(1999) 02 AP CK 0012

Andhra Pradesh High Court

Case No: A.S. No''s. 174 of 1998 and 230 of 1997

Land Acquisition Officer-cum-Special Deputy Collector (L.A.), Visakhapatnam		APPELLANT
	Vs	
Ravada Raju Babu		RESPONDENT

Date of Decision: Feb. 26, 1999

Acts Referred:

- Land Acquisition Act, 1894 - Section 11, 18, 23, 4(1), 54

Citation: (1999) 3 ALD 401 : (1999) 2 ALT 595

Hon'ble Judges: R.M. Bapat, J; P. Venkatarama Reddi, J

Bench: Division Bench

Advocate: Govt. Pleader, for the Appellant; Mr. Niranjan Reddy, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P. Venkatarama Reddi, J.
These two appeals filed by the State u/s 54 of the Land Acquisition Act are directed against the Award passed by the Subordinate Judge, Chodavaram in O.P.Nos.102 and 107 of 1988. These two OPs along with nine other OPs (i.e. 102 to 112 of 1988) were disposed of by a common judgment on 27.3.1995. The impugned Awards are examples of common pattern adopted by the then Subordinate Judge, Anakapalle (who is presently under suspension and facing disciplinary and criminal proceedings) to inflate the compensation to the maximum extent possible in absolute disregard of the facts, evidence and material on record and in distortion of the legal principles governing the determination of compensation. In a batch of appeals relating to acquisition for the same purpose at about the same time which were disposed of recently, we observed as follows :

"Neither the fact that in the award or even in the agreement of sale (Ex.A-1) relied upon by the Subordinate Judge, no trees were noted nor the fact that there could

not have been so many trees on small extents of cultivated lands had put the learned Judge on guard as to the veracity of their claims. Interpolations and corrections in material particulars in various claim petitions did not evoke an iota of doubt in the mind of the learned Judge. The discrepancies in value claimed by various claimants did not even engage the attention of the learned Judge. Whatever PW.2 stated in his evidence as taken as gospel truth on the ostensible ground that rebuttal evidence was not adduced.

Although PW.2 did not speak to the existence of trees on others'' lands forming part of this batch, yet line claims of others were accepted without demur. The Subordinate Judge conveniently omitted to observe the principle that the burden lies on the claimants to produce convincing evidence and that the intrinsic worth of the evidence should be lested by well-known principles governing the appreciation of evidence. A reasonable doubt ought to have been entertained regarding the genuineness of the claim and correctness of the version put forward by PW.2 and his evidence without any further corroboration ought not to have been accepted unreservedly. Even the original records of the Land Acquisition Officer such as statements made before him and protest applications were not verified or at any rate, not referred to at all and they were simply ignored. Considerations of public interest were blatantly forsaken. The result is complete miscarriage of justice and arbitrary and unwarranted enhancement of compensation especially for the trees under the facade of judicial orders passed u/s 18 of the Land Acquisition Act".

The situation is no better here and we are constrained to conclude that by any objective standard, the determination of compensation ought to be characterised as arbitrary, not reflecting a genuine estimate.

2. The brief facts are these: Ac.O.35 cents of dry land in S.Nos.23, 26 and 27 of Annavaram village belonging to respondent in AS No.230 of 1997 and Ac.O.23 cents of dry land in S.Nos. 23 and 27 of the same village belonging to respondents in AS No.l 74 of 1998 was acquired along with the contiguous lands in the year 1981 for the purpose of formation of Yeleru left main canal. The notification u/s 4(1) of the Act was published on 3.8.1981 and an errata was published on 11.!.1982. The possession of lands was taken on 25.2.1981. The Land Acquisition Collector passed the Award No. 12 of 1983 u/s 11 of the Act on 25.2.1983. Based on a sale deed of 1979, he fixed the market value at Rs.3,061/- per acre. As regards the lands in S.Nos.23, 26 and 27 with which we are concerned the Land Acquisition Officer specifically stated that paddy crop was being raised with the aid of a private water tank. He also observed that there was no wet cultivation. Moreover, he specifically mentioned thai there were no trees, structures over these lands as per the statements given by the claimants. The statements recorded by the LAO at the time of Award enquiry form part of reference record.

3. In the petition seeking reference to the Civil Court, the respondents claimed to have demanded compensation at Rs.60,000/-per acre before the LAO. As regards

the trees, nothing was mentioned. In the claim statement, the respondents prayed for award of compensation for the land at Rs.70,000/-pcr acre. As regards the number of trees and value thereof, there are additions and over-writings in the claim statements. The petitioner in OP No.107 of 1988 claimed compensation at Rs.20,000/- per each mango tree for 5 mango trees said to have been in existence on the small extent of land of Ac.O.23 cents (about I/4th acre). The claimant in OP No. 102 of 1988 also made a claim for the first time in the claim statement that the land was acquired along with] 0 coconut trees and he claimed compensation for the land at Rs.70,000/- per acre and Rs.10,000/- for each coconut tree. It may be mentioned that in the petitions filed before the LAO, the claimants asserted that they produced a sale deed at the time of Award enquiry according to which the value of the land per acre is Rs. 18,000/-and it was further asserted that during the interval between the date of handing over possession and payment of compensation, the rate had gone up from Rs.18,000/- to Rs.50,000/- The respondents further claimed that the lands were under their cultivation with sugar cane, paddy, oil seeds, ground nut etc., on the land and they were getting a itet income of Rs.6,000/- per year.

4. The reference Court fixed the market value of the land at Rs.60,000/- per acre which was Ihe compensation claimed by the claimant in OP No.111 of 1988 while giving his deposition. Similarly, whatever compensation was claimed for the mango and coconut trees, was awarded in toto. Before the trial Court, the claimant in OP 111 of 1988 was examined as PW.l. He made a bald statement that-he used to get an annual income of Rs.7,000/- to Rs.8,000/- per acre. It may be mentioned that in the claim statements filed by respondents herein, they stated that they were getting Rs.6,000/- net annual income by growing commercial crops. No other details bearing on the actual income or details regarding the crops raised were adverted to at all by PW.l. He admitted in the cross-examination that the Tank which irrigates their land is a rain-fed tank.

5. PW.l filed Ex.A.i which is the certified copy of the order in OP No.232 of 1988 wherein the market value the adjacent Yendapalli lands was fixed at Rs.60,000/-peracre. A perusal of the judgment in OP No.232 of 1988 discloses that PW.l examined therein (who is PW.2 in the present OPs) stated that the market value of land was between 30 to 40 thousand per acre during the year 1981 and he claimed Rs.30,000/- per acre before the LAO. The witness deposed that he was raising the crops viz., paddy groundnut and gingelly seed and he was getting net income of Rs.5,000/-for each crop. PW.l prayed for award of compensation at Rs.50,000/- per acre. Though the learned Judge himself commented that it was an exaggerated version, having regard to the fact that the Government Pleader suggested in the course of cross examination that he was getting Rs.3,000/- as annual can be taken at Rs.3,000/- per year and multiplied it by 20. Thus, he arrived at Rs.60,000/-per acre for the dry land acquired in OP 232 of 1988 and batch which is more than what was claimed by PW.l in that OP.

6. Coming back to the present appeals, the learned Judge having referred to the deposition of PW.l that he was getting net income of Rs.7,000/- to 8,000/- per acre, observed that the parties have a tendency to exaggerate amount of income and he purported to reduce the net income by 50 per cent and thereby arrived at Rs.4,000/- per acre per year. He multiplied it by 20 and arrived at the figure - Rs.80,000/-. On a cross check with Ex.A.i judgment, he preferred to award the compensation at Rs.60,000/- per acre which was the compensation determined in OP 232 of 1988. One consideration which weighed with the reference Court is that although the lands were classified as ''dry'', paddy and sugarcane were being raised on those acquired lands and therefore, they must be treated as wet lands. This conclusion is obviously perverse. As already noted, PW.l one of the claimants examined in the batch of OPs did not at all refer to the details of crops that were being raised. PW.2 who was examined to prove Ex.A.l did not also give any details about the crops. It is not known how the learned Judge could treat the lands in question as wet lands when they have no assured source of irrigation and admittedly, they were drawing water from a rain-fed private tank. The mere fact that paddy crop was being raised (as noted in the award) with the aid of irregular source from rainfed tank, the land in question does not become wet land. That apart, in the reference application made to the Special Deputy Collector (L.A.), the claimants stated that they were raising commercial crops like ground-nut, oil seeds which are crops grown on dry lands, whereas in the claim statements, they added two more crops i.e., sugar cane and paddy. Despite discrepant statements and utter lack of details in the deposition of PW. 1 and any other evidence in the form of revenue records etc., there was absolutely no basis to value the lands in question as wet lands.

7. Coming to the quantum of net income, without any details and without documentary evidence such as the accounts or evidence of independent witness, it is incomprehensible how the lower Court arrived at the net income of Rs.3,000/- per acre from these dry lands. In doing so, the learned Judge indulged in a feet of imagination by arriving at the net income at 50 per cent of what the claimants stated in the claim statement. The learned Judge sought to buttress his conclusion by referring to another absurd estimate made in OP No.238 of 1988 (Bx.A.l). The caution administered by the Supreme Court in Dilwarsab v. Special Land Acquisition Officer MR 1977 SC 2333 that much reliance ought not to be placed on oral evidence with regard to the income from lands, was entirely ignored. Judged from reasonable and normal standards, one cannot expect that the income from the dry lands having no assured source of irrigation would be Rs.3,000/- to Rs.4,000/- per year, that too in the year 1981 or 1982. Even the wet lands would not have fetched so much of yield and income. Taking a liberal view of the matter, we do not think that the income from the acquired land would not be beyond the range of Rs. 1,000/- to Rs. 1,500/-.

8. As regards the multiplier, he adopted figure ''20'' ignoring the catena of decisions of the Supreme Court which we have referred to in AS No. 1544 of 1996 and batch. The multiplier could at the most be 12 (vide decision in State of Haryana Vs.

Gurcharan Singh and another etc., . But, the Court purported to follow a judgment of the Orissa High Court rendered in the year 1972. If we apply the multiplier of 12, the rate per acre thus works out to Rs.18,000/-. It is this value that could be adopted on rough and ready basis in the absence of evidence of comparable sales and reliable evidence of net income. Accordingly, we fix the market value of the lands,

Compensation for Trees:

9. As already noled, the claimant in 107 of 1988 (AS 230 of 1997} was awarded compensation of Rs.1,00,000/- at the rate of Rs.20,000/- per mango tree. The claimant in OP No. 102 of 1988 was awarded compensation of Rs. One lakh for 10 coconut trees at the rate of Rs.10,000/- per tree. In the statement given before the LAO at the lime of Award enquiry, the claimants clearly stated that there were no trees or wells over the land. This fact has been specifically referred to in the Award by the Land Acquisition Collector. Even in the application made to the Collector seeking reference to the Civil Court, the claimants did not say anything about the trees. They only complained against the low value fixed for the land acquired. For the first time, in the claim statement filed before the Court, the claim was made, that loo by over-writing/ interpolating the following words in the first and penultimate paras : (in 1st para) "The LAO acquired the land along with 5 fruit bearing mango/ 10 coconut trees aged of 15 years" (in para 7, following words are inserted : "and Rs.20,000/- per each mango tree/ 10,000/- per each coconut tree". It is interesting to note that no evidence was adduced before the reference Court as regards the existence of trees. As already noted, PW.I who is the claimant in OP 111 of 1988 was examined as a witness. He did not mention about the existence of trees on his own lands, not to speak of others'' lands. He only referred to certain trees said to have been existing on Yendapalli lands. After referring to the trees on Yendapalli lands (OP 114 of 1988), he claimed that he was gelling a net income of Rs.500/- on each coconut tree. As regards Mango tree, PW.I did not say anything. PW.1 could not give any particulars of the lands of other claimants (vide 2nd sentence in cross examination). Apart from all these lacunae, the claim that there were mango trees on the small extent of iand cultivated with paddy etc., to say the least is unbelievable. Ignoring all these factors and the material on record, the reference Court propounded a theory that in the absence of counter to the claim statement, whatever the claimants have stated, they are taken to be true and that he invokes the principles that the averments in the claim statements if not denied amount to "judicial admission''. The learned Judge ignored the principle that the burden is on the claimants to make out a case for higher compensation. Existence of trees and income therefrom should be proved by cogent and satisfactory evidence. In the face of the clear statement in the Award that there are no trees and wells, on the acquired land, not even an attempt was made to estimate the value of the trees according to the settled principles. The statements made in the claim statements were implicitly believed and acted upon treating them as substantive evidence. In any case, as held by us in Appeal Nos.1544 of 1996 and batch following another

Division Bench judgment in ASNo.709 of 1996 pertaining to the same land acquisition, no separate compensation can be allowed for trees. We referred to the decision of the Supreme Court in which it was held that the timber value or the salvage value of the tree growth can be awarded. Further discussion on the probable income from the trees, the correct multiplier to be adopted is irrelevant in view of our finding that the respondent claimants failed to adduce any evidence as regards the factual existence oftrees on the small parcels of land acquired. We have therefore no hesitation in setting aside the impugned award and the ''decree'' directing payment of compensation for the mango and coconut trees alleged to have been acquired.

10. In the result, the appeals are allowed substantially. The value of the land is hereby determined at Rs.18,000/- per acre instead of Rs.60,000/- awarded by the reference Court. The benefits as per Land Acquisition Act on this compensation are payable. The compensation awarded for the trees is set aside. We make no order as to costs.