
(2014) 01 MAD CK 0047

In the Madras High Court

Case No : S.A. Nos. 654 and 676 of 2006

E.M. Swami Raju and Others

APPELLANT

Vs

Special Tahsildar, Adhi Dravida Welfare

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 2 MLJ 545

Hon'ble Judges : Pushpa Sathyanarayana, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pushpa Sathyanarayana, J.—Aggrieved by the judgments and decree dated 30.6.2005 passed by the Additional District Judge, Fast Track Court No. V, Chengalpet in L.A.C.M.A. No. 15 of 2001 and L.A.C.M.A. No. 17 of 2001, the land owners have preferred these Appeals. Since these Appeals arise out of Notification of the same date, they were heard together and are being disposed of by this common Judgment.

2. The facts that are necessary for the disposal of these Appeals are:

Regarding S.A. No. 654 of 2006, the Land Acquisition Officer published Notification u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 on 07.12.1995 so as to acquire a vast land including the appellant's lands in S. Nos. 166/2, 166/3, 166/4 and 166/5A, to a total extent of 1.05.0 Hectares Punja lands in Nochili Village, Tiruttani Taluk for providing house sites to Harijans. After complying with the formal procedures, an Award was passed by the Land Acquisition Officer on 22.3.1996 in Award No. 12/95-96 in Na.Ka. No. 27/93 granting Rs. 200/- per cent.

3. As regards S.A. No. 676 of 2006, Notification u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 was issued on 07.12.1995 so as to acquire a vast land including the appellants' lands in S. No. 36/9A to an extent of 0.43.5 Hectares Punja lands in Pattabhirama Madura

Sainathapuram Village, Tiruttani Taluk for providing house sites to Harijans. After complying with the formal procedures, an Award was passed by the Land Acquisition Officer on 16.3.1996 in Award No. 1/95-96 in Na. Ka. No. 1837/93/A granting Rs. 250/- per cent.

4. Dissatisfied with the Awards passed by the Land Acquisition Officer, the land owners/claimants preferred L.A.C.M.A. Nos. 15 of 2001 and 17 of 2001 respectively on the file of the Additional District Judge, Thiruvallur, u/s 9 of the Act 31/78.

5. The learned Additional District Judge, Fast Track Court No. V, Chengalpattu at Tiruvallur, by Judgments and Decree dated 30.6.2005, enhanced the compensation from Rs. 200/- to Rs. 600/- in respect of L.A.C.M.A. No. 15 of 2001 and in respect of L.A.C.M.A. No. 17 of 2001, the amount was enhanced from Rs. 250/- to Rs. 800/-. Aggrieved by the same, the Claimants/Appellants have preferred the Second Appeals on various grounds.

6. At the time of admission of the Second Appeals, the following substantial questions of law were formulated for consideration in S.A. No. 654 of 2006:

1. Whether the Court below was right in fixing the compensation to Rs. 600/- per cent against the documentary evidence available on record?

2. Whether the Court below is right in rejecting Ex. C. 1 from consideration as the same is a house site?

7. In respect of S.A. No. 654 of 2006, the following substantial questions of law were formulated for consideration:

1. Whether the Court below was right in fixing the compensation to Rs. 800/- per cent against the documentary evidences?

2. Whether the Court below was right in rejecting Exs. C. 1 to C. 4 to be of previous years to the year of acquisition?

8. Heard the learned counsel appearing for appellant and the learned Government Pleader.

9. It is a fact that the vast extent of land was acquired by the Government including the lands of the appellants herein. Learned counsel appearing for the Appellants would contend that

(a) the value of the land is fixed without considering the prevailing market value of the property on the date of Section 4(1) Notification;

(b) the grant of compensation fixed by the Additional District Judge, per cent is very low despite rejecting the data sale deeds;

(c) in the absence of any rebuttable evidence, Ex. C. 1 value should have been considered; and

(d) when the acquired lands are potential house sites and when residential houses are in existence, abutting the land under acquisition, the value fixed as compensation is minuscule.

10. As regards S.A. No. 654 of 2006, in L.A.C.M.A. No. 15 of 2001, the claimant had made a claim of Rs. 2700/- per cent. The date of Notification issued u/s 4(1) was on 07.12.1995 and Ex. C. 1 sale deed is dated 07.7.1994. The acquired land is situate in S. Nos. 166/2, 166/3, 166/4 and 166/5A to a total extent of 1.05.0 Hectares and Ex. C. 1 sale deed is in respect of S. No. 165/1A to an extent of 1200 sq. ft., i.e., 2 3/4 cent. Admittedly, the acquired lands are nearer to the C1 property and C1 land is a house site. The acquisition is also for providing house sites only. The land acquired and C1 land are dry in nature and in terms of potentiality for providing house sites, both are similar. Moreover, there are house sites in and around the land of acquisition. So the acquired lands are capable of being used as house sites.

11. It is relevant to note that the acquired lands are suitable for house sites. Ex. C. 1 land is a house site of 2% cents, i.e., 1200 sq. ft. which is adjacent to the acquired land. Being a house site, Ex. C. 1 is valued at per sq. ft. rate and not in terms of cents. As per Ex. C1, the price is fixed @ Rs. 11/- per sq. ft., i.e., Rs. 4800/- per cent and total consideration of Rs. 13,200/-. The Court has also to consider the plight of the land owners. The claimants are aggrieved by the rate of compensation since the lands acquired can be sold as house sites and has great appreciation value. In view of the acquisition, they are compelled to part with their lands and value paid to them are also less. Admittedly, the acquires lands are closer to highways and that the surrounding area is also housing colony.

12. In delivering the quantum of compensation, the Hon''ble Supreme Court, in Hasanali Khanbhai and Sons and Others Vs. State of Gujarat, , has observed as follows:

3. ...But it is settled law by series of judgments of this Court that the court is not like an umpire but is required to determine the correct market value after taking all the relevant circumstances, evinces active participation in adduction of evidence; calls to his aid his judicial experience; evaluate the relevant facts from the evidence on record applying correct principles of law which would be just and proper for the land under acquisition. It is its constitutional, statutory and social duty. The court should eschew aside feats of imagination but occupy the armchair of a prudent, willing but not too anxious, purchaser and always ask the question as to what are the prevailing conditions and whether a willing purchaser would as a prudent man in the normal market conditions offer to purchase the acquired land at the rates mentioned in the sale deeds. After due evaluation taking all relevant and germane facts into consideration, the court must answer as to what would be the just and fair market value.

13. Following the same, in A. Natesam Pillai Vs. Spl. Tahsildar, Land Acquisition, Tiruchy, , a subsequent case, in paragraph 20, it is held by the Hon''ble Supreme

Court as follows:

Para. 20: "This building potentiality of acquired land must also be taken into consideration while determining compensation. In *P. Ram Reddy v. Hyderabad Urban Development Authority* this Court held as follows: (SCC p. 314, para. 8)

8. Building potentiality of acquired land.--Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land u/s 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged u/s 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged u/s 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged u/s 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use i.e. on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged u/s 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged u/s 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now.

(emphasis supplied)

14. Again, in paragraph 22, it has been observed as follows:

Para. 22: Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, insofar as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration.

15. Considering all the above said features, this Court may analyse the evidence on record to determine the compensation payable to the Appellant/Claimant.

S.A. No. 654 of 2006:

16. As regards S.A. No. 654 of 2006, the Respondent had relied on Exs. R. 1 to R. 3 while passing the Award. Of the 59 items in Ex. R. 1, 58 were rejected for various grounds like classification, fertility of soil, nature, etc. Item No. 9 Sale deed dated 27.4.1994 relating to S. No. 169/5 was considered while passing the Award. Ex. R. 2 is Field Map showing the situation of the land acquired. On the other hand, the Appellant has relied on Ex. C. 1, which cannot be ignored as the land mentioned thereunder lies adjacent to the lands acquired. Hence, the first Appellate Court was justified in placing reliance on Ex. C. 1. However, the first Appellate Court was wrong in considering the value mentioned therein on the ground that the land in Ex. C. 1 is already an existing house site whereas the land taken for acquisition has to be converted in to house sites which has been a dry land.

17. It is true that the lands covered by Ex. C. 1 is a small tract of land when compared to the large area of lands acquired under the Notification. It is to be seen that any prospective buyer would only be too willing to pay same or higher price for the acquired lands than the land covered under Ex. C. 1 as it is located adjacent to the acquired land. No doubt, acquisition of large tract of land merits a discount in compensation. Even on giving a discount in respect of the acquired lands being a large tract as compared to Ex. C. 1 land, Rs. 600/- per cent fixed by Court below is very low and cannot be accepted as adequate and just compensation for the same.

S.A. No. 676 of 2006:

18. As regards S.A. No. 676 of 2006, in the L.A.C.M.A. No. 17 of 2001, the claimants had made a claim of Rs. 2000/- per cent. The date of Notification u/s. 4(1) of the Act is on 07.12.1995 and the sale deeds Exs. C. 1 to C. 4 relied on by the appellants are as follows:

19. The respondents relied on Exs. R. 1 to R. 3 while passing the Award. The respondent as per Ex. R. 1 considered 107 documents and rejected 106 of them on the grounds of classification, fertility of soil, nature, etc. Item No. 29 relied on by the respondent is situate in S. No. 30/5A, 30/5B and 30/6 which is 500 mtrs. away from the acquired land whereas the lands mentioned and relied on by the appellants are situate adjacent to the land of acquisition nearer to than that of the land compared by Acquisition Officer. Based on Exs. C. 1 to C. 4, the appellants had made a claim of Rs. 2000/- per cent in the L.A.C.M.A. The Additional District Judge, without adducing any reasons for either accepting or rejecting the value mentioned in the sale deed, had fixed at Rs. 1000/- per cent without any basis. The value, at any rate, basing reliance on Exs. C. 1 to C. 4 cannot be less than Rs. 2000/- per cent.

20. It is, therefore, held that that the appellant in S.A. No. 654 of 2006 shall be entitled to further compensation @ Rs. 1137/- per cent and after deducting 20% towards development charges, it would be Rs. 910/- (Rs. 1137/- - Rs. 227/-).

Accordingly, this Court enhances the market value at the rate of Rs. 1510/- per cent (Rs. 910/- + Rs. 600/-). The State shall also be liable to pay additional compensation and solatium on the amount enhanced and fixed including payment of interest in terms of the rate of interest awarded by Reference Court. As regards S.A. No. 676 of 2006, in view of the discussion made in the preceding paragraphs, this Court holds that the appellants are entitled to further compensation @ Rs. 1200/- per cent and after deducting 20% towards development charges, it would be Rs. 960/- per cent (Rs. 1200/- - Rs. 240/-). Accordingly, this Court enhances the market value at the rate of Rs. 1760/- per cent (Rs. 800/- + Rs. 960/-). The State shall also be liable to pay additional compensation and solatium on the amount enhanced and fixed including payment of interest in terms of the rate of interest awarded by Reference Court.

Both the appeals stand allowed to the extent indicated above. However, there shall be no order as to costs.