(1970) 01 MAD CK 0001

In the Madras High Court

Case No : App. No. 493 of 1964 and 550 to 566 of 1965 and cross objections in App. 550 etc of 1965

Egappa Gounder APPELLANT

Vs

The Special Tahsildar (Land Acquisition) Ashok Leylands and Blue Mountain Estate, Saidapet, Madras-15 RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 25(2), 4(1), 53

Citation : (1970) 01 MAD CK 0001

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J

Bench : Division Bench

Advocate : S.S. Bharadrj, T.G. Aravamuthan, Chndramaouil K. Jagannatha Gramani, S. Govindaswamy and M.V. Krishnan, The Addle. Govt. Pleader and Mr. T.N.C. Rangarajan, for the Respondent

Judgement

Ramanujam, J.—An extent of 14 acres and 80 cent of land in Kathivakkam village, Saidapet taluk, Chingleput Dt, was acquired for

providing residential accommodation for workers and for expansion of factory and godowns, etc. for Ashok Leyland Ltd., Ennore in pursuance of

notifications under S. 4 (1) of the Land Acquisition Act dated 26th October, 1960 16th November 1969 and 5th April 1961. The Land

Acquisition Officer dealt with the lands acquired under 6 awards, Ex. B. 2 to B. 7. The awards under Ex B. 2 and B-7 dealt with the lands

abutting the Kathivakkam road and the Land Acquisition Officer awarded compensation at the rate ranging from Rs. 30 to Rs. 50 percent. The

awards covered under Ex. B. 3, B. 4 and B. 6 as also B-7 dealt with lands in the interior situate on the western side of the road abutting lends

covered by the awards in Ex. B. 2 to B-7 and the Land Acquisition officer fixed the value at Rs. 10 percent for these lands. Award under Ex. B, 5

dealt with the lands on the eastern side of the railway line running from Madras to Bezwada and the Land Acquisition Officer fixed the value of

these lands at Rs. 30 percent. The claimant in respect of these lands abutting the Kathivakkam road as well as those in the interior put forward

claims for compensation at the rate ranging from Rs 100 to Rs 1000 per cent and the claimants owning the lands on the east of the railway line

have put forward a claim at the rate of Rs. 100 percent before the Land Acquisition officer. Not satisfied with amounts a warded by the Land

Acquisition officer as compensation for the lands acquired, all the claimants sought references to the court below under S. 18 of the Land

Acquisition Act. The court below fixed the market value of the lands covered by the awards, B. 2 and B-7 which are abutting Kathivakkam road

at Rs. 73 percent and for the lands lying an the east of the railway line covered by the award B-5 at Rs. 50 percent. The lower court, however,

valued the lands covered by the awards under Ex. B-3. B-4, and B-6, which did not abut the Kathivakkam road but lie in the interior under two

categories adopting the belting system It took the lands immediately on the west of the road abutting tends covered by Ex B-2 and B-7 and

awarded compensation for that category at Rs. 50 percent while it valued the lands in the farther west and nearer to the Buckingham Canal at Rs.

35 percent. The State hat filed all the above appeals, except A. S. 493 of 1964, challenging the enhanced valuation fixed by the lower court and

the respondent in A. S. 550, 551, 554, 555, 556, 557, 559 and 560 to 566 of 1965 have filed Memorandum of cross objections seeking a farther

enhancement of the compensation at rates ranging from Rs. 50 to 200 percent. A. S. 493 of 1964 is an independent appeal filed by the claimant in

C.R.O.P. No. 95 of 1962 on the file of the lower court wherein he questions the decision of the lower court restricting his compensation at Rs. 50

percent though it has fixed the compensation for the lands acquired from him at the rate of Rs. 75 percent on the ground that the claimant has

restricted his claim to Rs. 50 percent.

2. The Land Acquisition Officer fixed compensation of Rs. 50 percent for the road abutting lands relying on the sales under Ex. B. 8 and B. 9

dated 17th February, 1958 and 9th May, 1959 respectively He considered Ex, B.

8 and B. 9 which are sale deeds in respect of some of the lands

acquired and which abut the main road. The price fetched under Ex. B. 8 and B. 9 was at the rate of Rs. 48 and Rs. 27 percent respectively. The

Land Acquisition officer took the price fetched under Ex, B 8 as the basis for this valuation. The court below, on the other hand, relied en Ex. A. 4

as the basis for fixing the market value of the road abutting lands. It considered the land in S. No. 45/1 covered by Ex. A. 4 as being situate in an

advantageous position opposite to the Ashok Leyland factory and the price fetched under Ex. A 4 cannot be granted to all the road abutting lands

and on that basis reduced the market value of the lands to Rs. 75 percent while it awarded compensation for survey No, 45/1 alone at the rate of

Rs. 100 percent which is the rate at which the property was purchased by the claimant under Ex. A 4 dated 7th September, 1960.

3. The learned Government Pleader seeks to justify the valuation made by the Land Acquisition officer in these appeals. ""He submits that the lower

court was not justified in relying on Ex. A. 4 fo. fixing the market value of the read abutting lands and that the lower court should have confirmed

the valuation adopted by the Land Acquisition officer."" it is pointed out that there was a preliminary enquiry in 1960 when the officials visited the

spot and made local enquiries, that this has given rise to speculation in the value of the lands in the locality, and that Ex. A. 4 came into existence

after such a preliminary enquiry preceding the notification under S. 4 (1) of the Land Acquisition Act, when the speculation has started. We are not

however willing to eschew the sale under Ex. A. 4 from consideration in ascertaining the market value of the lands acquired as urged by the learned

Government Pleader. It is true that there has been an inspection of lands sought to be acquired and a preliminary enquiry by the officials in August

and September 1960 and that the owners of the land became aware of the contemplated acquisition, even then. The awards in these cases make a

reference to the local inspection in the beginning of 1960 and preliminary enquiry in August and September, 1960 and the claim of the claimants for

Rs. 100 percent even at that stage. Though the notifications under S. 4 (1) of the Land Acquisition Act were published on 26th October, 1960,

16th November, 1960 and 5th April, 1961, as a result of the preliminary enquiry in the village for the purpose of the proposed acquisition on behalf of the company, the proper sales for acquisition were well-known to the owners of the lands in the area even before the date of the

notification. It also transpires that some of the claimants were contacted and their statements obtained during the preliminary enquiry in June 1960

long before the first notification dated 26th October 1960 under S. 4(1) as is evident from Ex. B. 13 and B. 14. The contention of the learned

Government Pleader that during the interval between the time when the Government''s intention to acquire this block of land became known to the

public and the date of the actual publication of the S. 4(1) notification, prices have shown an increase and that as such no weight should be given to

the sales recorded during the said interval. According to him the sale under Ex. A. 4 dated 7th August 1960 covering S. No. 45/1 which is a part

of the acquired property come into existence during such interval and that the sale under in. A. 4 was for an extraordinary high value which has

been prompted by the proposed acquisition of a large extent of land in the locality which was imminent - it is further pointed out that the lands in

the area acquired were sold in February 1958 under Ex. B. 8 at the rate of Rs. 47-86 percent and that the same lands have been sold under. Ex.

A. 4 for Rs. 100 percent a 1960 which shows the phenomenal rise in the price of the lands in the locality in view of this speculation arising out of

the impending acquisition.

4. As pointed out by the court below, sales subsequent to the date of knowledge of the acquisition cannot be condemned and left out of account

unless it is proved that the said sales for abnormal prices had been created only with a view to boost prices and to get higher compensation in the

acquisition proceedings for other lands in the locality. Unless the State is able to show that the sale under Ex. A. 4 has been motivated without

intending it to be real, the said sale cannot be ignored for the purpose of ascertaining the market value of the lands acquired. In this case the sale

under Ex - A. 4 has not been attacked as not being genuine but it is attacked only on the ground that it came into existence as a result of

speculation in prices in view of the impending acquisition. The Judicial Committee has expressed in The Secretary of State for Foreign Affairs v.

Charles worth pilling and Co. 28 I.A. 121, that:

There is another general consideration of great importance. The sections of the

Land Acquisition Act have been stated, which provide that land is

to be taken at its market value on a given day, and that the court is not, on the one hand, to give more because the object for which it is taken is

likely to increase its value, nor, on the other hand to give less because the same object is likely to increase the value of the owner''s remaining land.

That appears to their Lordships to exclude for both parties speculations on the effects which the railway may produce on prices, except to the

extent to which it is shown that such speculations had actually entered into the market price of this sort of land by 2nd November 1896.

5. In that case the lands of the plaintiffs in the islands of Mombasa were taken for a railway by the British Government under S. 6 of the Indian

Land Acquisition Act, 1894, which was made applicable to that area by order in council. While fixing the compensation for the lands acquired it

was held by the Privy Council that the plaintiffs were entitled under the Act to the market value thereof on the valuation date including such actual

speculative advance therein as had already taken place in consequence of the railway scheme; but excluding any future speculative advance from

the like cause.

6. In The Government of Bombay Vs. Merwan Moondigar Aga, the question arose as to whether the price fetched during the period when there

was tremendous speculation of land prices in Bombay in 1919 and 1920 can be taken into account for ascertaining the market value of the land

acquired in pursuance of a notification dated 2nd February 1920 it was contended for the State that the market value in S. 23 of the Land

Acquisition Act meant intrinsic value and such intrinsic value would exclude all transactions of speculative nature. Mulla J. observed while

answering that contention that it was a notorious fact, that a huge wave of speculation in land passed over Bombay in 1919 and 1920 starting in the

beginning of 1919 and reaching the high water mark in February 1920, that it maintained itself at that level until about August 1920, whereafter it

began to subside, and that in such circumstances the claimant was entitled to the benefit of the rise as he could have obtained that benefit had he

then sold the property in the market. The learned Judge took the view that in assessing the market value of the land under the Land Acquisition

Act, the element of rise in the price of land occasioned by speculation is to be taken into consideration and that, on principle, if an owner of land

could sell his land in the market at a given time for Rs. 10 per sq. yard, it would be inequitable and unjust that because the land is compulsorily

acquired under the provisions of the Land Acquisition Act, he should get less than Rs. 10 per sq. yard. The learned Judge was also inclined to

think that the mere fact that a parcel of land is bought by a speculator in land with the object of reselling it at a profit is no ground for disregarding

the sale in compensation cases under the Land Acquisition Act.

7. In Dhusabhai Polabhai and Others Vs. Special Land Acquisition Officer, Ahmedabad, while dealing with a similar contention that the transaction

of speculative nature in the locality should not he taken into account to find out the market value of the land acquired based on the opinion of the

Land Acquisition Officer in that case that:

Speculation in land in this particular area with knowledge of Impending acquisition was rampant and that, therefore, the land values in the various

transactions during this period of or 7 months had to be accepted, for purposes of determining the market value with a great deal of caution, if not

to be discarded altogether.

8. The Division Bench expressed that if a person desires to acquire land or settle down in a place which is full of promise for development the

desire could not be condemned as a mere speculative desire. There is nothing unreal or undesirable about it for, if the knowledge that the

acquisition by the Government is imminent raises the tone of the market and gives impetus to the market, a new market rate would be created and

the transactions would be governed by that rate and that it would be too dangerous a proposition to lay down and too unfair to comment on human

impulses to generalise and stigmatise every transaction of sale entered into after the market had risen as a speculative transaction or demonstration

of a profiteering tendency of a human kind, with due respect. We agree with the views expressed in the decisions cited above.

9. In this case also even though the impending acquisition which was known to the people in the locality raised the tone of the market and a new

market was created, it cannot be said that no genuine or real purchase could take place in view of the creation of an increased market rate. In view

of what we have stated above it is not possible for us to ignore the sale under

Ex. A. 4 which dealt with a portion of the property acquired, for

ascertaining the market value of the lands acquired in this acquisition. It is also not possible to base our valuation on Ex B-8 and B-9 as was done

by the Land Acquisition Officer for, the said sales were practically about two years before the date of acquisition and it is in evidence that there

was a sharp rise in prices from 1958 till the date of notifications under S. 4 (1) in these cases.

x x x

10. The discussion relating to facts is omitted --Ed.

x x x

11. The appellant is A. S. No. 493 of 1964 owning S. Nos. 39-B 5 and 39-B 10 and the cross objector in A. S. No. 557 of 1965 owning S. No.

39-B 9 B questions the decision of the lower court awarding compensation at the rate of Rs. 50 percent as against the value fixed by the court

below for this category of lands at Rs. 75 percent and they claim at the rate of Rs. 75 percent as par the values arrived at by the court below.

12. It is the claimants'' contention that notwithstanding their statement asking for a compensation of ''at least'' Rs. 50 per cent. they are entitled to a

higher compensation if the court takes the view that a higher compensation is payable for the lands, that merely because they have made a minimum

demand it does not mean that their lands are worth that much alone, and that the bar under S. 25(2) preventing the court from granting a higher

compensation than the amount claimed by the claimants before the Land Acquisition Officer will not apply to the facts of this case. According to

them they had claimed Re. 100 percent before the Land Acquisition Officer but only in their application for reference and in their statements before

the court, they had said that ''at least'' the rate of Rs. 50 percent should be given for their lands. It is contended that the claim for ''at least'' Rs. 50

percent in their application for reference under S. 18 and in their statements filed before the court cannot be considered as a restricted claim as

they had only given a minimum rate for valuation of their lands and that they are not bound to give any valuation in their application for refers once

under S. 18 and in their statements before the court. Merely because they mentioned the minimum amount they required for their lands in some

statements which are not obligatory will not bar them from getting the compensation at the rate fixed by the court in respect of the lands in question.

They referred to the decision In In Re: Raja Jagaveera Rama Muthu Kumara Venkateswara Ettappa Naicker Ayyan Avergal, Zamindar of

Ettayapuram, and urged that the court is bound to grant the full amount of compensation due for the lands acquired even though the claimants have

mentioned a lesser rate in their applications for reference under S. 18. In that case, the claimants had claimed a particular rate of compensation for

their lands in their application for reference under S. 18 Subsequently the claimants filed an application before the reference court for amending

their application for reference seeking a higher rate of valuation. The court below having refused such an amendment the claimants came to the

High Court by way of revision. In revision, this Court expressed the view that even without an amendment of the rate mentioned in the application

for reference under S. 18, the court is bound to award the full compensation which it fixes for the lands under acquisition and which was subject-

matter of reference before the court. The court took the view that it was not obligatory on the part of the claimants to claim any particular rate in

the application for reference and even if the claimants claim at a particular rate in their application for reference, the court''s power to fix the

valuation is not limited to that rate.

13. We are of the view that the said decision may not be applicable to the facts of these cases. There the claimants claimed at a particular rate in

their application for reference which was a proceeding before the Collector and even without such a valuation the Collector is bound to make a

reference once the claimant objects to the valuation made by the Collector. But in these cases the concerned claimants have filed statements before

the court after reference having been made, that they want ''at least'' Rs. 50 percent as compensation for the lands acquired and the court granted

the minimum amount claimed by them. In such a case as this, it is difficult to say that the claimants are aggrieved against the decision of the court

below. Having asked for a minimum compensation of Rs. 50 percent and the same having been granted by the court below they cannot be said to

have been aggrieved of the decision of a court. It is not possible for them to say that the court is wrong in granting Rs. 50 percent which they

claimed in their statements before the court. It is well settled that the burden of proof is generally on the claimants-objectors to substantiate their

objection as to compensation and that in proceedings under S-18 it is the objectors who have to lead evidence to show that compensation

awarded was not fair and adequate. The concerned claimants in these cases by claiming a compensation of at least Rs. 50 percent should be

deemed to have confined their relief before the lower court to that particular amount. S. 53 of the Land Acquisition Act provides that the

provisions of the CPC are applicable to proceedings before the Court of reference and so when a reference under S. 18 is made on the ground of

valuation, the proceedings take the colour of the suit, the claimants figuring as plaintiffs in the action and the Government or the acquiring officer as

the defendant. If the claimant has filed a statement before the court claiming a compensation at a particular tree, the court is to take into account

such claim made by the claimant and award compensation on that basis. Unless the claimant chooses to amend the valuation which he has given in

his statement before the court, it is not possible for the court to grant a higher compensation than the amount claimed by the claimant in his

statement before the court which is to be treated as a plaint. The case in In Re: Raja Jagaveera Rama Muthu Kumara Venkateswara Ettappa

Naicker Ayyan Avergal, Zamindar of Ettayapuram, is clearly distinguishable as it dealt with the claimants'' statement of valuation in the application

for reference under S. 18 which is a proceeding before the Collector and as there was no claim by the claimants before the court at a particular

valuation as in these cases. We are not inclined to accept the claimants'' contention that notwithstanding their restricted claim before the court they

are entitled to get the market value for the lands as fixed by the court for, if such a contention is accepted, it will mean that even where the

claimants inform the court that they are satisfied with a particular sum for the lands acquired from them and the court grants such sum claimed as

compensation, they will be entitled to claim none the less, a higher compensation if the court fixes a particular value for the other lands involved in

the acquisition and that they can ignore their pleadings and the reliefs claimed therein in the event of the court accepting a higher valuation claimed

by other claimants. In the circumstances, the contentions of the appellant in A.S. 493 of 1964 and of the cross-objectors in A.S. 557 of 1964 claimed at the rate of Rs. 75 percent for lands east of the railway line notwithstanding their restricted claim at Rs. 50 percent before the court

below have to fail.

x x x

[The discussion relating to facts is omitted-Ed.]

x x x

14. In the result A.S. 493 of 1964 is partly allowed with proportionate costs. A.S. 550 to 566 of 1965 are dismissed and the cross-objections in

A.S. 559, 563 of 1965 are allowed in part, and cross-objection in A.S. 566 of 1965 are allowed. There will, however, be no order as to costs.

The excess compensation awarded by us will be paid with the usual solatium of 15 percent. The cross-objections in other appeals are dismissed

without costs.

Ramaprasada Rao, J.

15. I entirely agree with the conclusions arrived at by my learned brother. I would however like to add a few lines on the interesting Question

which Has arisen in this case regarding the feasibility of acceptance of prices of properties, in the sector of acquisition prevailing as a result of prior

knowledge of the impending acquisitions. My learned brother has considered the judicial precedents touching this aspect in full and I do not want

to retrace the ratio therein once again.

16. If, in a given case, the owners of lands situate in the area of acquisition do come to know, or obtain a fair knowledge, of the possibility of the

lands being acquired for a public purpose, then such a special potential developmental activity would certainly have an impact on the market value

of such lands. This leads us to the question as to what is ""market value"". The term ""market value"" has not been defined and the Legislature left it to

courts to interpret same. The analytical and accepted explanation of the term is what a willing vendor, not obliged to sell, might be expected to

obtain in the market from a willing purchaser. There is therefore an objective rather than a subjective standard in it. Both the vendor and the

purchaser should be prompted by commercial principles. The actual condition of the land together with its existing advantages, immediate

possibilities and prospective capabilities go into the mechanics of computation. It is also clear that any benefit might accrue by reason of the

compulsory acquisition has to be overlooked. But the impact of a developed neighbourhood or the prospect of it in and around the sector of

acquisition turns such potential of the land, to account. Even so, the possible desire of an expanding and needy neighbour who can purchase the

property ought not to be lightly disregarded. However, such future utility which an owner of land can take advantage of, ought not to be

conjectural, should always lean towards reasonable reality based on business consultations. The doctrine of potential value being based on

conjecture is likely to be overdone and overstressed by an over anxious and aspiring owner. So checkmates as are necessary have to be found to

avoid a totally imaginary and ill-founded claim based on speculative potential value. The theory of potential value to the owner undoubtedly

projects something more than the market value as is popularly understood. If the acquired land is in the midst of a developed area or an industrial

area, its impact on the some ought not to be lightly ignored. It is not only such a situation about general potential value of the land but also the

particular potential value thereof gained in the locality by reason of the impending acquisition that do have a bearing on the market value of the

subsequently acquired lands. This is because the value of the land to the owner, in such circumstances, must be the basis for compensation. As has

been often said, the question is not what the persons who take the land will gain by taking it, but that the person from whom it is taken will lose by

having it taken from him. The intendment of the Act is that the acquired property has to be valued rebus sic stantibus, just as it is on the date of the

notification under S. 4(1) of the Act. The Land Acquisition Officer himself says :

Though the notification under S. 4(1) of the Land Acquisition Act in this case was published in the Fort St, George Gazette on 16th November,

1960 enquiry in the village for the purpose of proposed acquisition an behalf of the company was made in the beginning of 1960 and so was well

known to the owners of the lands in the area even before this date and the first notification in respect of another block of similar lands was

published as early as 26th October, 1960. In spite of all precautions taken to publish the notification under S. 4(1) with the greatest promptitude,

there is usually a certain interval between the time when the intention to acquire a block of land first became known and the date of actual

publication of the notification.

Apart from this, it is common ground the surrounding area in this locality has been notified, accepted and developed as a big industrial area. Ex. A.

12 is a plan showing the location of industries at Tiruvettiyur High Road and at Ennore, Kathiwalkam village. This sketch clearly proves that the

neighbours hood of the acquired lands was a fully developed and developing industrial area. Thus the surrounding was throbbing with activity with

large and growing industrial enterprises. Every one in the locality was thus aware of such developmental activities and potential in the proximity as a

whole and in their lands in particular. The acquired lands are every near the factory of the promoters. It is but natural that landowners in the area

legitimately expected, by reason of their nearness to expanding industry, an unearned increased in the land value in the locality. Such a potential

inhered in the land is an element which enters into the computation of compensation. Such an expectation cannot lightly be equalised to speculation.

It is referable to the genuine and bonafide desire of every landowner in the region. Such desire and expectation but to be turned to account at it

obviously touches upon the market value of the land in the sector based on such special adaptabilities. If such as Impress of circumstance is

furthered by positive information that the lands are required for one of the progressive industries in the surrounding area, then it undoubtedly raises

the market price of the lands In the sector and creates as it were a new market and a new market rate. Sales based on such a hopeful but genuine

market, are not promoted by mere speculation of lack of bonafides. They cannot be summarily characterised as free sales, but, on the other hand,

they reflect consistent bargains. No stigma is attached to such a sale in a new market which emerges a new increased market rate for the lands in

the region. The developmental projects around and the impending need of one of the pioneers of such industrial development in the locality which

are made known to the public, are considerations, which are might progressively improve the market rate of the lands within the area. If ''market

rate'' is what a willing vendor could get from a willing purchaser, we see no reason to discord such a permissive influence which, though

superficially bordering on speculation, is but the result of the impetus given to the market price of the lands in the region by the known and conspicuous industrial advancement in the surrounding and in the neighbourhood. I therefore agree with my learned brother that Ex. A-4 has to be referred to and relied upon. The excess compensation as fixed by my learned brother is just and it shall be worked out in the manner stated by him in his judgment.

