

(2003) 07 AP CK 0001

Andhra Pradesh High Court

Case No: A.S. No. 2275 of 1999

Land Acquisition Officer

APPELLANT

Vs

Gonur Venkatswamy and
Another

RESPONDENT

Date of Decision: July 4, 2003

Acts Referred:

- Land Acquisition Act, 1894 - Section 23

Citation: (2003) 4 ALD 709 : (2003) 4 ALT 563

Hon'ble Judges: C.V. Ramulu, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: J. Prabhakar, for the Appellant; A. Narasimha Reddy, for the Respondent

Final Decision: Dismissed

Judgement

C.V. Ramulu, J

1. The Land Acquisition Officer and the Special Collector, Gadwal is in appeal before us in all these appeals, which arise out of a Common Award dated 29-4-1999 made in O.P. No. 261 of 1995 and batch on the file of the Senior Civil Judge's Court, Wanaparthy. Hence, all these appeals are being disposed of by this common Judgment.

2. An extent of Ac.42.00 of land under various survey numbers of Srinivasapuram village, Wanaparthy Mandal of Mahabubnagar District was acquired for the purpose of building housing colony by the A.P. Housing Board. The notification u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") was published on 24-4-1986. The award was passed u/s 11 of the Act by the Land Acquisition Officer in Award No. 5/88, dated 29-6-1988 in File No. E/2558/87 and fixed the market value of the acquired land at Rs. 10,000/-per acre. Dissatisfied with the market value fixed by the Land Acquisition Officer, the claimants sought for reference u/s 18 of the Act. The reference Court, after an elaborate consideration of both the oral and documentary

evidence, came to the conclusion that the land under acquisition is having potentiality of housing plots and as such, fixed the market value of the acquired land on yardage basis at Rs. 35/- per square yard, which comes to Rs. 1,69,405/-. Aggrieved by the same, the present appeals are filed complaining that the enhancement has absolutely no valid basis and the lower Court erred in placing reliance on Exs.A1 to A5 and the oral evidence of P.Ws.1 to 4. Further, the lower Court failed to see that the lands under acquisition are situated in Srinivasapuram village altogether a separate revenue village and it was not even a Gram Panchayat at the time of acquisition, as it was tagged on to neighbouring Gram Panchayat Appayapalle. Further, the lower Court erred in observing that the acquired land was nearer to APSRTC Bus Stand. In fact, the same is located at a distance of more than 2 kilometres and the lands under acquisition have no potentiality of house sites. As the lands under acquisition cannot be treated as having potentiality of house sites, they should be treated as dry chalka lands and the market value shall be fixed only on acreage basis. The Court below ought to have accepted the market value of the lands under acquisition at Rs. 10,000/- per acre as fixed by the Land Acquisition Officer considering Ex.B2 sale deed.

3. The learned Counsel for the respondent-claimants submitted that the lands under acquisition are adjoining and abutting the municipal limits of Wanaparthy town. Though Srinivasapuram is a separate revenue village, the lands under acquisition are part and parcel of suburbs of Wanaparthy town. The lands are located on either side of the State highway between Wanaparthy to Kurnool and at a distance of 950 metres from the APSRTC bus station and the Wanaparthy Agricultural Market Yard and on the rear side of Wanaparthy Milk Chilling Center. In fact, these lands are adjacent and abutting Wanaparthy town and they are 3 kilometres away from Srinivasapuram village. The Mandal Development Office, Land Mortgage Bank, Doordarshan Office, Roads & Buildings Office, Court buildings, fire station, Mandal Revenue Office, Teachers Colony, Vengalarao colony and rice mills are in between the acquired land and the agricultural market yard of Wanaparthy and as such, it is highly potential area for the purpose of house construction and commercial purpose also. Even the Land Acquisition Officer -R.W.1 - also admitted as to the location of the lands under acquisition. Thus, the reliance placed by the reference Court on Exs.A1 to A5 and the evidence of P.Ws.1 to 4 in fixing the market value at the rate of Rs. 35/-per square yard cannot be said to be unreasonable and exorbitant. The appellants have absolutely not made out any case to interfere with the common Award passed by the Court below and the appeals are liable to be dismissed.

4. The point for consideration is whether the market value fixed by the reference Court for the lands under acquisition at Rs. 35/- per square yard is unreasonable and exorbitant ?

5. In the light of the rival contentions, it is necessary to examine the evidence adduced by both sides. On behalf of the Referring Officer R.W.1 - Revenue Divisional Officer, Wanaparthy - was examined and Exs.B1 to B8 were marked and for the claimants P.Ws.1 to 4 were examined and Exs.A1 to A5 were marked.

6. The Land Acquisition Officer under Ex.B1 - Award No. 5/88 dated 29-6-1988 relied upon a sale deed - Ex.B2, dated 1.6.1984, whereunder an extent of Ac. 1.23 gts. of land in Sy.No. 573 of Srinivasapuram village was sold for a consideration of Rs. 15,700/-, which works out to Rs. 10,000/- per acre. Neither the vendor nor the vendee of Ex.B2 sale deed was examined. The lower Court considered the same and found that nobody was examined to prove the genuineness of the said sale. It had also taken judicial notice of the fact that in these parts of the State, it is more than common that registration of sale transactions of the lands would be effected at a lesser value than the actual sale price to avoid payment of stamp duty and registration fee. It was also observed that adopting such a value to ascertain the market value of the acquired under, Ex.B2 is of no help. Exs.B3 to B7, which are the copies of Pahanies for the years 1984-85 to 1988-89, need not be looked into for the reason that the Land Acquisition Officer had not passed the Award fixing the market value of the acquired land on capitalization basis nor any evidence was led in that direction. Ex.B8 is the copy of the combined rough sketch of Srinivasapuram village indicating the location of various lands acquired for the purpose of locating agricultural market yard, APSRTC bus station, milk chilling center etc. In fact, this is of no help to the appellant in view of the oral evidence let in by the claimants and also the evidence of R.W.I.

7. Learned Counsel for the appellant strenuously contended that the lower Court ought not to have looked into Exs.A1 to A5 and ought not to have placed any reliance on them and they are of no consequence in fixing the market value of the acquired land.

8. Now, we will scrutinize the evidence adduced on behalf of the respondents-claimants. Ex.A1 is the certified copy of the Order dated 12-4-1990 made in O.P. No. 46 of 1989 on the file of the same Court i.e., Subordinate Judge's Court, Wanaparthy. whereunder an extent of Ac. 1.37 gts. in Survey Nos. 1143/2 and 1144/ 2 situated at Wanaparthy town were acquired for the purpose of extension of agricultural market yard, Wanaparthy. The claim of the claimants therein was Rs. 200/- per square yard. The Court, after considering various aspects including the decree dated 23-4-1986 in another O.P. No. 16 of 1984 (which was marked as Ex.A8 in the said O.P. No. 46 of 1989), fixed the market value at Rs. 60/- per square yard with all statutory benefits. In O.P. No. 16 of 1984, the land was acquired in the year 1979 for the purpose of construction of APSRTC bus station at Wanaparthy and the reference Court fixed the compensation at Rs. 50/- per square yard, which was affirmed by this Court; whereas the land in O.P. No. 46 of 1989 was acquired in the year 1985 and the compensation was fixed by the reference Court at Rs. 60/- per

square yard, which was affirmed by this Court by judgment in A.S. No. 3459 of 1990, dated 25-7-1996, which is marked as Ex.A3. The lands acquired for locating the RTC bus station and market yard are adjacent to each other. P.W.2, who is no other than the former Village Officer and a practising Advocate, categorically stated that Wanaparthi Agricultural market yard is situated exactly at a distance of 950 metres to the acquired lands.

9. Ex.A2 is a registered sale deed dated 23-9-1985 wherein an extent of Ac.0.04 gts of land in Sy.No. 573 was sold for Rs. 10,000/-, which works out to Rs. 1,00,000/-per acre. This being a small extent of 4 guntas of land and as there is other evidence available on record, the lower Court has not placed any reliance on this document - Ex.A2 and in our view rightly so. Exs. A4 and A5 are the photographs, which show that the Housing Board has erected a board stating that the said lands belongs to it and they are marked only to emphasize that the acquired lands are located within the suburbs of Wanaparthi town.

10. It is required to notice that the lower Court has considered the matter basing upon Ex.A1 read with Ex.A3 and found that lands acquired for agricultural market yard are situated at a distance of 950 metres to the lands under acquisition. It was brought out in the evidence of P.W.1 that the lands under acquisition are very potential and costs Rs. 200/- per square yard. It is also brought out in the evidence that lands under acquisition are very near to APSRTC bus stand and agricultural market yard and there is no vacant land between the acquired land and APSRTC bus station. Many residential colonies and Government buildings have come up by the time of issuance of notification u/s 4(1) of the Act in the instant case and for all practical purposes, the acquired lands are part of Wanaparthi town. The said fact is admitted by R.W.1 himself in his evidence. He deposed that Srinivasapuram village lands i.e., lands under acquisition are adjoining Wanaparthi town outskirts. He also stated that there is a vast development and housing activity from new bus station, Wanaparthi towards Pebbair. Number of residential colonies have come up in between the new bus stand and housing colony. It is true that Wanaparthi is one of the biggest towns of the district and is an erstwhile Samsthan. There are degree colleges, postgraduate colleges, market committee, nationalized banks. Revenue Divisional Office, Courts and several Government Offices are located at Wanaparthi. It is true that under Ex.A1 market value was fixed at Rs. 60/- per square yard and the same was confirmed by this Court under Ex.A3. P.W.1, the claimant and P.W.2, the former Patwari and a practicing Advocate and P.W.3 - Ex.Sarpanch of the village, also deposed that the acquired lands are situated in a potential area and near to RTC bus station and market yard. Thus, the contention of the learned Counsel for the appellant that the acquired lands are located far away from the RTC bus station and agricultural market yard and it does not form part of Wanaparthi cannot be accepted. Merely because the acquired lands are located in a different revenue village does not mean that they are not of similar nature to that of the adjoining and abutting colonies. APSRTC bus station and market yard are located within the

Municipal limits of Wanaparthy, whereas the land under acquisition is located just 950 metres away from agricultural market yard of Wanaparthy. Thus, there is any amount of evidence to show that the acquired lands are situated in the suburbs of Wanaparthy town. As such, the conclusion arrived at by the lower Court that the lands under acquisition are equally potential lands as that of the lands within the vicinity cannot be faulted with.

11. Coming to the fixation of market value for the lands in question, it is seen that the Court below taking the average of the two market values of the lands acquired for RTC bus station and agricultural market yard at Rs. 44/- per square yard and finding that it is exorbitant and relying upon the evidence of P.W.3, fixed the market value for the acquired land at Rs. 35/- per square yard.

12. There is ample evidence that there is no vacant land available between the lands under acquisition and the agricultural market yard and many colonies have come up in and around the lands under acquisition. But, it is a fact that the lands under acquisition are located outside the municipal limits, though adjacent to the lands of Wanaparthy revenue village. The same value as fixed for the lands acquired for RTC bus station and agricultural market yard cannot be totally relied upon. It is also evident that the acquired land is situated at a distance of 950 metres from the market yard. Therefore, Exs.A1 and A3 cannot be relied upon in their entirety for fixing the market value of the acquired land. It may not be out of place to mention that the lands acquired are for the purpose of construction of houses by the A.P. Housing Board, which is a commercial enterprise of the State.

13. Learned Counsel for the appellant placed reliance upon the Judgment of a Full Bench of this Court in [Sub-Collector, LAO, Vijayawada Vs. Koppiseti Appala Narasamma](#), and contended that Exs.A1 and A3 cannot be treated as res judicata and as such, they cannot be relied upon. As it is, the said Judgment does not say that the judgment rendered as to different lands acquired under the same notification, though situated in the same locality, cannot be said as possessed of same potentiality and advantages. To classify different lands as similar and to award same market value, they shall possess of similar potentialities or advantages. Then only they suggest parity in the value to be determined. In other words, judgment in earlier case not relating to same parties and not in respect of same land may have a persuasive value to determine the compensation, but will not be conclusive by itself. In this case, the lower Court did not look Exs.A1 and A3 as res judicata between the parties or between the lands of similar potentiality. The lower Court has drawn inspiration from Exs.A1 and A3 in view of the fact that the lands acquired under Ex.A1 are not only similar in its potentiality, but located at a distance of just 950 mtrs. from the lands under acquisition and all along there are colonies continuously upto the land under acquisition.

14. The Counsel for the respondents relied upon the decision in [Ravinder Narain and Another Vs. Union of India \(UOI\)](#), and submitted that when large extent of areas

are acquired, the rate fixed for smaller plots in the same vicinity can be a basis. There is no absolute prohibition against it. Where there is no other material, it is open to the adjudicating Court to make comparison of the prices paid for smaller plots of land, subject to necessary deductions/adjustments. Obviously, this judgment is relied upon by the claimants to show that even Ex.A2 can be relied upon, though a small extent of 4, guntas of land was sold in the very same S.No. 57, out of which, the lands in question were acquired. This may not have any bearing in view of the fact that there is no necessity of relying upon Ex.A2 sale deed in view of the above discussion.

15. Learned Counsel for the respondents-claimants heavily relied upon the decision rendered in [Thakarsibhai Devjibhai and Others Vs. Executive Engineer, Gujarat and Another](#), wherein the apex Court while rejecting the contention of the Counsel for the State that the High Court has rightly reduced the compensation for the reasons that the distance between the land covered by Ex.16 and the land in that case is five kilometers and that the area of land under Ex.16 is small one viz., about 2 hectares, while the area covered in that case is large, viz., 20 hectares approximately, held as follows:

"12. As we have said above, the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex. 16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each land owner's holdings are of small area. Even otherwise visioning in the line with submission for the State, we find Ex.16 is about two hectares of land, which cannot be said to be of small piece of land. So far as the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex.16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex.16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh.16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the inference drawn by the High Court for reducing the compensation by Rs. 10/- per sq.mtr cannot be sustained"

and the judgment of the High Court was set aside and the findings of the reference Court were upheld. The case on hand squarely fits into the factual matrix of the case before the apex Court referred to supra. In this connection, it may be necessary to reproduce the findings of the Court below:

"In the case on hand, the distance between the acquired land herein and RTC bus stand Wanaparthi and agricultural market yard Wanaparthi town is less than (1) kilometer to say exactly 950 meters only. Thus, as already stated above, there is overwhelming evidence on record to say that there is no vacant space between the acquired land and APSRTC bus stand at Wanaparthi and the acquired land is quite adjoining Wanaparthi town. The said fact is admitted by R.W.I the Revenue Divisional Officer. Thus, taking into consideration the above aspects, I am of the considered opinion that a deduction of 30% can be made from the market values arrived above in respect of agricultural market yard, APSRTC has stand Wanaparthi. The market value of agricultural market yard is arrived at Rs. 46/-per square yard. 30% deduction from the same will work out to Rs. 32/- per sq.yard. The value of the land acquired for APSRTC bus stand is arrived at Rs. 80/- per sq.yard. The average of two market values of agricultural market yard and APSRTC bus stand is taken, it comes to Rs. 44/- per sq.yard, which works out to Rs. 2,12,960/- per acre, which to my mind appears to be exorbitant. However, if the market value of agricultural market yard and APSRTC bus stand lands are taken into consideration under any circumstances, value of the acquired land, as on the date of notification u/s 4(1) of the Land Acquisition Act, shall not be less than Rs. 35/- per sq.yard. Relying on the evidence of P.W.3, I have arrived at that figure. It is the evidence of P.W.3 the former Sarpanch of Srinivasapur village that during 1985-86 the acquired lands were being converted into house plots, and one acre was made into 18 to 22 plots of various sizes and each plot was sold at Rs. 5,000/- to Rs 10,000/- Thus, taking into consideration the evidence of PW 3, if each acre was made into 18 plots, the area of each plot would be 268 sq yards approximately, and the market value of each plot would be Rs. 37.31 ps. per sq.yard. Therefore, I shall fix the market value of the acquired land at Rs. 35/- per sq.yard with all other statutory benefits as per the Amended Act."

16. Learned Counsel for the respondent-claimants drawn our attention to the decision reported in [Kasturi and Others Vs. State of Haryana](#), wherein the lands being adjacent to the developed area and when there is a lot of development in and around the vicinity of the acquired land, there is no necessity of deducting 1/3 towards development charges and 20% would be sufficient in the facts and circumstances of that case. This may not have any bearing in view of the above discussion.

17. Considering the distance between the lands acquired under Ex.A1 as confirmed in Ex.A3, potentiality, location of the land and the time gap between the notifications u/s 4(1) of the Act in Ex.A1 and the instant cases and also the overwhelming oral and

documentary evidence, the market value arrived at and fixed at the rate of Rs. 35/- per square yard by the reference Court cannot be faulted, looking from any angle. In fact, as seen from the discussion of the lower Court extracted above, the respondents-claimants were denied of what they deserve.

18. For all the above reasons, we feel that there are no grounds made out by the appellants to interfere with the impugned Award passed by the lower Court, The appeals fail and shall accordingly stand dismissed. There shall be no order as to costs.