

A LAND ACQUISITION OFFICER-CUM-RDO, CHEVELLA
DIVISION RANGA REDDY DISTRICT

v.

A. RAMACHANDRA REDDY & ORS.
(Civil Appeal No. 438 of 2011)

B JANUARY 12, 2011

[R.V. RAVEENDRAN AND H.L. GOKHALE, JJ.]

C *Land Acquisition Act, 1894 – ss. 4(1) read with s. 17 (as*
amended in Andhra Pradesh) – Land acquisition for public
purpose – Issuance of preliminary and final Notification –
Award not passed within stipulated period – Subsequent
publication of another preliminary and final Notification –
Relevant date for determination of market value for the
purpose of compensation – High Court took the relevant date
as the date of publication of the second preliminary
Notification and awarded compensation at the rate of Rs.
15,000/- per acre – On appeal, held: State Government had
clearly abandoned the earlier Notifications by issuing the
subsequent Notifications – High Court was justified in holding
that the compensation should be determined with reference
to the date of publication of the second preliminary notification
– Quantum of compensation awarded by High Court also
does not call for interference since it was determined with
reference to a sale transaction just a few days prior to the
publication of the second preliminary notification.

G **A Preliminary Notification was issued under Section**
4 (1) read with Section 17 of the Land Acquisition Act,
1894 on 03.01.1990 for acquisition of certain land for a
public purpose and the final declaration under Section 6
of the Act was published in the Gazette on 10.01.1990. On
18.09.1991 the possession of the acquired land was
taken. The Land Acquisition Officer failed to estimate the

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compensation. The respondent-land owners filed a writ petition. The High Court directed the appellant-Land Acquisition Officer to pass an award. However, the award was not passed within the stipulated period of two years. The State Government being of the view that the acquisition had lapsed, published a fresh preliminary Notification in the Gazette on 19.11.1993 and the final declaration on 16.2.1994. Thereafter, the Land Acquisition Officer passed an award. The compensation was determined the rate of Rs. 24000/- per acre taking the relevant date for determining the market value as 03.01.1990, the date of the first preliminary Notification. The Reference Court awarded compensation at the rate of Rs. 50,000/ per acre taking the relevant date as 03.01.1990. On appeal, the High Court awarded compensation at the rate of Rs. 150,000/- per acre. The relevant date for determining the compensation was taken as 19.11.1993. Therefore, the appellant-Land Acquisition Officer filed the instant appeals.

Dismissing the appeals, the Court

HELD: 1.1 Section 17 of the Land Acquisition Act, 1894, as amended in Andhra Pradesh, no doubt provided that the land would vest absolutely in the government even before making the award, on taking possession of the land needed for a public purpose. But as the Land Acquisition Officer failed to estimate the compensation and tender 80% thereof to the land-owners, as required under section 17(3A) of the Act, the land-owners approached the High Court by filing a writ petition seeking a direction to the appellant to pass the award. As possession had been taken as the land had already vested in the government, the land owners could not and did not challenge the acquisition in the said writ petition. Keeping these facts in view, the High Court disposed of the said writ petition with a specific direction to make an

A award before 11.02.1992. Admittedly, the award was not
made and the order of the High Court was not complied
with. Also, under sub-section (5) of section 17 of the Act,
inserted by a State Amendment in Andhra Pradesh, if the
Collector does not take possession of the land within
B three months from the date when State Government
directs under sub-section (4) of section 17 that the
provisions of section 5A would not apply, the effect would
be that the provisions of section 5A would apply and the
period of 30 days referred to in section 5A would be
C reckoned from the date of expiration of three months. In
these peculiar circumstances, the government after
considering the facts and circumstances, with a view to
avoid further challenge, issued a fresh Notification dated
09.09.1993 (gazetted on 19.11.1993) followed by final
D declaration dated 16.02.1994. The State Government did
not subsequently cancel/rescind/withdraw the
Notifications dated 09.09.1993 and 16.02.1994. The State
Government had clearly abandoned the earlier
Notifications dated 3.1.1990 and 10.1.1990 by issuing the
E subsequent Notifications dated 9.9.1993 and 16.2.1994.
Therefore, the appellant cannot contend that the second
preliminary Notification is redundant or that first
preliminary Notification continues to hold good. In the
circumstances, the High Court was justified in holding that
the compensation should be determined with reference
F to the date of publication of the second preliminary
notification. [Para 10] [332-B-H; 333-A-B]

1.2 On examining the quantum of compensation
awarded by the High Court with reference to the date of
G Gazetting of the second preliminary notification, it is
found that the compensation award is not excessive and
does not call for interference. It was determined with
reference to a sale transaction dated 12.11.1993, just a
few days prior to the publication of the second preliminary

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notification in the Gazette. The High Court also made a deduction of 40% in the market value disclosed by the said sale transaction. [Para 11] [333-C-D]

1.3 In some of the counter affidavits filed in the special leave petitions by the claimants, they have alleged that their special leave petitions (challenging the judgment of the High Court and seeking higher compensation) were dismissed as barred by time and, therefore, they may be permitted to make a counter claim for a higher compensation. Such counter-claims in counter-affidavits in special leave petitions are impermissible and not maintainable and cannot be entertained. [Para 12] [333-E-F]

Satendra Prasad Jain v. State of U.P. 1993 (4) SCC 369 – distinguished.

Case Law Reference:

1993 (4) SCC 369 distinguished Para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 438 of 2011.

From the Judgment & Order dated 16.02.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in Appeal No. 4477 of 2004.

WITH

C.A. Nos. 440, 441, 442, 443, 444 & 445 of 2011.

Anoop Choudhari, C.K. Sucharita, Nirada Das for the Appellant.

Manjeet Kirpal, T.N. Rao, S.S. Dharma Teja for the Respondents.

The Judgment of the Court was delivered by

A **R.V.RAVEENDRAN, J.** 1. Leave granted in all the SLPs.

B 2. An extent of 24 acres in Survey No.24 of Peeram Cheruvu Village, Rajendranagar Mandal, Ranga Reddy District on the outskirts of Hyderabad was acquired for Andhra Pradesh Police Academy. For this purpose, a preliminary notification under section 4(1) read with section 17 of the Land Acquisition Act, 1894 ('Act' for short) was issued and published in the A.P. Gazette on 3.1.1990. It was also published in two newspapers circulating in that locality on 12.2.1990. The final declaration under section 6 of the Act was published in the A.P. Gazette dated 10.1.1990 (published in two newspapers circulating in that locality on 12.2.1990). Possession of the acquired lands was taken on 18.9.1991 by invoking the urgency clause under section 17 of the Act.

D 3. The respondents filed W.P.No.14396/1991 in the A.P. High Court seeking a direction to the appellant to pass an award. The High Court disposed of the said writ petition with a direction to pass an award before 11.2.1992 as the final notification had been published in the Gazette on 10.1.1992. E The award was not be passed within the stipuiated two years. The State government, being of the view that as a consequence, the acquisition had lapsed, published a fresh preliminary notification dated 9.9.1993 under section 4(1) of the Act in the A.P. Gazette dated 19.11.1993, followed by a fresh final declaration under section 6 of the Act published in F the Gazette dated 16.2.1994.

G 4. Ultimately, the Land Acquisition Officer made an award dated 31.8.1996. Before doing so he appears to have sought legal opinion as to the date with reference to which the compensation should be determined. The legal opinion was that as possession was taken on 18.9.1991 by invoking section 17, the acquisition proceedings did not lapse under section 11A of the Act and the fresh acquisition notifications dated 19.11.1993 and 16.2.1994 could be ignored and the award H could be passed with reference to the market value as on the

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date of issue of the first preliminary notification dated 3.1.1990. The Land Acquisition Officer, after referring the sales statistics and nature of land, by award dated 31.8.1996 offered compensation at the rate of Rs.24,000/- per acre with 30% solatium under section 23(2), additional market value at 12% per annum under section 23(1A) from 12.2.1990 to 18.9.1991 and interest at the rate of 9% per annum for the period 18.9.1991 to 17.9.1992 and at the rate of 15% per annum from 18.9.1992 to 31.8.1996.

5. Not being satisfied with the quantum of compensation, the respondents-landowners sought reference to Civil Court. Before the Reference Court, the respondents let in evidence about market value as on 19.11.1993, which is the date of publication of the second preliminary notification. The Reference Court held that the relevant date of determination of market value was 3.1.1990 (which was the date of the first preliminary notification), that there was no evidence about the market value as on 3.1.1990. He held that none of the sale deeds relied upon by the landowners was relevant, as they were all with reference to the second preliminary notification published on 19.11.1993. However having regard to the situation and potential of the land, it concluded that approximately double the amount offered by the Land Acquisition Officer would be the appropriate market value and therefore awarded compensation at the rate of Rs.50,000 per acre.

6. The respondents were not satisfied with the amount awarded by the Reference Court. They therefore filed a batch of appeals before the Andhra Pradesh High Court. Some of the appeals were decided by judgment dated 16.2.2005 and some were decided by judgment dated 3.1.1996 following the judgment dated 16.2.2005. The High Court was of the view that the relevant date for determination of compensation was not 3.1.1990 as the said preliminary notification was superseded by notification under section 4(1) of the Act published on

A 19.11.1993 and therefore the compensation had to be
determined with reference to the said date. The High Court
relied upon a sale deed dated 12.11.1993 (Ex. A7) relating to
B sale of a land at a distance of about 30 yards from the acquired
lands to arrive at the market value of the acquired land as on
19.11.1993. The said sale deed (Ex.A7) related to a sale of
an area of 1 acre 38 guntas (a little less than two acres) in
C favour of an educational institution for a consideration of
Rs.490,000/- (which works out Rs.250,000/- per acre). The
High Court rounded off the market value to Rs. 250,000/- per
acre, deducted 40% from the said value to make it a
comparable transaction for determination of market value and
consequently awarded compensation at the rate of Rs.150,000/
- per acre. The said judgment is under challenge in these
appeals by special leave by the Land Acquisition Officer.

D 7. On the contentions urged, two questions arise for
consideration :

(i) Whether relevant date for determination of market value
is 3.1.1990 as contended by the appellant (or
E 19.11.1993)?

(ii) Whether the compensation determined at Rs.150,000/
- per acre requires interference?

F 8. The appellant submitted that the first preliminary
notification under section 4(1) read with section 17 of the Act
was gazetted on 3.1.1990 followed by a final declaration under
section 6 of LA Act on 10.1.1990. As the urgency provision in
section 17 of the Act was invoked, there was no inquiry under
section 5A of the Act and possession was taken on 18.9.1991
G even before making an award. The appellant contended that
where possession is taken invoking section 17 of the Act, the
acquisition would not lapse under section 11A of the Act even
if the award was not made within two years from the date of
final declaration. In support of the said contention, the appellant
H relied upon the decision of this Court in *Satendra Prasad Jain*

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v. *State of U.P.* [1993 (4) SCC 369], wherein it was held that when section 17(1) of the Act is invoked by reason of urgency and the State Government takes possession of the land prior to the making of the award under section 11 of the Act and thereupon the owner is divested of the title of the land which vested in the Government, section 11A would have no application. It was also held that ordinarily if the Government fails to make an award within two years of the declaration under section 6 of the Act, the acquisition would lapse, if the land had not vested in the Government. But where the land has already vested in the Government by taking possession, there is no provision in the Act by which the lands statutorily vested in the Government could revert back to the land owner and therefore section 11A was inapplicable. This Court further held that even if the 80% estimated compensation required to be paid under section 17(3-A) of Act was not paid to the owner, that would not mean that the possession was taken illegally or that the land did not vest in the Government.

9. The appellant contended that as the land vested in the government by reason of possession being taken by invoking section 17 of the Act on 18.9.1991, section 11A of the Act would be inapplicable and the acquisition did not lapse. It was further submitted that as a consequence, the preliminary notification dated 3.1.1990 and final declaration dated 10.1.1990 continued to operate and consequently, the fresh notification dated 9.9.1993 (gazetted on 19.11.1993) followed by final declaration dated 16.2.1994 became redundant and inapplicable. The appellant contends that the High Court was therefore not justified in proceeding on the basis that the compensation should be fixed with reference to the date of publication of the second preliminary notification that is 19.11.1993, instead of determining the market value as on 3.1.1990.

10. On a careful consideration, we are of the view that the decision in *Satayender Prasad Jain* will not apply to this case.

A The issue in this case is not whether the acquisition lapsed or not. The issue is where the earlier preliminary and final notifications are superseded by the subsequent preliminary and final notifications and whether the market value should be fixed with reference to the first preliminary notification or the second preliminary notification. Section 17 as amended in Andhra Pradesh, no doubt provided that the land would vest absolutely in the government even before making the award, on taking possession of the land needed for a public purpose. But as the Land Acquisition Officer failed to estimate the compensation and tender 80% thereof to the land-owners, as required under section 17(3A) of the Act, the land-owners approached the High Court by filing WP No.14396 of 1991 seeking a direction to the appellant to pass the award. As possession had been taken as the land had already vested in the government, the land owners could not and did not challenge the acquisition in the said writ petition. Keeping these facts in view, the High Court disposed of the said writ petition with a specific direction to make an award before 11.2.1992. Admittedly, the award was not made and the order of the High Court was not complied with. It is also of some relevance to note that under sub-section (5) of section 17 of the Act, inserted by a State Amendment in Andhra Pradesh, if the Collector does not take possession of the land within three months from the date when State Government directs under sub-section (4) of section 17 that the provisions of section 5A shall not apply, the effect would be that the provisions of section 5A would apply and the period of 30 days referred to in section 5A shall be reckoned from the date of expiration of three months. In these peculiar circumstances, the government after considering the facts and circumstances, with a view to avoid further challenge, issued a fresh notification dated 9.9.1993 (gazetted on 19.11.1993) followed by final declaration dated 16.2.1994. The State Government did not subsequently cancel/rescind/withdraw the notifications dated 9.9.1993 and 16.2.1994. The State Government had clearly abandoned the earlier notifications dated 3.1.1990 and

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10.1.1990 by issuing the subsequent notifications dated 9.9.1993 and 16.2.1994. The appellant cannot therefore contend that the second preliminary notification is redundant or that first preliminary notification continues to hold good. In the circumstances, the High Court was justified in holding that the compensation should be determined with reference to the date of publication of the second preliminary notification, namely 19.11.1993. A
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11. If we examine the quantum of compensation awarded by the High Court with reference to the date of gazetting of the second preliminary notification, that is 19.11.1993, we find that the compensation award is not excessive and does not call for interference. It has been determined with reference to a sale transaction dated 12.11.1993, just a few days prior to the publication of the second preliminary notification in the gazette dated 19.11.1993. The High Court has also made a deduction of 40% in the market value disclosed by the said sale transaction. C
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12. In some of the counter affidavits filed in the special leave petitions by the claimants, they have alleged that their special leave petitions (challenging the judgment of the High Court and seeking higher compensation) were dismissed as barred by time and therefore, they may be permitted to make a counter claim for a higher compensation. Such counter-claims in counter-affidavits in special leave petitions are impermissible and not maintainable and cannot be entertained. E
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13. In view of the above, these appeals are dismissed.

N.J.

Appeals dismissed.