(2008) 01 MAD CK 0010

In the Madras High Court

Case No : A.S. No. 320 of 1997

Dharmalingam APPELLANT

Vs

Special Tahsildar (Land Acquisition) RESPONDENT

Date of Decision : 25-01-2008

Acts Referred:

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

Citation : (2008) 01 MAD CK 0010

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : V. Rangarajan, for the Appellant; A.K. Kumarasamy, for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This appeal has been preferred against the judgment and decree made in L.A.O.P. No. 195 of 1992 dated 30.07.1996

on the file of Subordinate Judge, Krishnagiri.

2. It is admitted that an extent of 14 cents of land in S. No. 15/5A2 classified as dry land in Gurugapatti village, Uthangarai Taluk was acquired for

the construction of a departmental buildings for Telephone Exchange and Staff Quarters. It is seen that notification u/s 4(1) of the Land Acquisition

Act, was published in the Official Gazette on 24.04.1989. As per the award Ex.B1, the respondent, Special Tahsildar, Land Acquisition,

Krishnagiri, after conducting enquiry, had fixed the market value of the acquired land. However, in the award, the respondent has stated the

market value of the acquired land at Rs. 17,000/-per acre, but fixed the market value for the acquired 24 cents of land at Rs. 81,600/- and also

added 30% additional amount of Rs. 24,480/- and as such estimated the total compensation at Rs. 1,06,080/-. The appellant herein received the

award amount under protest and at his request the matter was referred to u/s 18 of the Land Acquisition Act.

3. It is seen from the impugned judgment that the appellant claimant was examined as P.W.1 apart from examining P.W.2. On the side of the

appellant/claimant, Exs.A1 to A4 were marked. On the side of the respondents, the award passed by the land acquisition officer was marked as

Ex.B1; the sales statistics relating to the period from 01.03.1987 to 28.02.1990, in Gurugapatti village, was marked as Ex.B2 and the topography

showing the acquired land and the data land was marked as Ex.B3. An advocate Commissioner was appointed to inspect the property, who

inspected the properties and filed his report and sketch which were marked as Exs.C1 and C2.

4. Mr.R.Suresh Kumar, learned Counsel appearing for the appellant would contend that the Land acquisition Tribunal without following the

procedure had erroneously fixed the market value of the acquired land at Rs. 50,000/- and additional amount, solatium and interest were not

awarded as per Section 23 of the Land Acquisition Act.

5. On the side of the appellant/claimant documents relating to the sale of similarly placed lands, prior to the date 4(1) notification have been

marked. According to the learned Counsel for the appellant, the market value was fixed by the Tribunal, without any basis. It was further

contended that as per the award Ex.B3, the land acquisition officer, based on the document No. 1575/88 dated 12.12.1988, has stated that 0.05

acres of land, in S. No. 15/7B had been sold for Rs. 17,000/- and accordingly fixed the market value. However, in the award, the land acquisition

officer erroneously took the market value at Rs. 17,000/-per acre instead of 5 cents for the value of Rs. 17,000/- and fixed the compensation, to

be paid with solatium additional amount and interest though the market value should have been fixed at Rs. 81,600/-. It is seen that neither the

claimant nor the respondent had produced the aforesaid document viz., sale deed, document No. 1575 of 1988 dated 12.12.1988. Further, the

land acquisition officer has stated that the sale consideration for 5 cents of land is Rs. 17,000/-, in Ex.A3 letter dated 24.04.1989. However, the

Land Acquisition Officer, as per the Topo sketch, Ex.B3 has taken the data sale deed relating to the land in S. No. 91, which is far away from the

acquired land and therefore fixing the market value on the basis of the said data land cannot be construed as just and reasonable.

5. As per the oral and documentary evidence, it is clear that as per the sale deed, Ex.A1 relating to S. No. 15/7B 10 1/4 cents of land had been

sold at Rs. 35,000/- on 27.01.1989. Admittedly, the sale had taken place prior to the date of 4(1) notification and the land shown in Ex.A1 relates

to the very same survey number but, in different sub division. Under Ex.A2, Sale deed, on 11.10.1989 an extent of 5 cents of land had been sold

for Rs. 21,000/-. But, admittedly, the sale had taken place subsequent to the date of 4(1) notification. Therefore, as contended by the learned

Special Government Pleader appearing for the respondent, the subsequent sale deed Ex.A2 cannot be taken into consideration for deciding the

market value. Though the sale deed, Ex.A1 relates to the very same survey number and also for a similarly placed land and the sale had also taken

place prior to the date of 4(1) notification, the same was not considered by the Land Acquisition Tribunal. But, erroneously without any supporting

documents the Tribunal has fixed the market value of the acquired land at Rs. 50,000/- per acre and therefore, this Court is of the view that the

appeal should be allowed and impugned judgment and decree are to be set aside.

6. Learned Special Government Pleader appearing for the respondent submitted that while considering the market value as per Ex.A1, that 1/3rd

deduction to be made on the value of the land towards developmental expenses. It is seen that as per Ex.A1, an extent of 10 1/4cent of land had

been sold at Rs. 21,000/- at the rate of Rs. 3,414.63 per cent. The extent of the acquired land in the instant case, is 24 cents. Though the acquired

land and the land described in Ex.A1 are similarly placed lands, in the same survey number, in different sub divisions, while considering Ex.A1,

Sale Deed to decided the market value of the acquired land, this Court is of the view, to meet the ends of justice, to fix the market value of the

acquired land at Rs. 3,000/-per cent, by making reasonable deduction towards developmental expenses, since the land described in Ex.A1 is a

house site and the acquired land is yet to be converted as house site.

7. In the result, this appeal is allowed and the market value of the acquired land is fixed at Rs. 3,000/-per cent. Accordingly, the respondent is

directed to pay compensation for the acquired 24 cents of land at Rs. 3,000/-per cent with 12% additional amount from the date of 4(1)

notification till the date of award and 30% solatium. The appellant is also entitled to get 9% interest for one year from the date of award and 15%

subsequent interest for the balance amount to be paid. On the above terms, the appeal is allowed. Both the parties are directed to bear their own

costs.