyer dealing at arm's length with throw away price, nor facade of sale orfictitious sales brought about in quick succession or otherwiseto inflate the market value. The judge should sit in the arm chair of thesaid willing buyer and seekan answer to the question whether in the given set of circumstances as aprudentbuyer he would offer the same market valuewhich the court proposed to fix for the acquired lands inthe available market conditions. The court is therefore, enjoined with the bounden duty of public function and judicial dispensation indetermination of the marketvalueof the acquired land and compulsory acquisition.

The best evidence of the value of propertyare thesale transaction inrespectof theacquired land to which the claimant himself is a party; the time at whichthe property comes to be sold; nature of theconsideration and the manner in which the transaction cameto be brought out. They are all relevant factors. In the absenceof such a saledeed relating to the acquired land, the saletransactions relating to the neighbouring lands in the vicinity of the acquired land.In that case, the features required to be presentare ; it mustbe within a reasonable time of the date of thenotification;it must be a bonafide transaction; itshould be a sale of land similar to theland acquired or land adjacent to the land acquired; and it should possesssimilar advantageous features. These are relevant features to be takeninto consideration to prove the market value of the acquired land as on the date of the notification publishedunder Section 4(1) of the Act.This would be established by examining either the vendor or the vendee.If it is proved thatthey are not available, the scribe of the documentmay also be examined inthat behalf. Sect 51-A of the act only dispenses with the production of the original sale deed and directs to receive certifiedcopy for thereason that parties to the saletransaction would be reluctant topart with the original sale deed since acquisition proceedingswould take longtime before award of the compensation attains finality andin the meanwhile the owner of the sale deedis precluded from usingthe same for other purposesvis-a-vis thisland. The marking of the certified copyis perse is not admissiblein evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. Thisprinciple hasbeen repeated in a catena ofsubsequent decisions ofthis Court.

InBasant Kumar & Ors. V/s. Union of India& Ors. [1996 (11) SCC 542], this Court pointed out thatdoctrine of equality in determination of the payment ofsame compensation to allclaimants covered by thesame notification, is not a good principle. Treating the entire villageas oneunit and uniformly determiningcompensation 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 theAct andnot what was claimedby theparties. Even estimate of claimant is not decisive. The status of the claimant is irrelevant. It was reiterated that while determining the compensation under section23 (1), the Court should sit in the arm chairof a prudentwilling purchase in the open market and see whether

he would be willing to offer the sameprice as is proposed to be fixed bythe Land Acquisition Officer asmarket value for the same or similar lands possessedof all the advantageous features.This test should always be kept in mind in analysing theevidence 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 ordersand would land in misconduct amenable to disciplinary law. In that case, thecompensation as fixed by the Land Acquisition officer was reduced. In Special landAcquisition 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 theland in factwas used foragricultural purpose, no prudent andwiling vendee would offer the market value on square foot basis. Thus determination of compensation on the basis of square foot basis on thefoot of a small saletransaction washeld tobe a wrong principal of lawand according the determination of compensation was reducedfrom Rs. 1,96,20\- per acre to 45,000/-per acre.

InAgricultural Produce Market Committee V/s.Land Acquisition officer and Asstt. Commissioner &Anr. [(1996) 10 SCC 629], same view was reiterated. It was held thatwhen a total7 acresand oddof landwas sought to be acquired no prudentpurchaser in the open market would offer to purchase the open land on square foot basis that too onthe basis of a few small sale transactions. This court pointed outthat such fixation of the market value wasillegal and accordingly reduced themarket value.

Itwould thus b be settled lawthat the court is enjoined to determine the market value on an objective assessment of the conditions prevailing in theopen market; the nature of the user of the land to which theland was put on the dateof the notification,the income derived therefrom and all other relevant attending circumstances. The market value so determinedshould be just,adequate and reasonable. Inother words, it must be just equivalent to what the land is capable of fetching inthe open marketfrom a willing and prudent buyer, Therefore, the court is required to sit in thearm chair of a bona fide willing and prudentpurchaser in the openmarket and seekan answer to the question whether in the conditions prevailing in the market he would offerthe same market value as the court has proposed.

The HighCourt has relied upon the oral evidence adducedby theclaimants in support ofthe Claim. It is not in dispute, aseven 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 foruse asbuilding site?On thebasis of the evidence adduced beforethe land Acquisition officer and the contents of theaward which is always part of the record and material evidence, it is difficult to accept the contention of ShriSudhir Chandra that thelands possessedof potential value for being used for building purpose. Except a small fraction of land, the elands are agricultural lands. Tomake them fit for construction, evenaccording to the conservative estimate,an amount of Rs. 23.50 per acre to level up the same. Itwould be figment of imagination to believethat aprudent builder wouldd that. TheHigh Court, therefore, is clearly in error in treating the lands as fitfor 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 Section18, asheld earlier, the burden of proof always is on theclaimants to establishthat the lands are possessed of advantageous features and are, therefore, capable of fetching higher marketvalue than whatis determined by the Land Acquisition Officer in his awardunder Section 11. In view ofthe fact that the High Court itself hasrejected all the sale deedsexcept Ex. A-12which we are now constrained to reject, andas no other evidence isavailable, we cannot allow the appeals anddismissthe reference. The Court, insteadof indulging into feats of imagination, should sit in thearm chair of a prudent willing purchaser in the normal conditions of the market and seek answer to the question whether he would be willingto offer the amount proposed by the court, after taking into consideration all the features of the land existing ason thedate of the notification . In view of the material collected by theland Acquisition officer himself as referred in the award, we think that after taking into consideration allthe relevant factors, the reasonable compensation should beRs. 50.000/- per acre. The compensation is accordingly awarded.

The question thenis: whether the claimants arealso entitled to additionalamountunder 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 onthe floor of the House onApril 30, 1982. Thus it is clearthat possession wastaken prior to the introductionof Amendment Act. However, award under Section 11 was made onJune 19,1982, i.e., after the introduction of the bill but before the Actcame 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) ofSection 23 ofthe 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 inrelation 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 Houseof the People, in whichno award has been made by the Collector before that date;"

InK.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 annumon enhanced compensation was heldto bepart of the component of determination of compensation. If the proceedingswere pendingas on the date the notification underSection4(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 isentitled to additional amount @12 per cent per annum to be paid from the date ofthe notification under Section 4(1) till the date of depositinto court and where the possessionwas already taken, from the date of the notification till taking of possession. Similar view was reiteratedin 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 centper annum from the date of the notification till date of the taking possessionas mentioned hereinabove.

Payment ofadditional amount underSection23(1-A)is a substantive right. Under those circumstances,by operation of thetransitional provisions in Section 30(1)(a), the claimants are entitledto theadditional amount at 12% per annum under Section 23 (1-A) from thedate ofnotification under Section 4(1) till that date of taking possession. Insteadof Rs.1,00,000/- peracre, they are entitled to compensation atthe rate of Rs.50,000/- per acre in respect of allacquired landswith solatium at 30% onthe enhanced compensation and interest @ 9% for one year from June 20, 1981 and on expiry thereof, @ 15% tilldate ofdepositinto the court; andadditional amount. Consequently, the award and decree ofthe referenceCourt stand modified. The judgment of theHigh court Stands set aside.

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