

**(2001) 03 MAD CK 0062**

**In the Madras High Court**

**Case No : A.S. No's. 262 and 263 of 1996**

D.B. Rudrani and another

APPELLANT

Vs

The Land Acquisition Officer (Sub Collector), Dharmapuri,  
Dharmapuri District and another

RESPONDENT

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**Date of Decision : 23-03-2001**

**Acts Referred:**

Land Acquisition Act, 1894 — Section 18, 23, 24, 4(1), 47

**Citation : (2001) 2 LW 617**

**Hon'ble Judges : P. Thangavel, J;P. Sathasivam, J**

**Bench : Division Bench**

**Advocate : Mr. N.R. Chandran, for Mr. G. Nagarajan, for the Appellant; Mr. V. Ravi, Additional Government Pleader and Mr. R.P. Kabilan, for the Respondent**

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## **Judgement**

P. Sathasivam, J.—Claimants in L.A.O.P.Nos. 1 of 1991 and 2 of 1991 are the appellants in the above appeals. An extent of 2.53.5

hectares (6.25 Acres) of dry lands in Survey Nos.17, 18 and 19 in A. Jettihalli Village, Dharmapuri Taluk were acquired by the Government for

construction of building shed for Annai Sathya Transport Corporation. Notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred

to as "the Act") has been published in the Tamil Nadu Government Gazette dated 2.7.86. The Land Acquisition Officer passed an Award on

1.12.1988 fixing compensation at the rate of Rs.26,490 per acre. Not satisfied with the amount fixed by the Land Acquisition Officer, at the

instance of the landowners, the matter was referred to the Sub Court, Dharmapuri u/s 18 of the Act, which resulted in L.A.O.P.Nos.1 and 2 of

1991. Before the Sub Court, the claimants have prayed for compensation at the rate of Rs.20 per sq.ft. On the side of the claimants, the claimant

in L.A.O.P.No. 1 of 1991 was examined as C.W.I and one Nachimuthu, Sub Registrar of Dharmapuri West was examined as C.W.2. Various

sale-deeds were marked as Exs. A-1 to A-6 in support of their claim. On the side of the Referring Officer, two witnesses were examined as

R.Ws.1 and 2 and Exs. B-1 to B-7 marked in support of their stand. The learned Subordinate Judge after considering all the materials and in the

absence of any acceptable evidence for enhancement, confirmed the amount fixed by the Land Acquisition Officer and dismissed both the

petitions, hence the present appeals by the claimants.

2. Heard the learned senior counsel for the appellants and the learned Additional Government Pleader for the first respondent.

3. Mr. N.R. Chandran, learned senior counsel for the appellants, after taking us through award proceedings of the Land Acquisition Officer, the

evidence let in before the Sub Court as well as the impugned order of the learned Subordinate Judge, would contend that the Court below

committed an error in rejecting all sale transactions under Exs. A-1 to A-6. He also contended that the learned Subordinate Judge failed to see the

future potential value and the existence of important buildings such as Collector's office. Office of the Superintendent of Police, Tamil Nadu

Electricity Board etc. He also contended that the Court below erred in relying upon Ex.B-1 as data land which is situated in Survey No. 115/1 and

far away from the acquired lands in Survey Nos. 17 and 18. He further contended that the Court below ought to have accepted the guideline value

of the land and the evidence of C.W.2 Sub Registrar. He further contended that the Court below failed to see Ex.B-5 report, wherein the

Tahsildar, Dharmapuri clearly pointed out that the compensation for the acquired lands can be awarded at Rs.1,25,000. On the other hand,

learned Additional Government Pleader would contend that in the absence of any acceptable legal evidence on the side of the claimants, the

learned Subordinate Judge was right in dismissing their claim petitions.

4. We have carefully considered the rival submissions.

5. The only point for consideration in both the appeals is whether the claimants are entitled higher compensation as claimed; and the learned

Subordinate Judge is justified in dismissing their claim petitions.

6. Before the Court below, the claimant in L.A.O.P.No.1 of 1991 was examined as

C.W.I. No doubt, she has explained the potential value and the existence of important buildings, offices near the acquired lands. Her evidence can be considered in addition to the documentary evidence, namely, sale transactions that had taken place 3 years prior to the 4 (1) notification. The claimants have produced and marked certified copy of various sale-deeds as Exs. A-1 to A-6. Under Ex.A-1 dated 2.2.84, an extent of 1806 sq.ft. of land in A. Jettihalli village had been sold for Rs.7,200. Under Ex.A-2 dated 19.8.85, an extent of 2180 sq.ft. had been sold for Rs.10,000. Under Ex.A-3 dated 17.11.85, an extent of 987 1/4 sq.ft. had been sold for Rs.6,900 and under Ex.A-4 dated 24.4.86. an extent of 880 sq.ft. had been sold for Rs. 10,500, whereas under Ex.A-5 dated 26.3.86, an extent of 2 cent had been sold for Rs.3,400. The learned Subordinate Judge considered all the sale transactions and after noting that only smaller extent of land had been sold and in the absence of examination of any one of the parties to those documents, rejected Exs. A-1 to A-5 as not helpful to the claimants' case. As rightly contended by the learned senior counsel for the appellants, even though only smaller extent of land had been sold in Exs. A-1 to A-5, the same cannot be rejected for comparing and ascertaining the market value for the larger extent of land. Admittedly, in our case, a total extent of 6.25 acres were acquired for construction of building shed for Annai Sathya Transport Corporation. If no other acceptable evidence is available for consideration, the sale transaction wherein smaller extent of land had been sold can be considered by allowing deduction to certain extent. However, learned Additional Government Pleader, by drawing our attention to the fact that none of the parties to those documents was examined to prove the contents of the same, would contend that Exs.A-1 to A-5 are inadmissible in evidence and the same cannot have any assistance for fixing compensation for the acquired lands. No doubt, in a series of decisions, the supreme Court has held that in the absence of examination of any one of the parties, the document cannot be looked into or considered for the purpose of determining the amount of compensation for the acquired land. However, recently three Judges Bench of the Honourable Supreme Court, by referring Section 51-A of the Act, in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, ,

has held that it is open to the Court to act on the documents regarding the transaction recorded in such documents even without examining the

persons connected with the transactions mentioned therein. In the light of the latest pronouncement of the Supreme Court, the objection raised by

the learned Additional Government Pleader cannot be sustained and the documents Exs. A-1 to A-6 produced by the claimants have to be

considered, in order to ascertain just and proper compensation u/s 23(1) of the Act, let us consider the various sale transactions under Exs. A-1 to

A-6. Out of these documents, Ex.A-6 cannot be considered, since it is only a partition deed among the sharers of the claimants. In order to

appreciate and consider Exs. A-1 to A-5 documents, we have verified Ex.B-3 - Village Map produced by the Referring Officer. The first

document, namely. Ex.A-1 is in respect of lands in Survey Nos. 201/2 and 2/202 wherein an extent of 1806 sq.ft. of land had been sold for

Rs.7,200, A perusal of Ex.B-3 shows that these lands situate far away from the acquired lands. Hence the same is not considered.

7. Under Ex.A-2 dated 19.8.85, an extent of 2180 sq.ft. (5 cents) in Survey No.117 had been sold for Rs.10,000. Ex.B-3 - Village Map shows

that this land lies near the Salem-Bangalore Highway. As a matter of fact, the land in Survey No.117 is abutting the said Highway. The acquired

lands in Survey Nos. 17, 18 and 19 are also situated near the-Salem-Bangalore Highway that is abutting on the left hand side of the road.

Inasmuch as 4 (1) Notification had been published on 2.7.86, the sale transaction under Ex.A-2 dated 19.8.85 is nearly an year earlier to the 4 (1)

Notification, the same can be considered for ascertaining the market value of the acquired lands. Before ascertaining the value on the basis of

Ex.A-2, we shall consider the other two documents, namely, Exs. A-3 and A-4. Under Ex.A-3 dated 17.11.85, 987 1/4 sq.ft. in S.No.250 had

been sold for Rs.6,900. Here again, according to Ex.B-3 -Village Map, though it is abutting on the another road, it is far away from the acquired

lands, hence we are not inclined to refer the transaction covered under Ex.A-3. An extent of 880 sq.ft. of land in S.No.452/1 had been sold for

Rs.10,500 under Ex.A-4 dated 24.4.86. This is according to Ex.B-3-Village Map, situated on the northern end and quite far away from the

acquired lands, hence the same cannot be taken for consideration. The other document is Ex.A-5 dated 26.3.86 wherein 2 cents of land in

S.No.68 had been sold for Rs.3,400. No doubt, this land is situated adjacent to the acquired lands in S.Nos. 17, 18 and 19 on the western side.

As the total extent sold under Ex.A-5 is only 2 cents and it lies on the western side away from the Main Road, whereas the acquired lands are abutting the Main road, we are not inclined to refer the same.

8. The above discussion shows that among the several sale transactions, the sale transaction under Ex.A-2 dated 19.8.85 alone can be considered.

We have already stated that S.No.117 under Ex.A-2 is abutting the Salem-Bangalore Highway on the eastern side and the acquired lands in

S.Nos. 17, 18 and 19 are also abutting the very same Highway on the western side. The said sale had taken place one year prior to 4 (1)

Notification. As per Ex.A-2, one cent had been sold for Rs.2,000. Though the land acquisition officer was aware of the existence of land in

S.No.117, abutting the Salem-Bangalore Highway, it is not clear why he has chosen the land in S.No.115, which is little away from the Highways,

and fixed market value at the rate of Rs.26,490. When the land in S.No. 117 and the acquired lands in S.Nos. 17, 18 and 19 lie on the same

footing, we are of the view that it would be proper and just to fix compensation for the acquired lands as per Ex.A-2. However, we should not

forget the fact that a total extent of 6.25 acres were acquired for construction of building shed for Annai Sathya Transport Corporation. As already

discussed by us. if no other acceptable or comparable document is available for consideration, sale transaction involving smaller extent of land can

be considered by allowing reasonable deduction. We have already noted that the value for one cent under Ex.A-2 is Rs.2,000. Taking note of the

law laid down by the Apex Court in various decisions, we are constrained to deduct 40 per cent from and out of the value under Ex.A-2. In this

way, we fix the market value at the rate of Rs.1,200 per cent for the acquired lands. While arriving at the said amount, we have also taken note of

the argument of the learned senior counsel for the appellants that though on the date of acquisition the acquired lands are agricultural lands, they

situate with proximity to the Main Road and other Government offices having future potential value. A perusal of Ex. B-3-Map also reveals that the

acquired lands lie within the jurisdiction of Adhiyamankottai Panchayat and beyond Dharmapuri Municipal limits. Taking note of all the above

aspects, we are of the view that Rs.1,200 per cent would be just and proper compensation for the acquired lands and the rejection of the

reference by the learned Subordinate Judge cannot be sustained.

9. Now we shall consider the evidence of C.W.2, Sub Registrar of Dharmapuri West. In his evidence, he has deposed that during the year 1986,

the Government have fixed the guideline value in respect of the lands in Survey Nos. 18 and 19 in A. Jettihalli village at Rs.8-00 per sq.ft. He

further deposed that the said guideline value had been fixed based on the instructions/recommendations made by the Registration Department. In

cross-examination, he has admitted that the said guideline value was given effect from 1.3.1987. The learned Subordinate Judge, after noting the

fact that 4 (1) Notification had been published in the Gazette dated 2.7.86 and that the guideline value, according to C.W.2, would come into

force with effect from 1.3.1987, that is after 4 (1) Notification, has come to the conclusion that the same cannot be accepted for fixing market

value of the acquired lands. The learned senior counsel would point out that though the guideline value as explained by C.W.2, came into force

from 1.3.1987, it relates to various sale transactions that had taken place prior to 1986. First of all, let us consider how far the guideline value fixed

for registration purposes by the Registration Department is acceptable for fixation of compensation under the Land Acquisition Act. In the case of

Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another, , Their Lordships of the Supreme Court have held that fixation of

market value on the basis of basic valuation register is illegal and unsustainable. In para 7, Their Lordships have held in the following manner: -

7. The reasonable method to determine the market value of the acquired land is on the evidence of transactions of bona fide sales of acquired

land, but not on evidence of sales of such land got up having had knowledge of the proposed acquisition, the former would furnish reasonable basis

to determine the compensation. In its absence, bona fide sales but not manipulated sales of the lands in the neighbourhood possessed of same or

similar quality and having the same or similar advantages would give an unerring assurance to the court to determine just and proper compensation.

Such sales must not only be proved but also be bona fide transactions etc. These factors must be established as a fact by examining either the vendor

or the vendee. Marking of certified copies of sale deeds are not proof of either the contents or the circumstances in which it came to be executed.

Bona fide sale or series of sales of small pieces of land do not furnish the sole basis to determine market value. Bona fide sales may furnish

evidence of the market conditions for consideration. Fixation of market value on the basis of the basic valuation register is, therefore, illegal and unsustainable.

It is clear that the basic valuation register is maintained only for fiscal purpose of collecting stamp duty and registration charges. The market value

mentioned therein cannot form a foundation to determine the compensation u/s 23(1) of the Act. It is settled law that the market value should be

determined on the hypothesis of the price fetched in the bona fide sale by a willing vendor who would agree to sell the lands to a willing vendee of

the acquired land or the land in the neighbourhood possessed of similar features. The Notification u/s 47-A which is meant to be a guide for

collection of revenue cannot form the basis for determination of market value of the land u/s 23(1) of the Act. When the guideline value itself is not

the basis for fixation of market value for the acquired lands, we are of the view that the oral evidence of C.W.2-Sub Registrar is not helpful to the

case of the appellants. Further, merely on the basis of sale statistics furnished by the Office of the Sub Registrar or the Revenue Department,

market value for the acquired lands cannot be fixed. Accordingly, we are unable to accept the evidence of C.W.2 and the contention raised based

on his evidence.

10. Mr. N.R. Chandran, learned senior counsel for the appellants, by relying on Ex.B-5 letter dated 12.9.1986 of the Tahsildar, Dharmapuri to the

Revenue Divisional Officer, Dharmapuri, would contend that even the Tahsildar has assessed the value of the land at Rs.1,25,000 per acre. The

learned Subordinate Judge, after referring to the contents of the said letter (Ex.B-5) as well as the sale details referred to therein and after noting

the fact that only smaller extent of land, namely, 2 cents and 4 cents alone were sold, the Revenue Divisional officer rightly rejected the same and

fixed compensation based on the sale of 5 1/2 cents of land in Survey No.115. In this regard, Mr. N.R. Chandran, learned senior counsel for the

appellants, by drawing our attention to a decision of the Supreme Court in the

case of State of Jammu & Kashmir Vs. Mohammad Mateen Wani

and Others, , would contend that Ex.B-5 letter ought to have been accepted by the learned Subordinate Judge for determining the market price of

the acquired land. No doubt, in that case. Their Lordships have made an observation to the effect that the report furnished by the Tahsildar was

rightly relied upon by the Court below in determining the market price of the acquired land. A perusal of the said decision, particularly para 10

shows that the report of the Tahsildar was not challenged by any one before the District Court or before the High Court. No serious arguments

were also advanced before Their Lordships on behalf of Union of India or State of Jammu and Kashmir for rejection of the said, report. In that

context, the supreme Court approved the reliance made on the report of the Tahsildar. In our case, apart from the fact that only negligible extent,

namely, 2 cents and 4 cents were sold, in the absence of sale-deeds, we are unable to give much importance to Ex.B-5.

11. In the light of what is stated above, the market value of the acquired lands is fixed at the rate of Rs. 1,200 per cent or Rs.1,20,000 per acre.

Both the appeals are allowed in part. No costs.

12. Regarding the statutory amounts payable to the claimants, we make it clear that the claimants are entitled 30 per cent solatium only for the

market value of the acquired lands. In addition to this, they are entitled to additional amount at the rate of 12 per cent per annum from the date of 4

(1) Notification till the date of passing of the award or delivery of possession, whichever is earlier. We also make it clear that the claimants are also

entitled to interest at the rate of 9 per cent per annum from the date of possession for a period of one year and thereafter at the rate of 15 per cent

per annum till the date of deposit. The claimants are not entitled to interest on solatium and additional amount. It is further made clear that the issue

regarding grant of interest on solatium is pending before the Larger Bench of the Supreme Court, hence depending on the verdict of the Supreme

Court, the claimants are entitled to file appropriate petition before concerned Sub Court.