

THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE N.R.L.NAGESWARA RAO
A.S NO.2536 OF 2000

30-11-2010

BETWEEN:

Ch.Krishna Murthy and others

...Appellants

vs.

The -Land Acquisition Officer, Bhiknoor, Nizamabad District

...Respondent

THE HONOURABLE SRI JUSTICE GODA RAGHURAM
AND
THE HONOURABLE SRI JUSTICE N.R.L.NAGESWARA RAO
A.S NO.2536 OF 2000

JUDGMENT: (Per NRLN,J)

The claimants in O.P.No.58 of 1993 on the file of the Court of Additional District Judge, Nizamabad are the appellants herein.

An extent of Ac.5.25 guntas of land in Sy.No.961/A and other Survey Numbers was acquired for providing house sites to Backward Classes at Bhiknoor. After conducting an award enquiry, the Land Acquisition Officer granted compensation of Rs.8,100/- per acre.

The appellants herein are concerned with the land in Sy.No.961/A to an extent of Ac.1.05 guntas. As there was a dispute with regard to title, the matter was referred in O.P.No.69 of

1987 and the claim of the appellants was upheld and subsequently they received compensation under protest and the present application is referred under Section 18 of the Land Acquisition Act, 1894 (for short "the Act").

The appellants' claim that the compensation granted by the Land Acquisition Officer is inadequate; the land abuts the National High-way and adjacent to the village which is a developed one with all modern facilities; the Land Acquisition Officer should have granted the compensation @ 250/- per square yard. The appellants also relied upon a judgment in O.P.No.294 of 1986. The Land Acquisition Officer supported the market value as being reasonable.

On behalf of the claimants, PWs.1 to 3 were examined and marked Exs.B-1 and B-2. On behalf of the Land Acquisition Officer, Ex.A-1 was marked.

After considering the material on record, the learned Additional District Judge granted compensation @ Rs.16,000/- per acre with all necessary statutory benefits. In not satisfied with the said enhancement, the present claim is filed.

The points that arise for consideration are:-

1. Whether the market value fixed by the court below is real and correct?
2. Whether the claimants are entitled for enhancement and if so to what amount?

POINTS 1 and 2:-

It is not in dispute that in a case for enhancement of compensation, the burden is on the claimant who is in the position of the plaintiff to prove the claim for enhancement. Except relying upon the judgment of the Court in O.P.No.294 of 1986 which incidentally relied upon a judgment in O.P.No.40 of

1990 which are Exs.B-1 and B-2 whereunder similar lands were acquired for the purpose of providing house sites to the weaker sections at Bhiknoor, the appellants did not produce any sale transactions. The said transaction was considered by the Land Acquisition Officer in Ex.B-1 and enhanced the compensation.

Learned counsel for the appellants contends that a total extent of Ac.5.25 guntas was acquired under the same notification for the purpose of providing houses to weaker sections at Bhiknoor and as there was a title dispute with regard to the property, the claim of the appellants was referred with regard to Ac.1.05 cents and incidentally the claimants were found to be entitled to the compensation. It is his further contention for the rest of the land of Ac.4.20 guntas a reference was made to the court and in O.P.No.294 of 1986, the Additional District Judge, Nizamabad by following an earlier judgment in O.P.No.40 of 1990 under Ex.B-2 enhanced the compensation vide under Ex.B-1 fixing the market value at the rate of Rs.16.50 paise per square yard after giving deduction of 1/4th for development. In fact before the learned Additional District Judge, this is the evidence relied upon by the claimants and the learned Additional District Judge has not considered those judgment, on the ground that except following the judgment of the courts, the claimants have failed to file any piece of evidence to show the potentialities of the land. It cannot be lost site that the judgment of a court is relevant when a market value is fixed for the neighbouring lands and in the absence of other evidence, it can be looked into.

However, the observations of the learned Additional District Judge is not sustainable for the reason that the award in O.P.No.294 of 1986 concerns the same lands, which were acquired under the same award as in this case. Since the title

dispute was there this reference could not be made earlier. Therefore, the award in O.P.No.294 of 1986 was also inure to the benefits of these claimants. It is represented by the learned Assistant Government Pleader that no appeal has been preferred against the award in O.P.No.294 of 1986 passed by the lower court and therefore, it has become final. The lower court cannot and should not reject the said judgment as it is for the benefit of the claimants. It is useful to refer the Section 28(A) of the Act, which reads as under:-

28-A. Re-determination of the amount of compensation on the basis of the award of the court:-

(1) where in an award under this Part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section, 18 by written application to the Collector within three months from the date of the award of the court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:-

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

The above amended provision clearly extends the benefit of the compensation, if enhanced, for all the persons who lost their property under the same award and notification. That being the situation, even without any reference to the court, the Collector can enhance, when the reference is pending before the court and evidence is before the court, the court is bound to follow the said

award of the court. Therefore, the appellants will be entitled to the same benefits as granted in O.P.No.294 of 1986 for the land acquired under the same award for the same purpose. Accordingly we hold that the appellants will be entitled to the market value at the rate of Rs.16.50 paise per square yard with deduction of 1/4th towards development and the same benefits on additional market value and solatium as granted with all statutory benefits as granted in O.P.No.294 of 1986 under Ex.B-1. The order of the lower court is accordingly set aside and points are answered accordingly.

Therefore, the Appeal Suit is allowed fixing the market value of the acquired land @ Rs.16.50 paise per square yard after deducting 1/4th towards development and all statutory benefits as granted in O.P.No.294 of 1986 under Ex.B-1. In the circumstances, there shall be no order as to costs.

GODA RAGHURAM,J

N.R.L.NAGESWARA RAO,J

30th NOVEMBER 2010.

TSNR

