

(2013) 09 AP CK 0051

Andhra Pradesh High Court

Case No: L.A.A.S. No. 328 of 2012

Kondiba and Others

APPELLANT

Vs

Spl. Dy. Collector, SRSP

RESPONDENT

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**Date of Decision:** Sept. 24, 2013**Citation:** (2013) 6 ALT 1 : (2013) ALT(Rev) 428**Hon'ble Judges:** Dama Seshadri Naidu, J; Ashutosh Mohunta, J**Bench:** Division Bench**Advocate:** Manohar Rao, for the Appellant;**Final Decision:** Disposed Off

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### Judgement

Dama Seshadri Naidu, J.

This land acquisition appeal is preferred by the claimants, 34 in number, who are aggrieved by the decree and judgment, dated 30.07.2004 passed in O.P. No. 2 of 2001 by the Court of the Senior Civil Judge, Nirmal. The said OP has arisen out of a reference made by the Special Deputy Collector, SRSP, Pochampad, on the application of the claimants u/s 18 of the Land Acquisition Act, 1894 ("the Act"). Shorn of extraneous details, the facts in brief are as follows: The Government issued a notification u/s 4(1) of the Act with an intention to acquire lands to an extent of Acs. 62-21 gts., spreading across various survey numbers in Kollur and Masalga Villages, Thanur Mandal, Adilabad District, for the purpose of formation of stilt arrest tank. Given the urgency, the possession, however, was taken on 10.02.1998, that is about live months prior to the date of notification. Though the extent is seemingly large, the land actually belongs to 34 claimants, who owned only small extents, averaging about less than 2 acres.

2. In course of time, the Land Acquisition Officer (L.A.O.) awarded a compensation of Rs. 25,000/- per acre; but later, on application of the claimants u/s 18 of the Act, the L.A.O. referred the matter to reference court, i.e., the Senior Civil Judge's Court, Nirmal. Eventually, the reference court answered the reference by enhancing the rate of the acquired land to Rs. 32,000/- per acre, which is a marginal increase of Rs.

7,000/- over the value fixed by the L.A.O. The claimants, who initially claimed Rs. 52,000/- per acre, filed the present appeal, as they were aggrieved by the judgment and decree of the reference court.

3. At the bar, the learned counsel for the appellants argued that the compensation fixed both by the L.A.O. and by the reference court is woefully inadequate, since many relevant factors that have gone into determining the market value have not been taken into account. He stressed heavily on exhibit B.1 and submitted that its exclusion is unjustified, resulting in perversity. Per contra, the learned Government Pleader has urged that the market value of the land as revised by the reference court is just and proper and does not call for any interference. He has also urged that, exhibit A.1, which was rightly relied on by the reference court, comprises many other sale transactions, and after averaging out all the sale transactions, the reference court has taken an equitable view as to the market value of the lands acquired by the government.

4. After hearing the oral submissions of the respective counsel and after perusal of the record placed before us, it is evident that during the course of inquiry, the claimants, apart from leading oral evidence, placed reliance on Ex. B.1, which is a certified copy of registered sale deed, dated 29.12.1997, the sale transaction being prior in point of time to the notification u/s 4(1) of the Act, which was issued on 04.07.1998. The Special Deputy Collector, SRSP, Pochampad, on his part, relied on exhibit A.1, which is a copy of the award, dated 10.10.1998.

5. During the course of evaluating the evidence, the reference court did place reliance on exhibit B.1 in paragraph 12 of the judgment, holding that the land covered by exhibit B.1 is similar in nature, fertility and all other aspects with those of the acquired lands. Despite the same, the reference court, however, has chosen to place reliance on exhibit A.1, in which one of the items at serial number 22 refers to a sale transaction covering an extent of Ac. 1-04 gts., pertaining to 1996, i.e., two years anterior to the date of notification. Apparently, though erroneously in our view, the reference court has not placed reliance on exhibit B. 1, on the ground that it covers a small extent of land. The fact, however, remains that the lands acquired from the claimants were also small extents not exceeding Acs. 2-00 gts.

6. The land, sold through exhibit B. 1, being similar in nature in all respects, fetched the sale consideration of Rs. 52,000/-, more pertinently one-year prior to the date of notification. It has also come on record that the land covered by exhibit B. 1 is near or in proximity to those lands under requisition than the lands covered by exhibit A. 1 award. It is trite to state that the sale deed of contemporaneous nature recording higher sale consideration, in the absence of any other vitiating factors, is to be taken into account while determining the compensation. Way back in 1969, the Supreme Court ruled in *Sri. Rani M. Vijayalakshamma Rao Bahadur, Ranee of Vuyyur v. Collector of Madras* (1) (1969) 1 MLJ 45 (SC), that where sale-deeds pertaining to different transactions are relied on, that representing the highest value should be

preferred to the rest unless there are strong circumstances justifying a different course.

7. In [Ranjit Singh and others Vs. Union Territory of Chandigarh](#), at para 6, the Supreme Court has observed that market value of land acquired cannot be pleaded at the rate fixed for similar land acquired about a year ago and that, having regard to lapse of period of one year and the general increase of land prices during that period, higher market value should be awarded. Without further elaboration on this aspect, we may as well refer to the decision of this court, per Division Bench, in [Valluri Veerabhadra Rao and others Vs. Land Acquisition Officer and Spl. Dy. Collector, E.G. Dist.](#), wherein the same point, as was enunciated by the Supreme Court, has been echoed.

8. Before parting with the case, we deem it appropriate to add a few words on the issue of land acquisition, especially in the face of the repeal of the very act under which we have presently determined the issues that has arisen in the present appeal. Given the nature of inelasticity of land, ever since the independence, many a constitutional battle has been fought on the solitary issue of rights of an individual vis-a-vis the land. Beginning with the very first Amendment in 1950 to the latest amendment in 2013, substantial number of amendments have concerned themselves with the issue of land. The continuum of these amendments has finally culminated in the very repeal of the enactment in question. Be that as it may, every democratic nation has acknowledged the right of the State to acquire the land under the doctrine of Eminent Domain. As this right is not unbridled, our constitutional makers, even while abrogating the right to property as a fundamental right, have ensured that it remains a constitutional right. Further, the Constitutional courts have put this right on the pedestal of Human Rights. As it always touches an emotional chord of the nation, it is a very fitting requiem to the now almost moribund Land Acquisition Act, 1894, a pre-constitutional piece of legislation, which awaits a decent burial through the notification of the new enactment, to quote a passage from a decision of the Supreme Court in [Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others](#), per O. Chinnappa Reddy J, who poetically invoked a page from the American History concerning the land battles, in the context of environmental degradation:

A hundred and thirty-two years ago, in 1854, "the wise Indian Chief of Seattle" replied to the offer of "the great White Chief in Washington" to buy their land. The reply is profound. It is beautiful. It is timeless. It contains the wisdom of the ages. It is the first ever and the most understanding statement on environment. It is worth quoting. To abridge it or to quote extracts from it is to destroy its beauty. You cannot scratch a painting and not diminish its beauty. We will quote the whole of it:

How can you buy or sell the sky, the warmth of the land? The idea is strange to us.

If we do not own the freshness of the air and the sparkle of the water, how can you buy them?

Every part of the earth is sacred to my people. Every shining pine needle, every sandy shore, every mist in the dark woods, every clearing and humming insect is holy in memory and experience of my people. The sap which courses through the trees carries the memories of the red man.

The white man's dead forget the country of their birth when they go to walk among the stars. Our dead never forget this beautiful earth, for it is the mother of the red man. We are part of the earth and it is part of us. The perfumed flowers are our sisters; the horse, the great eagle, these are our brothers. The rocky crests, the juices in the meadows, the body heat of the pony, and man -- all belong to the same family.

So, when the Great Chief in Washington sends word that he wishes to buy our land, he asks much of us. The Great Chief sends word he will reserve us a place so that we can live comfortably to ourselves. He will be our father and we will be his children. So we will consider your offer to buy our land. But it will not be easy. For this land is sacred to us.

This shining water moves in the streams and rivers is not just water but the blood of our ancestors. If we sell you land, you must remember that it is sacred and you must teach your children that it is sacred and that each ghostly reflection in the clear water of the lakes tells of events and memories in the life of my people. The water's murmur is the voice of my father's father.

The rivers are our brothers, they quench our thirst. The rivers carry our canoes, and feed our children. If we sell you our land, you must remember, and teach your children, that the rivers are our brothers, and yours and you must henceforth give the kindness you would give any brother.

We know that the white man does not understand our ways. One portion of land is the same to him as the next, for he is a stranger who comes in the night and takes from the land whatever he needs. The earth is not his brother but his enemy, and when he has conquered it, he moves on. He leaves his father's graves behind, and he does not care.

He kidnaps the earth from his children. His father's grave and his children's birthright are forgotten. He treats his mother, the earth, and his brother, the sky, as things to be bought, plundered, sold like sheep or bright beads. His appetite will devour the earth and leave behind only a desert.

I do not know. Our ways are different from your ways. The sight of your cities pains the eyes of the red man. But perhaps it is because the red man is a savage and does not understand.

There is no quiet place in the white man's cities. No place to hear the unfurling of leaves in spring, or the rustle of an insect's wings. But perhaps it is because I am a savage and do not understand. The clatter only seems to insult the ears. And what is there to life if a man cannot hear the lonely cry of the whippoorwill or the arguments of the frogs around a pond at night? I am a red man and do not understand. The Indian prefers the soft sound of the wind darting over the face of a pond, and the smell of the wind itself, cleansed by a midday rain, or scented with the pinon pine.

The air is precious to the red man, for all things share the same breath -- the beast, the tree, the man, they all share the same breath. The white man does not seem to notice the air he breathes. Like a man dying for many days, he is numb to the stench. But if we sell you our land, you must remember that the air is precious to us, that the air shares its spirit with all the life it supports. The wind that gave our grandfather his first breath also receives the last sigh. And if we sell you our land, you must keep it apart and sacred as a place where even the white man can go to taste the wind that is sweetened by the meadow's flowers.

So we will consider your offer to buy our land. If we decide to accept, I will make one condition. The white man must treat the beasts of this land as his brothers.

I am a savage and I do not understand any other way. I have seen a thousand rotting buffaloes on the prairie, left by the white man who shot them from a passing train. I am a savage and I do not understand how the smoking iron horse can be more important than the buffalo that we kill only to stay alive.

What is man without the beasts? If all the beasts were gone, man would die from a great loneliness of spirit. For whatever happens to the beasts soon happens to man. All things are connected.

You must teach your children that the ground beneath their feet is the ashes of our grandfathers. So that they will respect the land. Tell your children that the earth is rich with the lives of our kin. Teach your children what we have taught our children, that the earth is our mother.

Whatever befalls the earth befalls the sons of the earth. If men spit upon the ground, they spit upon themselves.

This we know: The earth does not belong to man; man belongs to the earth. This we know: All things are connected like the blood which unites one family. All things are connected.

Whatever befalls the earth befalls the sons of the earth. Man did not weave the web of life: he is merely a strand in it. Whatever he does to the web he does to himself.

Even the white man, whose God walks and talks with him as friend to friend, cannot be exempt from the common destiny. We may be brothers after all. We shall see.

One thing we know, which the white man may one day discover -- our God is the same God. You may think now that you own Him as you wish to own our land; but you cannot. He is the God of man, and His compassion is equal for the red man and the white. This earth is precious to Him, and to harm the earth is to heap contempt on its Creator. The white too shall pass; perhaps sooner than all other tribes. Contaminate your bed and you will one night suffocate in your own waste.

But in your perishing you will shine brightly, fired by the strength of the God who brought you to this land and for some special purpose gave you dominion over this land and over the red man. That destiny is a mystery to us, for we do not understand when the wild buffalo are all slaughtered, the wild horses are tamed, the secret corners of the forest heavy with scent of many men and the view of the ripe hills blotted by talking wires. Where is the thicket? Gone. Where is the eagle? Gone. The end of living and the beginning of survival.

9. For the reasons stated above, we hold that both the L.A.O. and the reference court have failed to properly determine the true market value of the lands in question. In fact, exhibit B. 1 reflects the correct market value, and going by the same, we hold it just and proper to award Rs. 52,000/- per acre to the claimants for the lands acquired from them with all consequential statutory benefits, which they are, in any event, entitled to. Accordingly, we dispose of the present Land Acquisition Appeal in the manner stated above. No Costs.