
(1968) 04 SC CK 0034

In the Supreme Court Of India

Case No : ?Appeal (civil) 489 of 1965

Balammal & Ors etc.

APPELLANT

Vs

State of Madras & Ors etc

RESPONDENT

Date of Decision : 23-04-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1), 23(2)
Madras City Improvement Trust Act, 1950 — Section 73

Citation : AIR 1968 SC 1425 : (1969) 1 SCR 90

Hon'ble Judges : V. Ramaswami, J;J. C. Shah, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.C. Shah, J.—In this group of appeals arising out of land acquisition references, two questions fall to be determined:

(1) Whether the owners are entitled to get 15 per cent solatium in addition to the market value for compulsory acquisition of the lands; and

(2) Whether the rate at which compensation has been awarded to the claimants for compulsory acquisition of the lands is justified by the evidence.

2. The Legislature of the Province of Madras enacted the Madras City Improvement Trust Act 16 of 1945, to provide, inter alia, for improvement and expansion of the City of Madras by opening up congested areas. u/s 3 of the Act a Board of Trustees, with power to carry out the provisions of the Act, is to be constituted. The Board is empowered by the Act to frame a scheme to be called "Town Expansion Scheme", and to notify the scheme and also to publish it in the Government Gazette. After considering the objections raised by persons affected by the scheme the Government may sanction the improvement scheme with or without modifications and announce the fact by notification. Publication of the notification is conclusive evidence that the scheme has been duly framed and sanctioned. The Board shall then proceed with the execution of the scheme. The

Board is by virtue of Section 71 authorised, with the previous sanction of the Government, to acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of the Act. Section 72 authorises the Government to constitute a Tribunal for performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894. By Section 73 it is provided:

"For the purpose of acquiring land for the Board under the Land Acquisition Act, 1894--

(a) the said Act shall be subject to the modifications specified in the Schedule; and

(b) * * * * *

The Schedule to the Act provided for modifications in the Land Acquisition Act, 1894, for certain specific purposes. By Clause 6 (2) of the Schedule the acquiring authority is not liable to pay the additional 15 per cent of the market value u/s 23(2) of the Land Acquisition Act "where the land acquired is situated in an area which is declared by the Provincial Government to be a congested or slum area and the land is not in the actual possession of the owner." It may suffice to state that the land in the cases out of which these appeals arise did not fall within the proviso and in addition to the market value fifteen per cent on the market value in consideration of the compulsory nature of the acquisition was payable for acquisition of land made under Act 16 of 1945.

3. Madras Act 16 of 1945 was repealed and was replaced by Madras Act 37 of 1950. The scheme of the new Act remained, with some modifications, substantially the same as the scheme of the repealed Act. By Section 173(2) it was provided that:

"Notwithstanding such repeal all actions taken, all notifications published, all rules and orders issued and all things done under that Act (Act 16 of 1945) shall be deemed to have been taken, published, issued and done under this Act, and may be continued thereunder." All the proceedings commenced under Act 16 of 1945 were therefore to be deemed to have been taken under Act 37 of 1950. An important change, however, was made in the Schedule to Act 37 of 1950 which modified the provisions of the Land Acquisition Act, 1894, in its application to the acquisition of lands under that Act. By Clause 6 (2) of the Schedule it was provided that Sub-section (2) of Section 23 shall be omitted, and in lieu thereof the following sub-section shall be deemed to have been substituted namely:--

"(2) For the purpose of clause first of Sub-section (1) of this section--

(a) if the market value of the land has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;

(b) if any person, otherwise than in accordance with the provisions of this Act.

erects, re-erects, adds to, or alters any wall or building so as to make the same project into the street alignment or beyond the building line prescribed by any scheme made under this Act, then, any increase in the market value resulting from such erection, re-erection, addition or alteration shall be disregarded."

By that amendment persons whose lands were compulsorily acquired under the Madras City Improvement Trust Act 37 of 1950 were deprived of the right to the solatium which would be awarded if the lands were acquired under the Land Acquisition Act.

4. The Board of Trustees framed two schemes for improvement of the town of Madras -- "the Mandavalli Scheme" and "the Mowbrays Road Scheme". For the Mandavalli Scheme a notification u/s 17 of Act 16 of 1945 which operates as a notification u/s 4(1) of the Land Acquisition Act, 1894, was issued on August 24, 1948. A notification u/s 53 which is effective as a notification u/s 6 of the Land Acquisition Act was issued on May 23, 1950, and the Land Acquisition Officer made his award of compensation on November 22, 1951. Under that scheme 1,400 "grounds" (each ground is equal to 2,400 sq. ft.) of land were notified for acquisition. For the Mowbrays Road Scheme which was to cover 689 grounds, the notification u/s 47 of the Act of 1945 was issued on October 26, 1948, the notification u/s 53 was issued on May 23, 1950, and the award was made on April 17, 1952. The notification under Sections 47 and 53 in respect of the two schemes published in exercise of the powers under Act 16 of 1945 and all actions and proceedings taken thereunder were by virtue of Section 173 (2) of Act 37 of 1950 to be deemed to have been issued, and taken under the repealing Act.

5. The Land Acquisition Officer declined to award 15 per cent solatium to the owners of the lands. He valued the lands according to a scheme of classification of lands to which we will presently refer, and determined the compensation awardable to the owners on that basis. References were then made at the instance of the owners u/s 18 of the Land Acquisition Act to the Chief Judge of the Court of Small Causes, Madras, for enhanced compensation. The Chief Judge awarded enhanced compensation and in addition thereto awarded 15 per cent solatium on the market value of the land. Against the awards made by the Chief Judge, appeals were preferred by the State of Madras and by the owners of the lands. The High Court modified the awards made by the Chief Judge and determined the market value of the lands at rates in excess of the rates at which the Chief Judge had awarded compensation, but set aside the order awarding 15 per cent solatium on the market value. Against the awards made by the High Court, these appeals are preferred by the State and by the owners of the lands. In Appeals Nos. 513, 648 and 960-967 of 1965 filed by the State, modification in the rates of market value made by the High Court for determining the compensation has been challenged. In Appeals Nos. 489, 514, 645-647, 650, 651, 989-993 of 1965 and 2109 and 2228 of 1966 filed by the owners of the lands the claimants have claimed 15 per cent solatium which has been denied to them by the High Court and have also claimed additional compensation.

6. We may first deal with the claim of the owners to be awarded solatium at the rate of 15 per cent on the market value of the lands. If the lands of the owners were notified for acquisition under the Land Acquisition Act, the acquiring authority was bound to award in addition to the market value of the land fifteen per centum on the "market value in consideration of the compulsory nature of the acquisition": vide Section 23(2) of the Land Acquisition Act. But since the lands were notified for acquisition for the purpose of Town Expansion Scheme, it is claimed that the owners were, by virtue of Act 37 of 1950, deprived of the right to additional compensation. It was urged by counsel for the owners of the lands that proceedings for acquisition were commenced by the issue of notifications under Sections 47 and 53 of Act 16 of 1945, and the owners acquired a vested right to compensation inclusive of 15 per cent solatium, and that right could not be taken away by repeal of the Act and enactment of a new Act when proceedings for assessment of compensation were pending before the Land Acquisition Officer. It is true that by Clause 6 of the Schedule to Act 16 of 1945 solatium was awardable to the owners of the lands acquired for the Improvement Trusts, but since by Section 173 (2) of Act 37 of 1950 all the proceedings which were commenced under the Act of 1945 were to be deemed to be taken under Act 37 of 1950, compensation awardable by virtue of Clause 6 of the Schedule to the new Act read with Section 173 (2) of that Act could not include the statutory solatium. The Legislature has thereby deprived the owners of the lands of a right to compensation even in proceedings for acquisition commenced before Act 37 of 1950.

7. But, in our judgment, counsel for the owners are right in contending that Sub-clause (2) of Clause A of the Schedule to Act 37 of 1950, insofar as it deprived the owners of the lands of the statutory addition to the market value of the lands u/s 23(2) of the Land Acquisition Act is violative of the equality clause of the Constitution, and is on that account void. If the State had acquired the lands for improvement of the town under the Land Acquisition Act the acquiring authority was bound to award in addition to the market value 15 per cent solatium u/s 23(2) of the Land Acquisition Act. But by acquiring the lands under the Land Acquisition Act as modified by the Schedule to the Madras City Improvement Trust Act 37 of 1950 for the Improvement Trust which also is a public purpose, the owners are, it is claimed, deprived of the right to the statutory addition. An owner of land is ordinarily entitled to receive the solatium in addition to the market value, for compulsory acquisition of his land if it is acquired under the Land Acquisition Act, but not if it is acquired under the Madras City Improvement Trust Act. A clear case of discrimination which infringes the guarantee of equal protection of the law arises and the provision which is more prejudicial to the owners of the lands which are compulsorily acquired must, on the decisions of this court, be deemed invalid.

8. In *The State of West Bengal Vs. Bela Banerjee and Others*, the West Bengal Land Development and Planning Act 21 of 1948 passed primarily for the settlement of immigrants who had migrated into West Bengal provided for

compulsory acquisition of land for public purposes, but the amount of compensation was not to exceed the market value of the land on December 31, 1946. It was held by this Court that the provision fixing the market value of the land on December 31, 1946, as the ceiling on compensation without reference to the value of the land at the time of acquisition, was arbitrary and could not be regarded as due compliance in letter and spirit with the requirements of Article 31(2) of the Constitution.

9. In *State of Madras Vs. D. Namasivaya Mudaliar and Others*, this Court struck down the Madras Lignite (Acquisition of Land) Act 11 of 1953 which provided, inter alia, that compensation for acquisition of lignite bearing lands under the Land Acquisition Act shall be assessed on the market value of the land prevailing on August 28, 1947, and not on the date on which the notification was issued u/s 4(1) of the Land Acquisition Act.

10. In *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, it was held that the Land Acquisition (Madras Amendment) Act, 1961, which inter alia, provided that for the compulsory acquisition of land, the owner will be entitled to the market value of the land at the date of the publication of the notification u/s 4 Sub-section (1) of the Land Acquisition Act or an amount equal to the average market value of the land during the five years immediately preceding such date, whichever is less and also that he shall be entitled to solatium at the rate of "five per centum" was protanto void as infringing Article 14 of the Constitution. This Court observed that discrimination between persons whose lands were acquired for housing schemes and those whose lands were acquired for other public purposes was not sustained on the principle of any reasonable classification founded on intelligible differentia which had a rational relation to the object sought to be achieved.

11. In *N.B. Jeejeebhoy Vs. Assistant Collector, Thana Prant, Thana*, this Court struck down as violative of Article 14 of the Constitution a provision made by the Land Acquisition (Bombay Amendment) Act, 1948, which enjoined the acquiring authority to assess compensation for the lands compulsorily acquired for the purpose of "a housing scheme" in the State of Bombay at the market rate prevailing not on the date of the issue of the notification u/s 4 of the Land Acquisition Act, 1894, but on January 1, 1948.

12. Compensation awardable for compulsory acquisition of property must be a just equivalent of the value of the land of which a person is deprived and when compensation may at the option of the authority be related to different dates, according as it is awardable under the Land Acquisition Act or under some special provision the compensation awardable to the owners of the lands, unless the distinction is supported by any rational classification having reasonable relation to the subject-matter or to the object sought to be achieved by the special provision and is founded on some intelligible differentia, the special provision must be held void, as infringing the guarantee under Article 14.

13. The judgment of this Court in *Dalchand and Others Vs. Delhi Improvement Trust (Now Delhi Development Authority) New Delhi*, on which reliance was placed by the Advocate-General has no application to that principle. In *Dalchand and Others Vs. Delhi Improvement Trust (Now Delhi Development Authority) New Delhi*, under the U. P. Town Improvement Act 8 of 1908 as extended to the territory of Delhi, the Delhi Improvement Trust brought into force a scheme for industrial development under which lands were acquired. The Trust paid compensation based on the market value, but without the statutory solatium. It was observed in that case that if the land had been acquired under the Land Acquisition Act the claimants would have been entitled to statutory solatium, but not when they were acquired for the Delhi Improvement Trust. In *Dalchand and Others Vs. Delhi Improvement Trust (Now Delhi Development Authority) New Delhi*, the validity of the Act was not open to challenge. The notification for acquisition of land was issued many years before the date of the commencement of the Constitution and the land had vested in the Trust also before the commencement of the Constitution. No question of deprivation of a fundamental right of equality could therefore be set up in that case and this Court held that the claimants were not entitled to plead that if the land had been acquired under the Land Acquisition Act, they might have become entitled to a statutory solatium in addition to the market value, whereas under the U. P. Town Improvement Act they were not so entitled.

14. We, therefore, hold that Clause 6 Sub-clause (2) of the Schedule read with Section 73 of Madras Act 37 of 1950 which deprives the owners of the statutory right to solatium at the rate of 15 per cent on the market value of the lands is invalid, and the owners of the lands are entitled to the statutory solatium u/s 23(2) of the Land Acquisition Act in consideration of compulsory acquisition of their lands.

15. We may now turn to the argument that rates at which compensation was awarded to the owners of the lands was not justified by the evidence. Two schemes were framed by the Board of Trustees -- (1) Mandavalli Scheme; and (2) Mowbrays Road Scheme. The Land Acquisition Officer classified the lands in the Mandavalli Scheme into two groups -- 'the developed group' and 'the undeveloped group'. He designated small sites requiring no further improvement and which were ready for being built upon as 'developed lands' and the rest as 'undeveloped lands' and fixed the market value of the developed lands at Rs. 1,550 per ground. In determining the value of undeveloped lands he reduced an amount of Rs. 500 per ground being the estimated proportionate share of the cost for setting apart land for roads and for providing amenities and fixed the market value at Rs. 1,050 per ground. Further adjustments were made in that rate for lands in individual cases in the light of their situation. The Chief Judge adopted the classification made by the Land Acquisition Officer. and assessed the land value of developed plots at Rs. 2,000 per ground. For arriving at the value for undeveloped lands he reduced the value by Rs. 500 per ground for roads and cost of development and awarded compensation at the rate of Rs. 1,500 per

ground The High Court also accepted the grouping of the lands into two broad groups as adopted by the Chief Judge and the Land Acquisition Officer, and further sub-divided the developed plots into "nice desirable plots exceeding one ground and below three grounds, and facing well-known, convenient and already formed roads" and "standard developed plots". The former were Group K-A lands which were valued at Rs. 2,250 per ground, and the latter which were called Group I-B lands were valued at Rs. 2,000 per ground. In the view of the High Court a reduction of Rs. 400 per ground for the value of standard developed lands was adequate to meet the expenses for providing amenities. The basic value of undeveloped plots was assessed at Rs. 1,600 per ground. Having regard, however, to the superior situation of some of the undeveloped plots they grouped them into Group 2-A and awarded compensation at the rate of Rs. 1,750 per ground, and for one plot which in view of its "desirable situation" was awarded the rate of Rs. 1,850 per ground. The remaining lands which were called Group 2-B lands were awarded compensation at the rate of Rs. 1,600 per ground.

16. The Mowbrays Road Scheme plots were classified by the Land Acquisition Officer into four groups Group I-A, I-B, I-C and Group-II. For Groups I-A, I-B and I-C lands he determined the basic rate of compensation per ground at Rs. 2,500, Rs. 2,400 and Rs. 2,000 respectively, and on the footing that these three groups were undeveloped plots he reduced the rate by Rs. 800 per ground for expenses of laying out roads and providing other amenities. He valued the Group-II lands at Rs. 1,600 and reduced it by 25 per cent for expenses for laying out roads and providing other amenities. The Chief Judge substantially adopted the same classification. He designated the lands as Group I, Group II, Group III and Group IV. After considering the situation of the lands, the Chief Judge estimated the basic compensation for Group I at the rate of Rs. 2,400, for Group II at Rs. 2,300 and for Group III at Rs. 1,900 and declined to make any deduction for development on the footing that lands were developed lands and no expenditure was required to be incurred and no deduction had to be made. For the interior lands forming Group IV he estimated the basic price at Rs. 1,900 per ground and made a deduction of Rs. 550 per ground for providing amenities and for meeting the expenses incidental to the development of their lands. In the view of the High Court the rate of compensation per ground should be respectively Rs. 2,500, Rupees 2,400 and Rs. 2,250 for lands in Groups I, II and III. For Group IV the High Court assessed compensation at the rate of Rs. 1,630 per ground, In arriving at that valuation they took into consideration the situation of the land, the stage of development the lands had reached, the size of the plots and the estimated cost of raising the level of the land and providing other amenities which would make them similar to developed lands.

17. On behalf of the State it is urged that the High Court erred in increasing the value of the lands in the Mowbrays Road Scheme and that the High Court should have maintained the order of the Chief Judge relating to those lands. On behalf of the owners of the lands it is urged, especially for the lands in the Mandavalli Scheme, that there were transactions of sale proximate in time to the date on

which the notification u/s 47 of Act 16 of 1945 was issued, which disclosed a rate of market value varying between Rs. 2,000 and Rs. 3,000 per ground, and the Chief Judge and the High Court were not justified in accepting the lowest rate as determinative of the market value of the lands in the neighbourhood. But the instances relied upon by the owners are of sales of very small pieces of land approximately of one-half of a ground or less, and we do not think that the High Court has committed any error of principle in rejecting the higher rates furnished by instances of the sale of tiny pieces of land. Again no evidence was led before the Chief Judge that the sale transactions reflected the current rate of market value of lands in the locality, and that the prices paid were not affected by special considerations.

18. In AIR 1925 211 (Privy Council) the Judicial Committee held that in appeals involving the valuation of property, the Judicial Committee will not entertain an appeal as to the value of property compulsorily acquired, except upon questions of principle, including errors in appreciating or applying the rules of evidence, or the judicial methods of weighing evidence.

19. In AIR 1932 102 (Privy Council) the Judicial Committee observed that "it is well settled that this Board will not review the decree of an Indian Appellate Court merely upon questions of value" and reiterated the observations made in AIR 1925 91 (Privy Council) that the Board will not interfere with judgments of the Courts in India as to matters involving valuation of property and similar questions where knowledge of the circumstances and of the district may have an important bearing on the conclusion reached, unless there is something to show, not merely that on the balance of evidence it would be possible to reach a different conclusion, but that the judgment cannot be supported as it stands, either by reason of a wrong application of principle or because some important point in the evidence has been overlooked or misapplied.

20. This Court has adopted a similar approach in appeals which raise disputes relating to valuation of lands compulsorily acquired. In *The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, S. K. Das, J.*, speaking for the Court observed:

"We are content to proceed in this case on the footing that we should not interfere unless there is something to show, not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been overlooked or misapplied."

The learned Advocate-General appearing on behalf of the State of Madras has not invited our attention to any such error of principle or non-application of mind to any important piece of evidence, which may have a bearing on the valuation. The learned Advocates appearing on behalf of the owners of the lands also have not been able to invite our attention to any such error in the judgment of the High Court.

21. Mr. P. Rama Reddy appearing on behalf of respondents in Appeals Nos. 960-962, 964 and 967 and the appellants in Appeals Nos. 989-993 of 1965 raised a special argument which we may now consider. Counsel contended that the provisions of the Land Acquisition Act which are made applicable by Section 78 read with the Schedule to the Madras City Improvement Trust Act and which require the market value to be awarded to the owners of the land as on the date on which the notification u/s 47 of the Act is issued deprive the owner of the true compensation which is a just equivalent of the value of the lands expropriated. Counsel says that in all cases after the notification is issued, there is a considerable time-lag and the title to the land is extinguished only when the land vests absolutely in the Government u/s 16 of the Land Acquisition Act free from all encumbrances. He says that whereas the compensation payable is the market value prevailing on the date of the issue of the notification u/s 4 of the Land Acquisition Act the title of the owners to the land is extinguished on the date on which possession is taken, and on that account compensation is determined with reference to a date which in some cases may be years before the date on which the title is extinguished. Counsel invited our attention to the observations made by Subba Rao, J., in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, that under Article 31(2) a person whose land was acquired was entitled to compensation i. e. a "just equivalent" of the land of which he was deprived. He contended that if the just equivalent of the land is to be awarded, it must be based on the market value of the land on the date on which the title is extinguished and not the market value at some date anterior thereto. But in *P. Vajravelu Mudaliar Vs. Special Deputy Collector, Madras and Another*, it was decided that the law which determines the market value as at the date of the notification u/s 4(1) of the Land Acquisition Act does not offend Article 31(2) of the Constitution.

22. Mr. Thiagarajan appearing on behalf of the appellants in Appeals Nos. 650 and 651 of 1954 contended that no adequate compensation was awarded to the owners in respect of charges for severance. Counsel submitted that a part of the compound of a Cinema Theatre was acquired compulsorily and that deprived the owner of the land of the facility of providing additional amenities to the patrons of the theatre and also of making constructions on the land expanding the business, and on that account the owners were entitled to compensation either under "Thirdly" or "Fourthly" or "Sixthly" of Section 23(1) of the Land Acquisition Act. Under these clauses the damage sustained by the person interested by reason of severing such land from his other land, or by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings, or the damage bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration u/s 6 and the time of the Collector's taking possession of the land may be awarded to the owners. But there is no evidence on the record to which our attention was invited which supported the case of the appellants to compensation under any of the clauses. There is nothing to prove that the owners had sustained any loss by

reason of the severance of the land from their other lands, nor is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owners were affected, nor is there any evidence to show that there was any damage resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession of the land. The High Court has awarded Rs. 2,500 as compensation for severance, and we see no reason to interfere with that order.

23. The appeals filed by the State therefore fail and are dismissed with costs. The appeals filed by the owners are allowed 15 per cent solatium u/s 23(2) of the Land Acquisition Act on the market value of the land in addition to the compensation awarded to them. Appellants in each of these appeals will be entitled to their costs in this Court. Parties appearing through the same counsel will be entitled to one hearing fee only.