(2008) 03 MAD CK 0070

In the Madras High Court

Case No : A.S. No''s. 150 and 704 of 1997

D. Ramachandran — APPELLANT

Vs

The Sub Collector, The Superintending Engineer, Tamil Nadu Electricity Board, Rajadurai and R. Lalitha
The Sub Collector Vs D. Ramachandran, The Superintending Engineer, Tamil Nadu Electricity Board, Rajadurai and R. Lalitha — RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 18, 23, 23(1), 23(1A)

Citation : (2008) 2 LW 143 : (2008) 4 MLJ 123

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : S. Parthasarathy, in A.S. No. 150 of 1997 and P.S. Raman, A.A.G for V. Ravi, Spl. G.P. in A.S. No. 704 of 1997, for the Appellant; S. Parthasarathy, in A.S. No. 704 of 1997, P.S. Raman, A.A.G. for V. Ravi, Spl. G.P. for Respondent No. 1 in A.S. No. 150 of 1997 and J. Ramakrishnan, for the Respondent

Judgement

K. Raviraja Pandian, J.—The Appeal suits in A.S. Nos. 150 and 704 of 1997 are preferred against the judgment and decree dated

30.4.1996 made in L.A.O.P. No. 6 of 1987 on the file of Principal Subordinate Judge''s Court, Coimbatore. A.S. No. 150 of 1997 is filed by the

claimant for enhancement of compensation. A.S. No. 704 of 1997 is filed by the Land Acquisition Officer representing the Government disputing

that the compensation fixed by the reference Court as very high.

2. The facts of the case in brief are as follows:

The Land Acquisition Officer- Sub-Collector Coimbatore acquired an extent of 6.67 acres of land in S. Nos. 522, 523 and 55 of Sowripalayam

village of Coimbatore District from the claimant for the purpose of erection of

110 KV sub station under urgency provision. Notification u/s 4(1),

declaration u/s 6 and direction u/s 7 of the Land Acquisition Act, 1894 (hereinafter referred to as ""the Act"") have been published in the

Government Gazette dated 20.4.1983. The land was taken possession on 1.2.1979. There were as many as 608 sales during the period from

1.1.1981 to 19.4.1983, out of which 228 sales have been rejected as they were sales in respect of house sites either in approved or unapproved

layouts. The sales covered under other 15 documents have also been discarded as the Land Acquisition Officer was of the opinion that they have

purchased for fancy price for erecting small factories. The remaining sale deeds are pertaining to agricultural lands and the rate per acre was

ranging from Rs. 30,000/- to Rs. 75,000/-, out of which two sale deeds have been taken for consideration under which an extent of 3.60 acres in

Survey Nos. 20 and 21 has been sold through seven documents for one and the same rate at the rate of Rs. 75,000/- per acre. Hence, out of the

seven sales, the sale covered by document No. 3263 dated 24.7.1982 has been taken as a data document. Under that document, an extent of 0-

60 acres in Survey Nos. 20 and 21 has been sold for Rs. 45,000/- at the rate of Rs. 75,000/- per acre. On that basis, the value of the land has

been determined at Rs. 75,000/- per acre by the Land Acquisition Officer and the total value for 6.67 acres has been arrived at Rs. 5,00,250/-. In

addition to that, 30 percent solatium i.e., Rs. 1,50,075/- and additional amount at 12 percent per annum from 20.4.1983 to 19.9.1986 in a sum of

Rs. 2,05,102.50ps, has been granted, totalling in all Rs. 8,55,427.50ps. The claimant feeling aggrieved that the compensation awarded is too law

price prevailing during the relevant period sought for reference u/s 18 of the Act. The Reference so made has been taken on file in L.A.O.P. No. 6

of 1987.

3. Before the Reference Court, the claimants relied on two sale deeds dated 10.11.1982 and 11.10.1982 which were marked as Exs. C.1 and

C.2 and claimed compensation at the rate of Rs. 42,000/- per cent.

4. The Reference Court after considering the evidence, both oral and documentary and after hearing the argument of the parties concerned,

determined the compensation at the rate of Rs. 10,000/- per cent and held that the claimants are not entitled to the additional amount of 12 percent u/s 23(1A) and further held that they are not entitled to interest over the solatium.

5. The Land Acquisition Officer aggrieved by the order of the Reference Court filed an appeal in A.S. No. 704 of 1997. The Claimant in their turn

filed appeal in A.S. No. 150 of 1997 for further enhancement of the compensation.

6. During the pendency of the appeals before this Court, the Land Acquisition Officer sought to file two documents by filing C.M.P. No. 9021 of

2006. This Court by order dated 8.9.2006 taking note of the judgments of the Supreme Court in the case of K. Venkataramiah Vs. A.

Seetharama Reddy and Others, and The A.P. State Wakf Board Hyderabad Vs. All India Shia Conference (Branch) A.P. and Others, ,

transmitted the material case bundle to the reference Court and directed the Reference Court to record the evidence of the parties by giving the

parties liberty to adduce evidence and render a finding thereon so as to enable this Court to proceed further. Pursuant to the same, the reference

Court by its proceedings dated 6.11.2006 recorded a finding and transmitted the case bundle.

7. The Land Acquisition Officer assailed the order of the reference Court on the ground that the enhancement of the compensation awarded by the

reference Court is very exorbitant. Without any reason, the reference Court rejected the data sale deed adopted by the Land Acquisition Officer

for arriving at a compensation. The reference Court also has not taken into consideration of the extent of land covered under Ex. C.1 filed by the

claimant. Hence, the enhancement is liable to be set aside.

8. On the other hand, the claimant sought to assail the order of the reference Court contending that the reference Court has committed error in

rejecting the sale deed produced on behalf of the claimants in Exs. C.1 and C.2 and commercial potentiality of the land has not been taken into

consideration. The reference Court committed serious error in holding that the claimants are not entitled to additional amount at the rate of 12

percent u/s 23(1A) of the Act. The reference Court erred in finding of fact that the extent of land acquired from the claimant was 6.67 acres, but

the total extent acquired was 6.72 acres. The evidence adduced by R.W. 1 has been totally lost sight of and sought for enhancement atleast at the rate of Rs. 30,000/- per cent.

9. We heard the argument of the learned Counsel on either side and perused the material on record.

10. On a reading of the award, we are not able to approve that the document No. 3263 dated 24.7.1982 can be taken as a document reflecting

the correct value. The said document is in respect of an agricultural land over an extent of 0.60 acres in Survey Nos. 20 and 21. The said land

came to be possessed by the vendor for the purpose of doing certain endowment by an endowment deed dated 18.2.1930. The land was a

manavari land and not yielding any income at all that the vendors were not able to do the endowment as required under the endowment deed and

the vendors were of the view that in spite of keeping the land without deriving any income if the lands are sold out of the sale consideration they

could perform the endowment as required under the deed. Thus, it is evident that the sale deed was effected on compelling reasons. So, the said

document cannot be regarded as a transaction between a willing purchaser conveying the property to a willing seller. It is a well established legal

principle that a free sale by willing seller to a willing purchaser can only be regarded as transaction genuinely reflecting the market value. Further,

the documents Exs. C.1 and C.2 have not been taken to their face value by the reference Court for enhancing the compensation as contended by

the Government Pleader. Hence, the contention on behalf of the Land Acquisition Officer that Ex. R. 1 has been rejected without assigning any

reason and Ex. C. 1 has been adopted in its entirety has to be rejected and the same is rejected.

11. On behalf of the claimants, much reliance has been placed on Exs.C. 1 and C. 2. Under Ex. C. 1, an extent of 87 cents and 164 sq.ft., and

with Bungalow bearing Door No. 366 has been sold. The said property situated in Krishnarayapuram village. From the schedule of property, it

could be seen that it is virtually in the Coimbatore City bounded by Kuppuswaminaidu Hospital, Avinashi Road, vacant site belonging to

Kuppuswami Naidu and bungalow. Under Ex. C.2, an extent of Ac. 2.34 cents in Krishnarayapuram village has been sold for a sum of Rs. 26

lakhs and purchased by South India Viscose Limited. It is stated that the lands covered under Ex. C. 1 and C. 2 were valued at Rs. 30,000/- and

Rs. 32,000/- respectively per cent. As per the evidence on record, two properties covered under these documents Exs.C. 1 and C. 2 are one

kilometre away on the western side of the acquired land, which comes within the Coimbatore City Corporation. Even in respect of the properties

in the Coimbatore Corporation limit, the value is depending upon the nearness of the property to the city. The acquired land is in the eastern side of

the Coimbatore city. The value of the lands which are situated in the eastern side of the Coimbatore City, which is away by one kilometre from the

Coimbatore corporation limits would fetch only a lesser amount than the land situated in the western side towards the city. By considering these

evidence, the Land Acquisition Officer discarded these two documents also, however fixed the value at the rate of Rs. 10,000/- per cent. The

evidence adduced by the claimants shows that the acquired land is situated within the Coimbatore Corporation limits and several industries such as

Santha Industries, Suguna Kalyanamandapam, Nava India and Ramakrishna Industries are situated nearby the acquired land. Laskmi Textile Mill

is situated within 1 kilometre on the west of the acquired land. The residential houses in Bharathi Colony is on the north of the acquired land and

there are several bungalows in the above colony and P.S.G. College is about 200 yards on the east of Bharathi Colony Ex. C.7 plan also

corroborates the evidence of C.Ws. 1 to 3. Above all, the evidence of R.W. 1 would establish that the land acquired is situated in the industrial

area abutting National High Way called Avinashi Road within the Corporation limits and surrounded by various industries, institutions, housing

colonies and cinema theatres. Siruvani water is also available to the acquired land. Such facilities are available within a short distance. In addition to

that, one more important and equitable factor is that the land has been taken possession more than four years prior to the issuance of the 4(1)

notification. The claimants were deprived of the benefit arising out of the property for more than four long years. Taking into consideration of the

evidence establishing that the facilities are available to the land and having regard to the fact of year of taking possession of the property and the

further fact of deduction to be allowed as regards to the larger extent of area under acquisition, while accepting the action of the reference Court in

rejecting two documents Exs. C.1 and C.2 for determination of the compensation of the acquired land as correct, we are of the considered view that the compensation should have been atleast fixed at Rs. 11,000/- per cent, which would roughly come nearer to 1/3rd of the value reflected

under Exs. C.1 and C.2. The fixation of the above amount would take into account in itself the usual deduction for development charges and the

deduction for larger extent of acquired land.

12. We have gone through the findings recorded by the learned reference Court in respect of Exs.R. 8 and R. 9. As the finding stands to reason to

the effect that earlier the said two documents have been discarded by the Land Acquisition Officer himself, and the evidence adduced by the Land

Acquisition Officer at the time of marking the documents is also as vague as anything and no particular evidence worth consideration has been

adduced to take the documents for consideration, the documents now marked as Exs. R.8 and R.9 would not in any way advance the case of the

appellant.

13. The other contention that the claimants are entitled to additional amount of 12 percent u/s 23(1-A) of the Act from the date of taking

possession cannot be considered in favour of the claimants on the face of the statutory provision and in the light of the interpretation of the said

provision by the Supreme Court. As per the statutory provision 23(1-A), the Court is mandated in every case to award an amount calculated at

the rate of 12 percentum per annum on the market value for the period commencing on and from the date of publication of the notification u/s 4(1)

to the date of award of the Collector or the date of taking possession of the land, which ever is earlier. Thus, it is clear that the starting point for

calculation of 12 percentum is the date of 4(1) notification. However, there are two terminal points. One is the date of award and the other is the

date of taking possession of the land. If the two terminal points are available after the 4(1) notification, the terminal point, which occurs earlier shall

be taken up for calculation of the amount. So far as the present case is concerned, one of the two terminal points is not available i.e., taking over of

possession subsequent to 4(1) notification, as possession has been taken on 1.2.1979 much prior to the issuance of 4(1) notification. The one and

only terminal point available is the date of passing of the award by the Collector. So the amount should be calculated from the date of Section 4(1)

notification to the date of passing of the award.

14. The Supreme Court in the case of Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, , wherein a three Judge

Bench of the Supreme Court on a reference by reason of the contrary views taken by two Benches of two learned judges in Special Tahsildar

(LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, and Assistant Commissioner, Gadag SUb-Division, Gadag Vs. Mathapathi

Basavannewwa and others, on the other has ruled as follows:

3. Section 23(1-A) reads as follows:

23. (1-A) In addition to the market value of the land, as above provided, the court shall in every case award an amount calculated at the rate of

twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4

Sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.-In computing the period referred to in this Sub-section, any period or periods during which the proceedings for the acquisition of the

land were held up on account of any stay or injunction by the order of any court shall be excluded.

4. It is the contention of learned Counsel for the appellants that the appellants are entitled to compensation for the period 1-6-1977 to 8-3-1991

i.e. from the date on which possession of the said land was taken till the date of publication of the Section 4(1) notification. He finds sustenance for

this contention in the decision of this Court in Mathapathi Basavannewwa case (1995(6) scc 355) where a similar contention was upheld. The

provisions of Section 23(1-A) were analysed but, said the Court, ""strict construction leads to unjust result, hardship to the owner and defeats

legislative object"". In its view, therefore, the expression ""whichever is earlier"" in Section 23(1-A) had to be construed in that backdrop and the

claimant was entitled to the additional amount from the date of taking possession. Since advance possession was taken before the publication of

the notification u/s 4(1), ""the claimants, by necessary implication are entitled to the payment of the additional amount by way of compensation from

the date of taking over the possession for loss of enjoyment of the land.

5. This Court in Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, , quoted Section 23(1-A) and said:

In other words, the owner of the land who has been deprived of the enjoyment of the land by having been parted with possession, the Act

intended that the owner be compensated by awarding an additional amount calculated at the rate of 12 per centum per annum on the enhanced

market value for the period between the date of notification and the date of award or date of taking possession of the land whichever is earlier.

Admittedly, possession having already been taken on 15- 2-1965, before publication of the notification u/s 4(1) on 6-3-1980, the award of

additional amount for the period from 6-3-1980 to 30-9-1983, i.e., the date of making the award u/s 11 is perfectly correct.

6. It is, as we see it, clear from Section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the

rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is

either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken

prior to the publication of the Section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High

Court, therefore, was in no error in holding that the appellants were entitled to the additional compensation u/s 23(1-A) for the period 8-3-1991 to

6-2-1993.

7. Section 23(1-A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other

than that given above. It is only where a provision is ambiguous that a construction that leads to a result that is more just can be adopted. Having

regard to its clear terms, Section 23(1-A) must receive the only construction it can bear. We are of the view, therefore, that the law has been

correctly laid down in the decision in Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, and that it has not been correctly

laid down in Assistant Commissioner, Gadag SUb-Division, Gadag Vs. Mathapathi Basavannewwa and others, and, for that matter in State of

Himachal Pradesh and others Vs. Dharam Das, .

Hence, in this case, the claimants are entitled to additional amount u/s 23(1-A) for the period from the date of Section 4(1) notification to the date

of award.

15. In respect of the payment of interest on solatium, we are of the view that the order of the reference Court cannot be countenanced, as it has

been held by the Constitution Bench of the Supreme Court in the case of Sunder v. Union of India, 2001 Suppl. (3) SCR 176, that the expression

compensation"" awarded would include not only the total sum arrived at as per Section 23(1) but the remaining Sub-sections thereof as well. Thus,

it is clear from Section 34 that the expression ""awarded amount"" would mean the amount of compensation worked out in accordance with the

provisions contained in Section 23, including all the Sub-sections thereof. The Supreme Court ruled that in calculating the interest as mentioned in

the provisions of Sections 34 and 28 of the Act, the amount of solatium envisaged in Section 23(2) of the Act should be included. Thus, claimant is

entitled to interest on solatium also.

16. In respect of the dispute of extent of the area acquired from the claimant, it could be seen from the award that though the total extent in Survey

Nos. 522/2, 523/2, 524/1, 525/1, 525/2 is for an extent of 6.72 acres, the notification has been issued only for 6.67 acres. In respect of the

uneconomical bit of 0.05 acres in Survey No. 525/1, action was stated to be perused separately under Land Acquisition Act and the present

Acquisition was in respect of 6.67 acres. Hence, the contention that the land acquired under the notification and the award is 6.72 acres is not

correct.

17. As regards the claim of compensation for severance of the acquired land from other lands, the claimant deposed that he was owning 3.00 and

10.00 acres of land on the southern and eastern side respectively of the acquired land. He however admitted that there is a 40 feet public road

available to reach the land. From the evidence on record, it cannot be said that the claimant sustained any damage by reason of severing the

acquired land from the other lands. Hence, we are of the view that the reference Court rightly rejected the claim of Rs. 25,00,000/- restricted to

Rs. 1,00,000/- under this head.

18. For the foregoing reasons, the appeal filed by the Land Acquisition Officer in A.S. No. 704 of 1997 is rejected and the appeal filed by the

claimant in A.S. No. 150 of 1997 is allowed to the extent indicated above i.e., the compensation in respect of the land acquired from the claimant is enhanced by Rs. 1,000/- per cent and the issue as to the interest on solatium is decided in favour of the claimant vide Sunder v. Union of India

2001 Suppl. (3) SCR 176 . The claimants are entitled to additional amount of 12 percent per annum u/s 23(1-A) of the Act from the date of

Section 4(1) notification to the date of passing of award, vide Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr,

. However, there is no order as to costs.

