

KUMMARI VEERAAIAH AND ORS.

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v.

STATE OF ANDHRA PRADESH

FEBRUARY 28, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Land Acquisition Act, 1894—Sections 4(1) & 23(1)—Notification u/s 4(1)—Determination of compensation—Comparable sales—Certified copies of sale deed—Admissible in evidence as secondary evidence—Vendor or vendee to be examined as witness—Nature and situation of respective lands are relevant—When suitable deduction to be made.*

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Certain land to the extent of 69 acres and 25 gunthas was acquired to provide house-sites. Notification u/s 4(1) of the Land Acquisition Act was published on March 4, 1985 and possession was taken dispensing with the inquiry u/s 5-A. The Land Acquisition Officer determined compensation between Rs. 6000 to Rs. 10,000 per acre. Petitioners claimed compensation at the rate of Rs. 40 per Sq. yd. On reference u/s 18, the Subordinate Judge determining compensation at Rs. 10 per sq. yd. deducted Rs. 3 towards developmental expenditure and then fixed the market value at Rs. 7 per sq. yd. Dissatisfied, the petitioner as well as the State filed the appeals in the High Court. The High Court dismissed both the appeals and held that fixation of compensation by the reference court was fair and reasonable and that the certified copies of the sale deeds brought as evidence on record did not reflect the true and correct market value.

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In this appeal the petitioners admitted that all the sale deeds adduced were of small extents as the lands were situated within the municipal limits, but those sale transactions furnished the basis to determine the compensation of Rs. 40 per sq. yd. and they could not be rejected as being of small extents.

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Dismissing the petition, this Court

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**HELD:** 1. It is true that certified copies of the sale deeds are admissible in evidence as secondary evidence under s.51A of the Land Acquisition Act since owners would be reluctant to part with their original sale deeds. But unless the vendor or vendee has been examined as a witness

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A to testify to the consideration paid, their specific knowledge and the  
circumstances in which the sale deed came to be executed, nearness to the  
lands etc., the sale deeds cannot be relied on to determine market value of  
the acquired lands. The true nature and situation of the respective lands  
are relevant and germane as comparable sales for determination of the  
B compensation and are required to be brought on record through admis-  
sible evidence and tested on the anvil of common experience. The High  
Court was right in its finding that Ex.A-2, though related to the same land,  
was brought into existence just few days prior to the date of the publication  
of the notification under s.4(1) and other similar documents also came to  
be registered during the said period to boost up the prices. [383-E-H]

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2. Suitable deduction may be made to the value based on the sale  
deeds and compensation may be determined on that basis. But, first it is  
to be ascertained whether the document is genuine. Then, under what  
circumstances it came to be executed and the special advantageous feature  
D for which the sale came to be made. if the documents are genuine and the  
acquired land possessed of the same or similar special advantageous  
features, then reasonable price is required to be determined. Similarly, it  
must be shown that land is situated in a developing area etc. When such  
evidence is adduced, it is required to be considered on the touchstone of  
E potentiality of the land, human conduct and probabilities. If the court  
finds that the land possessed those potentialities and could be purchased  
as house site, then only suitable deduction needs to be made considering  
the relative extent of the land covered by the sale/sales and the land under  
acquisition. True market value is required to be determined, it must not  
be on feats of imagination. Since such evidence was not brought on record,  
F the evidence of sale transactions render little assistance in determining the  
market value of the acquired lands. Moreover, as the two colonies were in  
slum area, but for the acquisition, there would be no scope for develop-  
ment. [384-D-H, 385-A]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)  
G No. 4021 of 1995.

From the Judgment and Order dated 20.12.93 of the Andhra Pradesh  
High Court in A.No. 2698 of 1987.

H D. Prakash Reddy and Mrs. D. Bharathi Reddy for the Petitioners.

The following Order of the Court was delivered :

This petition arises from the judgment and decree of the High Court of Andhra Pradesh dated December 20, 1993, in Appeal No. 2698/87 and the counter appeal filed by the State. The land to the extent of 69 acres and 25 gunthas situated in Bhongir municipality in Nalgonda district of Andhra Pradesh, was acquired to provide house-sites. The notification under s.4(1) of the Land Acquisition Act 1 of 1894 (for short, 'the Act') was published in the district gazette, as amended by the local amendment on March 4, 1985. The possession thereof was taken on March 27, 1985 dispensing with the inquiry under s.5-A. The Land Acquisition Officer (for short, 'the LAO') in his award dated March 27, 1985, determined the compensation to the lands varying between Rs. 6000 to Rs. 10,000 per acre. Though petitioners claimed at the rate of Rs. 40 per sq. yd., on reference under s.18, the Subordinate Judge, Bhongir, determined the compensation at Rs. 10 per sq. yd., deducted Rs. 3 towards developmental expenditure, and fixed the market value at Rs. 7 per sq. yd. Dissatisfied therewith, the petitioner as also the State filed the appeals in the High Court.

The High Court after appreciation of documentary sale deeds and oral evidence relied on by the petitioners held that fixation of compensation by the reference court was fair and reasonable. Accordingly, dismissed both the appeals of the claimants as well as the State.

Learned counsel, Sri Prakash Reddy, in his usual thorough preparation and persuasive advocacy contended that though all the sale deeds are of small extents, since the lands are situated within the municipal limits, the sale transaction furnish the basis to determine the compensation as claimed at Rs. 40 per sq. yd. and they cannot be rejected as being of small extents. He placed strong reliance on Ex.A-2, sale deed relating to the land in question dated February 12, 1985 and sale deeds, Ex.A-9, A-11 and A-17 etc., relating to the lands in the neighbourhood. The High Court after consideration of the entire evidence held thus :

"Ex.A-2, which was strongly relied on by Sri Pratap Reddy, is dated 12.2.1985 in respect of 400 sq. yds. situated in one of the acquired survey numbers. The sale consideration is Rs. 16,000 and it works out to Rs. 40 per sq. yd. It was pointed out by Sri Krishna Koundinya that the vendor of the land covered by Ex.A-2 is none else than the 5th claimant and the sale was on 12.2.85, which was

A just a few days prior to the publication of the notification under s.4(1) of the Act on 4.3.85. Therefore, the said sale cannot form the basis for fixing the market value of a large extent of the land in question. Ex.A-4, which is a sale deed dated 13.12.82, is in respect of a very small extent of 140 sq. yds. of land sold for Rs. 7,000. Neither the vendor nor the vendee has been examined.

B Ex.A-5 sale deed covers an extent of 700 sq. yds. sold for Rs. 15,000. The sale transaction took place on 23.2.85, which was a few days prior to the notification. Ex.A-6 relates to the land situated in S.No. 1063 and the sale was on 28.2.85 just prior to the notification. Ex.A-7 relates to a small extent of 167 sq. yds. of land situated in S.Nos. 121 and 123 and pertains to Ward No. 1 in Hasnabad area. Exs. A-9 to A-11 relate to S.Nos. 1041, 1075 and 1056 and they do not form part of the survey numbers of the acquired land and are situated in Hasnabad area and they too do not provide any useful guidelines for fixing the market value of the lands in question. Exs. A-13 and A-14 also relate to the sale of small extents of lands in Kisan Nagar and there is no evidence to show the distance between Kisan Nagar and the acquired lands. An extent of 35 sq. yds. was sold under Ex. A-17 and the sale was on 13.3.85, just prior to the notification. The sale included a small extent of 35 sq. yds. with basement for Rs. 40,000 and it is not possible to rely on this document, as there is nothing to show as to the value of the basement. The sales of lands in Gunj area under Ex.A-8 a small extent of 300 sq. yrd. situated behind the club under and a small extent of 300 sq. yds. situated behind the club under Ex.A-11, cannot form the basis for fixing the market value of a large extent of land situated far away from the said plots. Ex.A-15 is the judgment in OP No. 218/83 dated 19.4.84 relating to survey number 137 situated in Hasnabad. Ex.A- 16 is the award dated 14.8.82 and it relates to survey Nos. 97 and 100. These documents are of no help in arriving at the market value of the acquired lands. We have examined the documents produced by the claimants. Most of the sales covered by the said documents are effected a few days prior to the notification under s.4(1) of the Act, and they relate to small extents. Applying the 'minus factors' mentioned in the decision of the Supreme Court referred to above, the largeness of the area under acquisition has to be considered as a 'minus factor'. The

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land acquired is a large extent of 69 acres and 25 guntas. The original claimants are six in number. It will not be possible for the claimants to find purchaser if such a large extent of land situated in town, even if they are made into plots and sold. The entire land is at a distance from the road without proper approach roads. The land is uneven and requires filling-up. It is also remote from the developed localities like Gunj and market place. The acquired land cannot be compared to small bits of land situated near the Gunj and behind the club as evidenced by Exs.A-8, A-11 and A-17. The sites covered by Exs. A-15 and A-16 are near business localities and the entire land is contiguous to Ambedkar Nagar and Sriram Nagar, which are slum areas, and cannot fetch the same value covered by the sale deeds produced by the claimants. Excepting Ex.A-2, no other sale deeds covering the lands adjacent to the acquired lands, are produced. As observed earlier, under Ex.A-2 the vendor is claimant No. 5, and as such, no reliance can be placed on the said document".

On the basis of the above consideration and finding it was concluded that the sale deeds do not reflect the true and correct market value and the compensation determined by the Subordinate Judge, therefore, was found to be proper and reasonable.

It is true that the certified copies of the sale deeds are admissible in evidence as secondary evidence under s.51A of the Act since owners would be reluctant to part with their original sale-deeds. But unless either the vendor or the vendee has been examined as witness to testify not only the consideration paid but also their specific knowledge and the circumstances in which the sale deed came to be executed nearness to the lands etc., the sale deeds cannot be relied on to determine market value of the acquired lands. The true nature and situation of the respective lands are relevant and germane as comparable sales for determination of the compensation and are required to be brought on record through admissible evidence and tested on the anvil of common experience. Therefore, by mere marking the documents Exs. A-3, A-4, A-8 and A-10 by themselves do not amount to proof of the afore-mentioned factors. The High Court rightly held that the documents cannot be relied upon. The High Court is also right in its finding that Ex.A-2 though relates to the same land, it was brought into existence just few days prior to the date of the publication of the notifica-

A tion under s.4(1) to boost up the prices and other similar documents also came to be registered during the said period.

B It is common knowledge and experience that the proposal for acquisition take long time for arriving at a decision. In the mean time, it would be an open cards and known to everyone, in particular, to the owners of the land and persons in the neighbourhood. Therefore, it is not uncommon to have sale deeds executed and registered in the interregnum so as to boost the value of the acquired lands. The High Court had, therefore, rightly excluded the documents. It is true that Ex.A-4 was executed as early as December 19,1982 for an extent of nearly 700 sq. yds. which consideration worked out at Rs. 40 per sq. yd., but neither vendor nor vendee was examined. The lands are situated at a distance of 1 k.m. Whether a willing buyer would offer the same price when a large extent of land is offered for sale in an open market on a free bargain, either in one lot or different lots, in comparison with small piece or pieces of land? The answer obviously is no.

D It is then contended that suitable deduction may be made to the value determined on the basis of Ex.A-4 and compensation be determined on that basis. We find the application of that principle also would be fraught with injustice and needless burden on the State exchequer. First, it is to be ascertained whether the document is a genuine document. If it is found to be so it is required to be examined under what circumstances the document came to be executed and the special advantageous feature for which the sale came to be made. Whether the land under acquisition possess the same special advantages? In case it is found that the documents are genuine and the acquired land possessed of the same or similar special advantageous features, then reasonable price is required to be determined by giving suitable deduction depending upon the extent of land covered by the sale transaction and the acquired land. When a large extent of land is available for house sites and commands market for sale in bits, then a prudent owner as a part of normal human conduct, he would get a layout prepared and sanction obtained from the competent authority and would offer the plots for sale. Similarly, it must be shown that land is situated in a developing area etc. When such evidence is adduced, it is required to be considered on the touchstone of potentiality of the land, human conduct and probabilities. If the court finds that the land possessed those potentialities and could be purchased as house site, then only suitable deduction

need to be made considering the relative extent of the land covered by the sale/sales and the land under acquisition. True market value is required to be determined, then it must not be on feats of imagination. Since such evidence was not brought on record, the evidence of sale transactions render little assistance to determine market value of the acquired lands. Moreover, the two colonies are in slum area. So, but for the acquisition, there would be no scope for development.

It being a pure appreciation of evidence-on-record, we do not find any error of law committed by the Subordinate Judge or the High Court in not relying upon sale deeds. It is next contended that the witness has stated that the land purchased under Ex.A-14 is by the side of the acquired land and the Subordinate Judge and High Court were not right in their conclusion that the witness did not mention the nearness of the land. So, the error is required to be corrected. It is true that the witness has stated that the lands are nearer to the land under acquisition. But the witness has not specifically stated the distance between the two lands as pointed out by the Subordinate Judge and the High Court. It also being a fact based on appreciation of evidence, we find no error of law in that behalf. The High Court, therefore, was right in confirming the determination of the compensation by the subordinate court. As seen the LAO had determined the compensation at the rates ranging between Rs. 6,000 to Rs. 10,000 per acre. The subordinate judge has increased to Rs. 7 per sq. yd. In other words, nearly Rs. 34,000 per acre.

In that fact-situation, determination of the compensation by the High Court or Subordinate judge cannot be held to be illegal or arbitrary warranting interference. The petition is accordingly dismissed.

A.G.

Petition dismissed.