

2022 LiveLaw (SC) 984

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
S. ABDUL NAZEER; J., J.K. MAHESHWARI; J.
NOVEMBER 22, 2022.

CIVIL APPEAL NOS. 8727-28 OF 2022 (ARISING OUT OF SLP (C.) NOS. 170-171 OF 2019)
THE REVENUE DIVISIONAL OFFICER & ANR. *versus* ISMAIL BHAI AND OTHERS

CIVIL APPEAL NOS. 8729-32 OF 2022 ARISING OUT OF SLP (C.) NOS. 5629-32 OF 2018
ISMAIL BHAI & OTHERS *versus* THE REVENUE DIVISIONAL OFFICER (LAND ACQUISITION OFFICER) ETC.

CIVIL APPEAL NOS. 8733-34 OF 2022 ARISING OUT OF SLP (C.) NOS. 22151-52 OF 2018
FAKHRUDDIN ALI *versus* THE REVENUE DIVISIONAL OFFICER (LAND ACQUISITION OFFICER) & ANR.

Land Acquisition Act, 1894 - Land acquired in 1981 but compensation not yet paid - Authorities directed payment of compensation within two months - The value of the said land cannot be computed at the rate less than Rs. 250/- per sq. yard which is supported by the evidence brought on record by the land owners.

(Arising out of impugned final judgment and order dated 24-11-2017 in LAAS No. 303/2013 08-10-2018 in C.O. No. 908/2018 passed by the High Court of Judicature at Hyderabad for the State of Telangana and The State Of Andhra Pradesh)

For the parties: M/S. Venkat Palwai Law Associates, AOR Mr. Yelamanchili Shiva Santosh Kumar, Adv. Mr. Rudrajit Ghosh, Adv. Mr. Tarun Gupta, AOR Mr. Abhishek Sharma, Adv. Mr. Venkateswara Rao Anumolu, AOR

JUDGMENT

J.K. Maheshwari, J.

Leave granted.

2. The present case is having history of repeated litigation by land owners to get compensation of the land owned by them. The land owners' land admeasuring area of Ac 3.23 guntas in Survey No. 268 of Attapur Village, Rajendranagar Mandal, Ranga Reddy District was sought to be acquired for the purpose of extension of the Nehru Zoological Park. The Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "L.A. Act") and final Notification under Section 6 were issued on 19.03.1981 and 09.04.1981 respectively. Despite taking possession, award was not passed and no amount of compensation was paid. The land owners had filed Writ Petition No. 17119 of 1996 before the Andhra Pradesh High Court, which was disposed vide order dated 22.04.1997 directing the respondents (Revenue Department) to pass an award within a period of three months from the date of receipt of the order. Only thereafter award was passed in case No. 1/1844/89 on 07.06.1997 and a meagre compensation @ Rs. 6 per sq. yard was awarded to the land owners.

3. The land owners submitted representation asking reference under Section 18 of L.A. Act, which was not responded, forcing them to approach again the High Court. The land owners filed Writ Petition No. 5676 of 2003 which was disposed of on 18.04.2003 directing the Land Acquisition Officer to take action to make reference within six weeks. Even after direction by the High Court, reference was not made, however the land owners filed Contempt Case No. 1668 of 2004. After issuing notice in contempt, reference was made by the Land Acquisition Officer to the Ist Additional Senior Civil Judge, Ranga Reddy District which was registered as O.P. No. 205 of 2005. The Reference Court made the award on 03.09.2012 directing respondents to pay compensation to the land owners @ Rs. 250 per sq. yard with solatium and interest.

4. The enhancement, as directed by the Reference Court, was questioned by the Revenue Department by filing appeals before the High Court bearing LAAS Nos. 303 of

2013 and 330 of 2015. The land owners had also filed an appeal bearing LAAS No. 353 of 2015 questioning the adequacy of compensation. The High Court, during the course of hearing, by consent of the parties, referred the appeals for Mediation vide order dated 01.02.2016. The relevant extract of the order is reproduced as under:

“In the given circumstances, we are satisfied that if a trained mediator works out, exhibiting the necessary patience, it is more likely that the controversy can be sorted out effectively and to the satisfaction of both sides. In these given facts and circumstances, we consider it appropriate to direct the Registry to refer these appeals for Mediation and Conciliation Centre attached to the High Court with a request to the Deputy Director in charge thereof to refer the dispute in these appeals to one of the trained mediators, if possible, who has handled similar assignments relating to the land acquisition matters in the past”

During the mediation proceedings, the parties have entered into Joint Memorandum of Compromise on 28.04.2016, in which the Revenue Department agreed to pay compensation @ Rs. 350/- per sq. yard. Accordingly, the Mediator submitted its report on 05.05.2016, inter alia stating that the proposal made by the land owners of Rs. 500/- per sq. yard had not been accepted on behalf of the Government, but agreed to fix Rs. 350 per sq. yard towards the compensation and determined the total sum as Rs. 3,48,46,578/-. The report of the Mediator is also relevant, therefore reproduced as thus:

“As per the claim of the parties quoted @ Rs. 500 /per Sq. Yard for total extent of 8,651.5 Sq. Yards including 30% Solatium on market value under Section 23(2) and 12% p.a. Addl. Market Value u/s 23(1) from the date of Notification 03.03.1981 to 07.06.1997 as per Award.

The claim from the above after calculation of interest the parties after deduction of the payment made in EP No. 11 of 2013 deposited by the LAO the claim is Rs. 7,33,17,558/-.

After making hectic efforts between the parties and the matter is finalized on 28.04.2016 before me at Mediation Centre proposed to fix the land value @ Rs. 350/- per Sq. Yard as per the proposal made by the officers to deduct the 20% of the land value, the amount comes to Rs. 3,48,46,578/- and the parties convinced as full and final settlement subject withdrawal of the cases pending before the Courts”

5. After submission of Mediation Report, Deputy Collector, Government of Telangana addressed a letter bearing No. 1/4279/1997 dated 7.5.2016 to the Curator, Nehru Zoological Park, Bahadurpura, Hyderabad with a request to pursue the matter with the Government to sanction the fund at the earliest to avoid any other future problem. The relevant extract of said letter is reproduced as thus:

“During the course of discussions regarding settlement of land value, the party in person requested to fix the market value@ Rs. 500/- per Sq. Yard. But after long discussions the Mediator has proposed the land value @ Rs. 350 /- per Sq. Yard. Via Media and placed before this authority. Finally by considering the prevailing market value of the land agreed the proposal of Mediator and fixed the land value @ Rs. 350/- per Sq. Yard. Accordingly a Joint Memorandum of Compromise has been filed before the Mediation Centre on 30.04.2016.

In compliance to the above the Mediator High Court of, Judicature at Hyderabad has addressed a letter dated. 05.05.2016 to this authority directing to make arrangement to issue cheque in the name of the parties in the LAAS No.353/2015 by name Mr. Ismail Bhai S/o. (Late) Hassan Ali before the Mediator centre on or before 20.05.2016 to settle the issue and submit before the High Court.

In view of the above, kindly make it pursue the matter with Government and to provide the fund at the earliest to avoid any other future problems.”

6. On the basis of the mediation report, relying upon the Joint Memorandum of Compromise executed by the parties, the appeals filed by the Revenue Department as

well as the land owners were disposed of vide order dated 10.06.2016. The order passed by the High Court is reproduced as thus:

“1. The dispute between the parties in the above appeals was referred to the Mediation and Arbitration Centre, by an order of this court dated 01.02.2016.

2. From the report of the Mediation and Arbitration Centre attached to this Court, it appears that the Mediation was successful. The parties have entered into a Joint Memorandum of Compromise before the Mediation and the copy of the Joint Memorandum of Compromise entered into on 28.04.2016 is filed before us.

3. Therefore, both the appeals are disposed of in terms of the Joint Memorandum of Compromise entered into by the parties before the Mediation and Arbitration Centre. There shall be no order as to costs. Pending miscellaneous applications, if any, in these appeals, shall stand closed.”

7. Even on communication of the said order, which was passed in presence of both the parties, it was not complied with by making the payment of compensation. Therefore, a Writ Petition bearing No. 34175 of 2016 was filed by the land owners before the High Court seeking direction to the authorities to make payment of agreed compensation of Rs. 3,48,46,578/- as calculated in Joint Memorandum of Compromise. After service of the notice of the said Writ Petition, the Revenue Department instead of complying the order of the High Court, filed petitions seeking recall of the order dated 10.06.2016 taking exception that the Revenue Divisional Officer, who signed the Joint Memorandum of Compromise, had not taken permission from the superior officers. The High Court allowed the Recall Petitions bearing LAASMP No. 59 of 2017 in L.A.A.S. No. 303 of 2013 and LAASMP No. 60 of 2017 in L.A.A.S. No. 353 of 2015 and restored LAAS Nos. 303/2013 and 353/2015.

8. After restoration, the appeal filed by the Revenue Department was allowed by High Court vide order dated 24.11.2017 reducing the compensation @ Rs. 100 /-per sq. yard in place of Rs. 250/- per sq. yard as determined by the Reference Court. Consequently, the appeal filed by the land owners was dismissed.

9. Relying on the order dated 24.11.2017 passed in LAAS Nos. 303 of 2013 and 353 of 2015, the High Court vide order dated 19.12.2017 also disposed of LAAS No. 163 of 2016 filed by Fakhruddin Ali (appellant herein), whose land was also acquired in the same impugned Notification.

10. Challenging the impugned order of the High Court, the present appeals have been filed by the land owners, questioning the adequacy and grant of compensation with interest. The Revenue Department has also filed an appeal assailing the impugned order on the ground that the deductions for development charge and the area of land used for development have not been made by the High Court.

11. Learned senior counsel for the land owners submits that a prayer was made before the Reference Court to compute the compensation @ Rs. 1000/- per sq. yard with solatium @ 30% on the market value as provided under Section 23(2), 12% p.a. additional market value under Section 23(1)A of L.A. Act from the date of notification under Section 4 till the date of award along with statutory interest. The Reference Court after considering the submissions so made and relying upon the copy of the sale deed (Exb. A-1) i.e. document No. 1208/81, the judgments and decrees of the High Court in two appeals bearing CCCA Nos. 6 of 1987 and 110 of 1987 arising out of the different Original Petitions relating to the land of another village Bahadurpur filed as Exb. A-2 and A-3, topo sketch Ex. A-4, maps of village Attapur and Mir Sagar as Exbs. A-5 and A-6 and D.O. letter dated

28.8.2019 sent by the Revenue Divisional Officer Exb. A-7 and also the statement of the claimant PW1 and the retired Government Surveyor PW2 and also considering the statement of the Land Acquisition Officer RW-1 and Deputy Collector-cum-RDO examined as RW-2, determined the compensation @ Rs. 250 per sq. yard enhancing the same from Rs. 6 per sq. yard. It was also held that the land owners would be entitled for solatium @ 30% on the market value, additional market value along with interest @ 12% p.a. and the interest as specified under Section 23(2) of L.A. Act. Before the High Court, the adequacy of the said amount was questioned looking to the surroundings of the land acquired and the market value on the date of acquisition. It was urged during mediation, and as agreed by the Revenue, compensation @ Rs. 350/- per sq. yard was decided by Joint Memorandum of Compromise which was accepted by the High Court. Later, the Revenue Department filed recall petitions only on the ground that for the Joint Memorandum of Compromise, permission from superior officers have not been taken. The Revenue Department has not questioned the rate as agreed by the Revenue Divisional Officer, but the High Court allowed the Recall Petitions and restored the appeals and by the impugned order, reduced the compensation to Rs. 100/- per sq. yard without any basis, applying the reverse calculation.

12. On the other hand, in the appeal filed by Revenue Department, it is urged that out of compensation so awarded, development charges have not been deducted and the area required for development has not been reduced while computing the compensation at the rate so determined by the High Court and prayed that the appeal filed by the Department may be allowed dismissing the appeal filed by the land owners.

13. After having heard learned senior counsel for the parties and on perusal of the material brought on record, it is apparent that the acquisition of land was made in the year 1981. Indisputably, the land acquired is situated in a highly developed area of the twin cities having amenities of water, electricity, drainage, telephone, transport etc. The only sale deed filed by the claimants Exb. A-1 dated 21.09.1981 of village Bahadurpur which is of adjacent village because no sale deed of village Attapur in the said year was executed. As per topo sketch Exb. A-4, the distance between the two villages Bahadurpur and Attapur is 1320 meters. The value of the said land as per said sale deed was Rs. 200/- per sq. yard. Exbs. A2 and A3 are the decrees passed in two cases in which the compensation has been fixed @ Rs. 250/- per sq. yard of the land acquired at the same time. The said documents find support from the testimony of PW-1 and PW- 2. The departmental witness RW-2 in his statement admitted that in Katedan Village, an industrial estate is situated at the distance of 3 ½ k.m. from Attapur Village. The Agricultural University, National Police Academy is also nearby. The High Court of Andhra Pradesh is also situated within a distance of 3 K.M. from the land acquired. The said land is required for laying the filter beds for Nehru Zoological Park. The evidence as produced by the land owners has not been rebutted by filing any document. On the contrary, the departmental witness has admitted before the Reference Court that the acquired land of the village is a prominent area within the vicinity of the city of Hyderabad. In absence of having any material on record, in our view, the Reference Court rightly relied on Exb. A-1 sale deed of adjacent Village Bahadurpur. The acquired land may have been situated in Village Attapur but it is adjacent to Village Bahadurpur, where the land value was fixed as Rs. 200 per sq. yard. While granting the compensation of the adjacent piece of land, the Court decided value @ Rs. 250/- per sq. yard as mentioned in decrees Exbs. A2 & A-3. The D.O. letter of Revenue Development Officer dated 28.8.1991 acknowledges minimum value @ Rs. 200 per sq. yard on the date of acquisition. It is also relevant to observe that after sending the matter for mediation, Joint Memorandum of Compromise was entered

into by the Revenue Divisional Officer, wherein the Mediator fixed the rate @ Rs. 350/- per sq. yard in place of Rs. 500/- per sq. yard as agreed by the Revenue Department. In Recall Petitions, the said joint memorandum of compromise was challenged only on the ground that such compromise was signed without permission of the superior officer without challenging that the value of land as offered is on higher side. Therefore, in our view, the High Court committed an error in computing the compensation @ Rs. 100 per sq. yard ignoring the un rebutted documents produced by the land owners and without any cogent material on record, by applying reverse calculation. In our view, as per the testimony of the departmental witness RW-2, it is clear that the land acquired is near to the Agricultural University, National Police Academy and High Court of A.P., which is now in the heart of the city of Hyderabad. Considering the aforesaid and, taking note of the date of acquisition i.e. 1981 which is about 40 years ago, the value of the said land cannot be computed at the rate less than Rs. 250/- per sq. yard which is supported by the evidence brought on record by the land owners.

14. We now revert to the issue raised in the appeal filed by the Revenue Department on the point of deduction of development charge and the area of the land used for development. Recently in the case of **Reddy Veerana vs. State of Uttar Pradesh and Others** 2022 SCC Online 562, the deduction of the development charge was denied. The facts of the present case is not uncommon to the said case. As discussed above, it is apparent that the land in the present case was acquired 40 years back in the year 1981 and the compensation was decided by LAO after litigating in courts only @ Rs. 6 per sq. yard. The land acquired is now in the heart of city of Hyderabad where the cost of the land has been increased more than 100 times. The development of the city has already taken place. The land owners, whose land has been utilized 40 years back, now cannot be compelled to pay the development charge for the development which has already taken place, only for a parcel of land to which they have not given compensation up to decades. Therefore, the plea taken by the Revenue Department sans merit.

15. In view of the foregoing, the appeals filed by the land owners are allowed and the appeals filed by the Revenue Department are dismissed. The impugned judgment passed by the High Court stands set-aside, restoring the order of the Reference Court. The amount of compensation, as determined by the Reference Court, be calculated and be paid now within a period of two months from the date of this judgment. In the facts of the case, the parties to bear their own costs.