(2017) 02 MAD CK 0035

In the Madras High Court

Case No : 1 of 2010

Balachandran APPELLANT

Vs

Special Thasildar & Anr. RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

Land Acquisition Act, 1894, Section 18, Section 4(1) - Reference to Court - Publication of preliminary notification and powers of officers thereupon.

Citation : (2017) 02 MAD CK 0035

Hon'ble Judges : S.S.Sundar

Bench : SINGLE BENCH

Advocate : S.S.Sundar

Judgement

1. The above appeal has been filed by the claimant as against the award of the Tribunal confirming the amount of compensation fixed by the Land

Acquisition Officer, at the rate of Rs.40/- per cent, equivalent to Rs.4,000/- per acre.

2. The brief facts that are necessary for the disposal of the above appeal are as follows:

2.1.An extent of 5.21.05 Hectares of dry lands in Urumangalam Village, Radhapuram Taluk, was acquired by the State Government for the

excavation of left side main canal Distributary No.1 and its supply channel in Urumangalam village in Radhapuram Taluk. The notification under

Section 4(1) of the Land Acquisition Act was published in the gazette on 12.08.1999. Out of the total extent of land acquired, an extent of

2.04.05 Hectares equivalent to 5.05 acres were acquired from the appellant for the said purpose. The Land Acquisition Officer passed an award on 07.04.2000. Though the Land Acquisition Officer relied upon several sale deeds, fixed compensation on the basis of a sale deed dated

25.01.1999 wherein the market value for the land conveyed under the said document has been shown as Rs.40/- per cent. Relying upon the said

document, the market value for the acquired land was also fixed at the rate of Rs.40/- per cent. Aggrieved by the quantum of compensation

determined by the Land Acquisition Officer, the claimant sought for reference under Section 18 of the Land Acquisition Act. Upon reference, the

Land Acquisition Tribunal entertained the matter in L.A.O.P.No.104 of 2001. The Land Acquisition Tribunal also found that the compensation

fixed by the Land Acquisition Officer is justified. The only document relied upon by the claimant in Ex.C1, namely, the sale deed which is in

respect of a land in Survey No.316/5, 316/3 and 692/3 in the same village was discarded by the Tribunal only on the ground that the land which

was sold under the document under Ex.C1 is not proved to be located near the acquired land. Thus, the Tribunal after referring to the award of

Land Acquisition Officer, justified the quantum fixed therein as market value. Aggrieved by the decision of Tribunal the above appeal has been

filed.

3. Heard the learned counsel for the appellant as well as the learned Additional Government Pleader appearing for the respondents.

4. The respondents have filed the topo sketch as Ex.R2 before the Land Acquisition Tribunal. The document Ex.C1-sale deed dated 05.12.1996,

which is almost 2 1/2 years prior to the notification that is issued under Section 4(1) of the Land Acquisition Act. This sale deed is in respect of

three Survey numbers, namely, S.Nos.316/3, 316/5 and 392/3. Survey No. 392/3, is also a land which is adjoining the tank which is known as

Pettaikulam. The acquisition is only for the purpose of regularising the channel that originate from this tank. Survey No.692 is very near the

acquired land. Hence, this document Ex.C1 cannot be discorded on the ground that the land covered by this document is far away from the

acquired land. Ex.R4 is only a xerox copy of the hand written copy of the sale deed dated 25.01.1999. This document is not admissible in

evidence, as it is not a copy of the document marked after comparing with the original. This document cannot be admitted as a secondary evidence. The only other document that was filed by the respondents is the statistics under Ex.R1 and the copy of the award. This Court has

already found that the topo sketch filed by the respondents as Ex.R2 gives a clear indication that the acquired lands are very near the land

conveyed under Ex.C1. The award of the Land Acquisition Officer cannot be relied upon for the purpose of fixing the market value for the

acquired land.

5. The learned Additional Government Pleader relied upon the document Ex.R1 which is nothing but the statistics of the sale deeds between

01.04.1998 and 31.03.1999 in respect of the lands which are surrounding the acquired lands. This Court and the Hon''ble Supreme Court have

time and again reiterated the inadmissibility of the documents which are referred to in the award for the purpose of arriving at the market value for

the acquired lands. In the absence of any other evidence, this Court has no other option but to rely upon only the document Ex.C1 which is filed by

the claimant for the purpose of arriving at market value for the acquired lands.

6. It is seen from the evidence of R.W.1 that the Land Acquisition Officer though has referred to the document Ex.C1 in the award discorded the

document only on the ground that higher price has been shown in the document. The sale exemplars cannot be discorded on the ground that they

reflect higher price. The sale exemplar of the relevant period can be discorded only if the nature of land, the standard of soil, potential and other

features are different when compared to the acquired land or if the land is far away from the acquired land so that the market value reflected from

the sale exemplar cannot be taken for the purpose of arriving at the market value for the acquired land. The evidence of R.W.1 clearly would

speak to the fact that several documents which are lying adjacent to the acquired land were discorded by the Land Acquisition Officer only

because of the reason that those sale deeds were indicating higher price for the land which are dealt with in those sale deeds. Coming to the

documents Ex.C1, this document is in respect of the land comprised in three survey numbers namely S.Nos.316/3, 316/5 and 392/3. In Survey

No.692/3, an extent of seven cents has been sold for the price of Rs.2,730/-. This works out to Rs.390 per cent. This Court has already pointed

out that the land in Survey No.392/3 is located very near the acquired land and the price for the land in Survey No.392/3, can be taken as the

market value for the acquired land. Since the smaller extent of 7 cents is conveyed under document Ex.C1, this Court is justified in allowing 30%

deduction relying upon the sale deed which is in relation to a smaller extent. Since the acquisition is for the purpose of regularising the channel,

there need not be any further deduction towards development. Even assuming 30% can be allowed as deduction, the market value can be fixed at

Rs.273/- per cent. The claimant in this case has claimed only a sum of Rs.25,000/- per acre which is just Rs.250 per cent. This Court has already

found that the claimant is entitled to a sum of Rs.273/- per cent. Hence, this Court feels that the claimant is entitled to get compensation determined

on the basis by fixing the market value at Rs.250/- per cent. The above appeal is therefore allowed by fixing the market value for the land acquired

from the claimants at the rate of Rs.250/- per cent which is equivalent to Rs.25,000/- per acre. The judgment and decree of the Land Acquisition

Tribunal in L.A.O.P.No.104 of 2001 is set aside and the market value for the acquired land is enhanced at the rate indicated above. The appellant

is entitled to other statutory benefits. No costs.

