

(1992) 10 AP CK 0024

Andhra Pradesh High Court

Case No: A.S. No. 1520 of 1980

Land Acquisition Officer and
Sub-Collector

APPELLANT

Vs

Ch. Seetharama Prabhakaram

RESPONDENT

Date of Decision: Oct. 12, 1992

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 27
- Land Acquisition Act, 1894 - Section 18

Citation: (1993) 1 ALT 49 : (1992) 2 APLJ 472

Hon'ble Judges: Immaneni Panduranga Rao, J

Bench: Single Bench

Advocate: Government Pleader for E and H Ser, for the Appellant; T. Veerabhadraiah, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Immaneni Panduranga Rao, J.

The Government have preferred this appeal against the award of compensation at Rs. 40,000/- per acre for the area of 79cents in R.S.No. 459/3A and 24 cents in R.S.No. 459/4B of Gunupudi (v) in West Godavari district.

2. It is stated that including the land concerned with this appeal, a total extent of Ac.4-36 cents belonging to two other claimants was also acquired under the same notification issued u/s 4(1) of the Land Acquisition Act on 28-7-1976. By award dt.31-8 76 the Land Acquisition Officer has awarded compensation at Rs. 5,660/- per acre for the land and at Rs. 3,500/- for the tree situated in R.S.No. 459/3A.

3. Challenging that compensation, the appellant herein sought a reference u/s 18 of the Land Acquisition Act. The learned Subordinate Judge relying upon the evidence of P.W.2 to the effect that the acquired land is lower in level than the road by three

feet and that the acquired land requires a lot of amount for levelling the road upto the road level, awarded compensation of Rs. 40,000/- per acre.

4. He has, however, confirmed the compensation awarded for trees. Challenging the enhancement of compensation for the land, the Government have preferred this appeal. The respondent/claimant has filed cross-objection claiming compensation at Rs. 80,000/- per acre for the land and Rs. 1,000/- per tree.

5. The learned Government Pleader for Land Acquisition argued that the learned Subordinate Judge having proceeded on the basis that the acquired land cannot be compared with the land covered by Ex.A-2 sale deed, has committed an error in fixing the market value at Rs. 40,000/- per acre. Referring to the evidence of P.W.2 that the acquired land is lower in level than the road by three feet and that the acquired and requires a lot of amount for levelling the land upto the road level, he submitted that the learned Subordinate Judge has committed an error in awarding compensation at Rs. 40,000/- per acre.

6. The learned counsel for the respondent, on the other hand, submitted that apart from the O.P.No. 82/77 out of which this appeal arises, there were two other O.Ps. before the learned Subordinate Judge, Narsapur, that the other two O.Ps. were transferred to Subordinate Judge at Bhimavaram; that O.P. No. 43/79 which was re-numbered as O.P.No. 87/80 was disposed of by the learned Subordinate Judge, Bhimavaram on 1-10-1981 awarding compensation at Rs. 1,200/- per cent and Rs. 690/- for each tree: that there is no information as to whether the Government have preferred any appeal against that decision and, therefore, the judgment of the learned Subordinate Judge which has become final in respect of a portion of the land covered by the same notification operates as res judicata. Though the compensation as awarded by the learned Subordinate Judge, Bhimavaram works out at Rs. 1,20,000/- per acre, the learned counsel for the respondent has argued that since the respondent has limited his claim to Rs. 80,000/- per acre in the cross-objections, the crossobjections should be allowed. He further submitted that the compensation awarded at Rs. 3,500/- per tree is too low.

7. Though the decision of the learned Subordinate Judge in O.P.No. 87/80 was rendered as long back as on 1-10-81 the respondent/claimant has not taken steps to file the certified copy of the judgmnet and get it adduced as additional evidence in this case. Without filing of an application under Order 41, Rule 27 CPC and getting the document brought on record in this appeal. I hold that this court is not entitled to look into the judgment and take cognizance of the fact that in respect of a part of the land covered by the same notification, the compensation was awarded at Rs. 1,200/- per cent. I, therefore, hold the value arrived at by the learned Subordinate Judge, Bhimavaram in another O.P. cannot form the basis for fixing the market value of the land in question, in the absence of any evidence to show that the land covered by O.P. No. 87/80 on the file of Subordinate Judge's Court at Bhimavaram and the land covered by this appeal are identical in nature.

8. I cannot agree with the submission made by the learned counsel for the respondent that the decision of the learned Subordinate Judge, Bhimavaram in O.P.No. 87/80 operates as res judicata. The parties are different. The learned Government Pleader submitted that in the present case, the claimants did not let in any evidence about the market value of the acquired land on the date of Section 4(1) notification, whereas before the learned Subordinate Judge at Bhimavaram as many as eight witnesses were examined and eight documents have been marked on behalf of the claimants. It is basing on that oral and documentary evidence that the learned Subordinate Judge Bhimavaram might have fixed the compensation at higher rate. The claimant (the respondent) who has not taken pains to adduce the relevant oral and documentary evidence cannot claim that the decision of the said learned Subordinate Judge operates as res judicata. I, therefore, do not uphold the submission made by the learned counsel for the respondent in this regard.

9. The learned Government Pleader relying upon the decision of the Supreme Court in [Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala](#), argued that it is the duty of the claimant to let in reliable evidence in support of his claim in a reference u/s 18 of the Land Acquisition Act and when once the claimant has failed to let in the relevant material evidence in support of his claim, the civil court cannot enhance the compensation. In this case P.W.2 has been examined to prove Ex.A-2 sale deed and as I have already referred to the evidence wherein she has admitted that the acquired land is lower than the road level by three feet and that a lot of amount is required for levelling the land upto the road level. P.W.2 has thus contradicted the claimant's evidence as P.W.I that the acquired land is of high level. Therefore, the value of land mentioned in Ex.A-2 cannot, form comperative material to fix the market value of the acquired land which is lower in level than the road level and requires a lot of amount for levelling it. Under these circumstances, I hold that the learned Subordinate Judge has committed an error in fixing compensation arbitrarily at Rs. 40,000/- per acre.

10. The next question, therefore, that remains for consideration is what is the amount of compensation that can be fixed for the acquired land. P.W.I the claimant, himself admitted during his cross-examination that the market value of th3e cultivable land in that area is Rs. 24,000/- per acre on the date of his examination. It is seen from the deposition of lower court that he examined on 22-10-79. Whereas the notification u/s 4(1) of the Land Acquisition Act is dated 28-7-76. The very fact that the acquired land has 23 coconut trees, one mango tree, 20 palmyrah trees, one babul tree, one jack tree and one gova tree besides number of plantain trees shows that the land when it was acquired was only fit for cultivation and, therefore, the market value of the land should have been fixed on the basis that it is a cultivable land. The Supreme Court in Hindustan Oil Co. Ltd., v. Special Deputy Collector (Land Acquisition) (1990) 1 S.C.R. 59 held that the cumulative effect of all the facts and circumstances should be taken into consideration in arriving at a reasonable and fair market value. Though P.W.I admitted that the value of cultivable

land in that area was Rs. 24,000/- per acre on the date of his deposition and the notification u/s 4(1) of the Act is more than three years prior thereto, taking into consideration the statement of P. W.2 in her cross-examination that the entire locality including the acquired land has become a built-up area with residential houses, it is amply established by the claimants that the acquired land has potential value as a site for residential houses. Taking, therefore, the cumulative effect of all the facts and circumstances and keeping in view the potential value of the acquired land, I fix the market value at Rs. 30,000/- per acre.

11. The learned counsel for the respondent has not relied upon any cogent evidence to prove the value of the trees. The value of the trees as assessed by the Land Acquisition Officer has been confirmed by the learned Subordinate Judge and there is no material placed on record to persuade me to take a different view in the matter. The value of trees, is, therefore confirmed.

12. The appeal is, therefore, allowed in part setting aside the award of compensation at Rs. 40,000/- per acre and fixing the market value of the acquired land at Rs. 30,000/- per acre. The cross-objections are dismissed. I direct each party to bear its own costs in the appeal as well as cross-objections.