

**THE HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
THE HON'BLE SRI JUSTICE A. SHANKAR
NARAYANA**

**L.A.A.S. Nos.359, 360, 374, 378, 401, 402, 403, 405, 411, 412,
413 AND 414 OF 2008 AND L.A.A.S.No.1112 OF 2011**

COMMON JUDGMENT: (*Per Hon'ble Sri Justice R. Subhash Reddy*)

These appeals, under Section 54 of the Land Acquisition Act, 1894, are filed aggrieved by the common order, dated 27.03.2006, passed in L.A.O.P.Nos.81, 82, 83, 84, 86, 87, 88, 90, 91, 92, 93, 94 and 95 of 1997 by the learned Senior Civil Judge, Mahabubnagar.

A total extent of Acs.25.04 guntas of land covered by Survey Nos.685, 925, 930, 934, 919, 922, 921, 826 and 927 situated at Burgula Village of Farooqnagar Mangal, Mahabubnagar District was acquired under the provisions of the Land Acquisition Act for the purpose of percolation Tank in the village. Draft notification under Section 4(1) and draft declaration under Section 6 of the Land Acquisition Act were published on 27.11.1992 and 29.12.1992, respectively. However, possession was taken by the authorities concerned on 10.03.1990,

which is nearly 2½ years prior to the date of issuance of 4 (1) notification. The Land Acquisition Officer, after conducting award enquiry, has passed an award on 27.03.1993, dividing the lands into two categories, namely, wet and dry lands and fixed the compensation at Rs.4,000/- per acre for dry land and Rs.8,000/- per acre for wet land. Not satisfied with the same, the respondents – claimants sought reference under Section 18 of the Land Acquisition Act, which were tried in L.A.O.P.Nos.81, 82, 83, 84, 86, 87, 88, 90, 91, 92, 93, 94 and 95 of 1997 by the learned Senior Civil Judge, Mahabubnagar.

As the references received by the Land Acquisition Officer arose out of single award, all the L.A.O.Ps., were clubbed together and evidence was let in L.A.O.P.No.86 of 1997. On behalf of the respondents - claimants, PW.1 was examined and Exs.A1 to A6 were marked. On behalf of the Referring Officer, RW.1 was examined and Ex.B1 was marked.

The reference Court, having examined the oral and documentary evidence available on record, enhanced the compensation to Rs.30,000/- per acre for wet land and Rs.20,000/- per acre for dry land and awarded interest from the date of taking possession.

Aggrieved by the same, these appeals are filed by the Land Acquisition Officer-cum-Revenue Divisional Officer, Mahabubnagar.

Having heard the learned counsel for parties, we have perused the material available on record.

In these appeals, it is contended by the learned Government Pleader for Appeals that without there being any comparable sales and without assigning any valid reasons, the reference Court has enhanced the compensation to Rs.30,000/- per acre for wet land and Rs.20,000/- per acre for dry land. It is further submitted that, in any event, in view of the judgment of the Hon'ble Supreme Court in the case of **R.L. Jain (D) by LRs. v.**

DDA and others [1], the reference Court ought not to have awarded interest from the date of taking possession. It is further submitted that if the respondents – claimants suffer any damages on account of taking advance possession in the year 1990, they can move appropriate application before the Land Acquisition Officer, claiming rent/damages. It is further submitted that the reference Court ought not to have granted additional market value from the date of taking possession till the date of passing of award.

On the other hand, it is submitted by Sri B. Ranganadh Rao, learned counsel for the respondents – claimants, that the lands in question are fertile black soil lands used to raise commercial crops like Cotton, Red Gram, Chilly etc. It is further submitted that in the same Village, land admeasuring Acs.6.05 guntas was sold for an amount of Rs.1,83,753/- under Ex.A1 – sale deed, dated 21.04.1992, and taking the same as a comparable sale, the reference Court has enhanced the compensation. It is further submitted that in view of the judgment of the Hon'ble Supreme Court in the case of

Tahera Khatoon and others v. Revenue Divisional

Officer/Land Acquisition Officer and others^[2], as the possession of the lands in question was taken before the issuance of preliminary notification under Section 4(1) of the Land Acquisition Act, the respondents – claimants are entitled to rent/damages at 15% on the compensation awarded from the date of taking possession till the date of issuance of preliminary notification.

From a perusal of the impugned order, it is clear that the land acquired is nearer to National Highway No.7, which passes through the Village Burugula and the lands in question are situated at a distance of six

kilometres from Shadnagar, which is a commercial town and the State Capital is just 55 kilometres away from the said land. Though Ex.A1 – sale deed was referred to by the Land Acquisition Officer, the same was discarded on the ground that there are two sets of lands covered by the said document i.e., Acs.6.03 guntas and Ac.0.02 guntas separately, however, the reference Court has considered the said sale deed as a comparable sale treating the same as pertaining to Acs.6.05 guntas of land sold for an amount of Rs.1,83,753/-, which works out to more than Rs.30,622/- per acre and it is executed nearly seven months earlier to the notification issued under Section 4 (1) of the Land Acquisition Act.

Having regard to the documentary evidence in Ex.A1, and as the acquired lands are nearer to National Highway No.7 and are situated at a distance of six kilometres away from Shadnagar Town, we are of the view that the compensation fixed by the reference Court at Rs.30,000/- per acre for wet land and Rs.20,000/- per acre for dry land is just and reasonable.

With regard to the award of interest, in **R.L. Jain's case**

(1 supra), the Hon'ble Supreme Court had held that if

possession is taken before the issuance of preliminary notification under Section

4 (1) of the Land Acquisition Act, the claimant is entitled to get rent/damages. At the same time, in the subsequent judgment of the Hon'ble Supreme Court in **Tahera Khatoon's case** (2 supra), it is held that when possession is taken before the issuance of preliminary notification, rents/damages can be awarded at the rate of 15% on the compensation awarded from the date of taking possession till the date of issuance of preliminary notification under Section 4 (1) of the Land Acquisition Act. In the present case, it is clear that possession was taken as early as on 10.03.1990 and 4 (1) notification was issued on 27.11.1992. In that view of the matter, we are of the view that it is not a fit case to drive the respondents back in enquiry for damages. In view of the judgments referred to above and by taking into account the nature of lands acquired, we are of the view that it is a fit case to award rent/damages at the rate of 10% per annum on the basic compensation of Rs.30,000/- per acre for wet land and Rs.20,000/- per acre for dry land from the date of taking possession till the date of issuance of 4 (1) notification.

Appeals are accordingly allowed in part.

Miscellaneous Petitions, if any, pending shall stand closed. No costs.

JUSTICE R.SUBHASH

REDDY

JUSTICE A. SHANKAR

NARAYANA

28th March, 2014

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[1] 2004 (4) ALD 25 (SC)

[2] 2014 (2) ALD 1 (SC)