

THE HONOURABLE SRI JUSTICE

A.GOPAL REDDY

and

THE HONOURABLESRI JUSTICE

VILAS V.AFZULPURKAR

**A.S.Nos.1410, 1407, 1491, 1492, 1565, 1610, 2561, 3797, 1462, 1463,
1480, 1485, 1486 & Cross Objections, 1488, 1547, 1559, 1561, 1578,
1585, 1595, 1596, 1599, 1602, 1603,
1653 & Cross Objections, 1655 & Cross Objections,
1656, 1659, 1731, 1738, 1743, 1827 & Cross Objections, 1840, 1858,
1906, 1914, 1916 and 2030 of 2000**

and

**LAASMP No.1230/2009, LAASMP (SR) No.7485/2009 &
LAASMP (SR) No.7484 of 2009**

in

A.S.No.1485/2000;

LAASMP No.1341 of 2007 in A.S.No.1486 of 2000;

LAASMP No.1399 of 2007 in A.S.No.1561 of 2000;

LAASMP No.1342 of 2007 in A.S.No.1653 of 2000;

LAASMP No.1396/2007 & LAASMP (SR) No.8958/2007

in

A.S.No.1655 of 2000;

LAASMP Nos.1510, 1511, 1512 of 2009 in AS No.1731 of 2000;

LAASMP No.1394 of 2007 in AS No.1827 of 2000;

LAASMP No. 1398 of 2007 in ASNo.1906 of 2000 and

**LAASMP No.1397 of 2007 & LAASMP (SR) No.9055 of 2007 & 9056
of 2007**

in

AS No.1914 of 2000

Date of Order: 18-02-2010

CT in AS No.1410 of 2000

Between:

RDO (LA) Kurnool

..Appellant

And

A.Venkateswarlu

..Respondent

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The Court made the following Common Judgment:

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

and

THE HONOURABLESRI JUSTICE
VILAS V.AFZULPURKAR

A.S.Nos.1410, 1407, 1491, 1492, 1565, 1610, 2561, 3797, 1462, 1463,
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A.S.No.1485/2000;

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in

A.S.No.1655 of 2000;

LAASMP Nos.1510, 1511, 1512 of 2009 in AS No.1731 of 2000;

LAASMP No.1394 of 2007 in AS No.1827 of 2000;

LAASMP No. 1398 of 2007 in ASNo.1906 of 2000 and

LAASMP No.1397 of 2007, LAASMP (SR) No.9055 of 2007 &

LAASMP (SR) No.9056 of 2007

in

AS No.1914 of 2000

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Common Judgment: (Per Hon'ble Sri Justice ***A.Gopal Reddy***)

1. Appeals by the Land Acquisition Officer and Cross-Objections and Cross Appeals by the claimants, which are directed against the common order of the Senior Civil Judge, Atmakur dated 01-11-1995 which arose out of the award Nos.6/91, 3/91 and 2/91 of

the Land Acquisition Officer, were heard together and disposed of by this common judgment.

2. Various extents of lands belonging to the claimants admeasuring Ac.198.09 cts. along with Eucalyptus plants in some of the extents comprised in various survey numbers situated in Indereswaram Village, Atmakur Mandal were acquired for the purpose of Padmaraja Vagu Tank by issuing a draft notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") published in A.P.Gazette dated 19-05-1989 followed by declaration under Section 6 of the Act dated 15-06-1989.

3. The Land Acquisition Officer (LAO) by Award No.6/1991, dated 08-07-1991, Award No.3/1991, dated 07-04-1991 and Award No.2/91, dated 07-03-1991 fixed the compensation at Rs.10,000/- per acre and tree value separately as per the award. The claimants who have not satisfied with the fixation of the market value sought for reference of the matter to the Civil Court under Section 18 of the Act claiming Rs.30,000/- per acre and Rs.122/- per Eucalyptus tree alleging that they were subsisting at the time of acquisition.

4. On reference being made to the Civil Court, the learned Senior Civil Judge entertained the same and on issuing notices the claimants filed their claim statements and subsequently amended. On filing a memo by the claimants all the O.Ps. were clubbed with O.P.No.459 of 1992.

5. In order to prove the market value, P.Ws.1 to 3 were examined on behalf of the claimants and Exs.A1 to A7 were got

marked. On behalf of the Referring Officer, Revenue Divisional Officer was examined as R.W.1 and marked Ex.B1—award.

6. The reference Court after taking into consideration the registration extract of the sale deeds and the evidence of P.Ws.2 and 3, who are the vendees of Exs.A1 and A3—sale deeds, Ex.A4—expert opinion of the retired District Forest Officer, Ex.A5—certified copy of reference and award copy in O.P.No.5934 of 1991 and Exs.A6 & A7—certified copies of books by name Forest in India and Forest and Wild Life in India fixed the market value of the acquired land at Rs.18,000/- per acre confirming the compensation awarded for trees by the LAO in his award with statutory benefits such as additional market value , solatium and interest under Section 23(1A) of the Act.

7. Feeling aggrieved by the enhancement the State preferred some of the appeals and claimants filed cross-objections and they have also preferred separate appeals claiming compensation.

8. During the pendency of the appeals L.R. applications—LAASMP (SR) No.7485 of 2009 in A.S.No.1485 of 2000 along with set aside abatement petition i.e. LAASMP (SR) No.7484 of 2009; LAASMP No.1399 of 2007 in A.S.No.561 of 2000; LAASMP No.1396 of 2007 in A.S.No.1655 of 2000; LAASMP No.1512 of 2009 in A.S.No.1731 of 2000 are filed along with applications to condone the delay i.e. LAASMP No.1230 of 2007 in A.S.No.1485 of 2000 and LAASMP No.1510 of 2009 in A.S.No.1731 of 2000, which are ordered and the delay in filing the L.R. applications is condoned and legal representatives are brought on record. In some cases there is delay in filing the Cross Objections; hence, LAASMP No.1341 of 2007 in A.S.No.1486 of 2000; LAASMP No.1342 of 2007 in A.S.No.1653 of 2000 and LAASMP No.1394 of 2007 in A.S.No.1827 of 2000 and LAASMP (SR) No.8958 of 2007 in A.S.No.1655 of 2000

are filed, which are allowed and the delay is condoned.

Due to non-bringing of legal representatives of the deceased—claimants, two cases were abated. Hence, LAASMP No.1511 of 2009 in A.S.No.731 of 2000 and LAASMP (SR) No.9055 of 2007 in A.S.No.1914 are filed to set aside the abatement, which are also allowed. Since there is delay in filing the set aside petition i.e. LAASMP (SR) No.9055 of 2007 in A.S.No.1914 of 2000, LAASMP No.1397 of 2007 is filed to condone the delay in filing the set aside petition, which is also allowed and delay is condoned. L.R.Petition i.e. LAASMP (SR) No.9056 of 2007 in A.S.No.1914 of 2000 is also ordered.

9. LAASMP No.1398 of 2007 in A.S.No.1906 of 2000 is filed under Order XLI Rule 27 CPC to mark a copy of the report of the District Forest Officer, Social Forestry, Kurnool as additional evidence—Ex.A8 to substantiate the number of trees existed and its particulars namely, average height and average girth etc.

10. We have heard the learned Government Pleader for Appeals on behalf of the LAO and Sri C.B.Rammohan Reddy and Ms.I.Mammu Vani, learned counsel for the claimants/cross objectors.

11. Sri C.B.Rammohan Reddy, learned counsel for the claimants contends that in O.P.No.882 of 1992, which arose out of the same notification, the reference Court on following the instructions laid down by the Supreme Court and by rejecting the separate valuation of land and trees adopted by the LAO valued the income of the plantation as a whole and held that Eucalyptus trees yield 5 to 7 cuttings and accordingly awarded Rs.122.60 ps. per Eucalyptus tree. Against the said fixation of the compensation the Government preferred appeal—A.S.No.735 of 1997, which was dismissed by this Court by a judgment

dated 05-09-1998. The S.L.P. filed against the said judgment was also dismissed by the Supreme Court, which attained finality.

But, in the present batch of O.Ps. the reference Court has not accepted the binding principle and valued the land separately and enhanced the market value of the land from Rs.10,000/- to Rs.18,000/- and disallowed the claim for trees confirming the value awarded by the LAO. The reasons given for confirming the value of the trees are that there is dispute with regard to number of trees and the LAO has adopted the report given by the Forest Department. A copy of the report, which is now sought to be marked as additional evidence, clearly indicates that the forest officials have prepared a statement showing the value of the girth and the trees. So the same can be marked and the matter can be remitted to the lower Court permitting the claimants to lead further evidence in that regard. To buttress the said submission learned counsel relied upon the judgment of the PUNJAB AND HARYANA High Court in **MOHINDER SINGH v LAND ACQUISITION COLLECTOR, PATIALA**^[1].

12. The arguments advanced by Sri C.B.Rammohan Reddy are adopted by Ms.I.Mammu Vani.

13. On the other hand, learned Government Pleader for appeals strenuously contends that no tangible evidence has been adduced by the claimants before the lower Court nor any claim was made before the LAO regarding the trees its age, height, girth etc. In the absence of any such evidence claimants cannot take advantage of the judgment of the reference Court in O.P.No.882 of 1992 as confirmed by this Court in A.S.No.735 of 1997, certified copy marked as Ex.A2.

14. In view of the above submissions, the points that arise for consideration in this batch of appeals are:

1. Whether the copy of the report of the District Forest Officer, Social Forestry, Kurnool can be received as additional evidence and remand the matter to the lower court, if not,
2. What is the market value for which the claimants are entitled to?

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Point No.1:

15. The additional evidence, which is now sought to be marked as Ex.A8, is only typed copy of the statement of submergible areas and the value of growth affected. It is not a certified copy of the original record emanated from the District Forest Officer, Social Forestry, Kurnool as claimed by the claimants nor the said copy is part of the record, which was relied upon by the LAO in the award enquiry.

16. The reference Court in its judgment categorically observed that there is dispute about the number of Eucalyptus trees in the acquired land. As per the award there is no mention about number of trees, its age, girth etc. whereas the claimants stated that there were about 2400 trees per acre in the acquired land as on the date of acquisition. In fact, the claimants did not state about the number of trees that were in existence in the said survey numbers. Under Ex.B1 —Award the LAO observed in some of the lands Eucalyptus trees were submerged in the tender age itself and dried up which was not rebutted by the claimants by adducing any evidence.

17. It is now fairly well settled that the burden of proof in

reference under Section 18 of the Act is always on the claimants to adduce reliable and acceptable evidence to prove proper and adequate compensation in respect of the acquired land. (See **STATE OF U.P. V. RAJENDRA SINGH** AIR 1996 SC 1564).

18. The claimants, who are claiming compensation at Rs.122.60 ps. per tree as awarded in O.P.No.882 of 1992, which is covered by the same notification, as confirmed in A.S.No.735 of 199—Ex.A2, cannot claim equity under Article 14 of the Constitution, for the reason, number of trees existed in each survey number and its age, girth etc. have to be established by the claimants independently in each case. In view of the same, if one of the claimants gets higher compensation under Section 18 of the Act, the other claimants cannot claim equity under Article 14 of the Constitution. The question of equity under Article 14 cannot be extended in land acquisition cases particularly, wherever compensation is claimed for the trees or structures.

(See **RAMESH SINGH v. STATE OF HARYANA** AIR 1996 SC 3066 = 1996 (4) SCC 469).

19. Keeping the same in mind, we shall now consider whether the claimants can claim higher compensation at Rs.122.60 ps. per tree, as claimed by them, by receiving typed copy of the statement, which is now sought to be marked as Ex.A8.

20. Generally speaking, copy of a copy is not admissible as secondary evidence but the copies of a copy taken out by mechanical process or compared with the original can be treated as secondary evidence. (See **MAHADEVA ROYAL v. MAHADEVA VIRABASAVA** AIR 1948 PC 114; **SUBRAHMANYA SASTRI v. BALCHAND** AIR 1958 AP 22).

21. Secondary evidence under Section 63 of the Evidence Act means and includes certified copies given under the provisions mentioned therein, namely, copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies; copies made from or compared with the original; counterparts of documents as against the parties who did not execute them and oral accounts of the contents of a document given by some person who has himself seen it.

22. The contents of document can be proved either by primary evidence or by secondary evidence. Since the statement, which is now sought to be marked as additional evidence, do not fall within the definition of '*secondary evidence*' and the same cannot be received as additional evidence. Accordingly, we dismiss LAASMP No.1398 of 2007 in A.S.No.1906 of 2000. Point No.1 is accordingly answered.

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Point No.2:

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23. Before the L.A.O. the claimants have not adduced any evidence with regard to number of trees, its age and girth as has been established by the claimants in O.P.No.882 of 1992.

In the award at page No.6, there is a reference about the existence of Eucalyptus trees in the land under acquisition. The LAO observed in some of the lands trees have been submerged at the tender age itself and dried up. Wherever trees are alive, the District Forest Officer, Social Forestry, Kurnool furnished the value of the trees and the same was adopted. According to the award, Eucalyptus trees are in various survey numbers mentioned in page-7 of the award and the value furnished by the Divisional Forest Officer, Social Forestry, Kurnool by

proceedings No.193/90/81 dated 21-02-1990 has been adopted for some trees. The claimants have not marked the said proceedings of the Divisional Forest Officer before the reference Court nor made any endeavour to contradict the value with material particulars. In the absence of such evidence, this Court cannot enhance the compensation for the Eucalyptus trees as claimed by the claimants in the appeals and cross-objections filed by them.

24. The lower Court after taking into consideration Exs.A1 and A3—sale deeds, which are of the year 1987 prior to issuance of notification and the evidence of vendees of the said sale deeds i.e. P.Ws.2 and 3, where Ac.1.46 cts. was sold at Rs.22,000/- under Ex.A1 whereas Ex.A3 shows one acre of land was sold at Rs.18,000/-, rightly fixed the compensation at Rs.18,000/- per acre, which do not call for any interference. Point No.2 is accordingly answered.

25. In the result, Appeals and Cross Objections fail and they are accordingly dismissed. All the Miscellaneous Petitions are allowed except LAASMP No.1398 of 2007 in A.S.No.1906 of 2000, which is filed to receive the copy of the report of District Forest Officer as additional evidence. No costs.

A.GOPAL
REDDY, J.

VILAS

V.AFZULPURKAR,J.

18-02-2010
Murthy

[\[1\]](#) 1996 LACC 95