(2010) 08 MAD CK 0251

In the Madras High Court

Case No : Appeal Suit No''s. 773, 777, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875 and 876 of 2009 and 7, 706 and 707 of 2010

G. Seethadevi APPELLANT

Vs

The Special Tahsildar (Land Acquisition Officer) and Chief Executive Officer, CMDA RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

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

Citation : (2010) 5 LW 306

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Mohan, in A.S. Nos. 866 to 876 of 2009 and 706 and 707/2010, K. Padmanabhan, in A.S. Nos. 773 and 777 of 2009 and Manoj Srivatsan, in A.S. No. 7 of 2010, for the Appellant; V. Ravi, Spl. GP (AS) for Respondent-1 and C. Kathiravan, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard the arguments of Mr. R. Mohan, Mr. K. Padmanabhan, Mr. Manoj Srivatsan, learned Counsel for the appellants, Mr. V. Ravi, learned Special Government Pleader (AS) for the 1st respondent and Mr. C. Kathiravan, Standing Counsel for CMDA, the 2nd respondent in all the appeals.

2. In all these appeals, the appellants are the claimants/land owners. Their lands situated in Koyambedu were acquired for the purpose of establishing Koyambedu Market Complex at Koyambedu by the Chennai Metropolitan Development Authority. After following due procedure, the lands were taken over by Award No. 1 of 2004 during May 2004. The aggrieved appellants raised objection with reference to the rate of compensation, which was fixed at Rs. 407/- per Sq.ft.

3. The references were registered as different LAOP numbers and the matter was registered as LAOP Nos. 1/2005 to 6/2005, 8/2005 to 15/2005 and 18/2005 to 22/2005. The matters were grouped together and heard by the VI Assistant City

Civil Judge, City Civil Court, Chennai.

4. Before the Reference Court, on behalf of the claimants, G. Kothandapani, claimant in LAOP No. 21 of 2005 was examined as C.W.1. On their side, 9 documents were filed and marked as Exs.C.1 to C.9. Exs.C.1 to C.5 and C.7 are various sale deeds relating to the sale transactions in that area. Ex.C.8 is the previous award in Award No. 3/2001. Ex.C.9 is the Award passed in the present acquisition. On behalf of the acquiring authority, one Jon was examined as R.W.1 and one Sale Deed dated 17.2.2001 was marked as Ex.R.1.

5. The Reference Court on an analysis of the materials placed (both oral and documentary) came to the conclusion that the market rate of compensation fixed by the acquiring authority, at the rate of Rs. 407/- per Sq.ft was low. Therefore, taking note of the previous judgment in LAOP No. 14 of 2002 dated 14.11.2006 by the very same Reference Court, it fixed the compensation at Rs. 825/- per Sq.ft by a common judgment dated 29.12.2008. The acquiring authority is not aggrieved by the said judgment and there were no appeals on their side. It is only the land owners, who are aggrieved by the fixation of compensation at Rs. 825/- per Sq.ft and are before this Court.

6. The following table will show the name of the claimants, the LAOP Numbers, with which they are concerned and the corresponding Appeal Suits filed by them.

Sl. No. Name of the claimants L.A.O.P. No. APPEAL No. 1 G. Seethadevi 1/2005 866/2009 2 A.J.Babiamma 3/2005 867/1009 3 1. A.J. Babiamma 8/2005 868/1009 2. R. Rajeswari 3. A.J. Ramamurthy 4. A.J. Raghupathy 5. A.J. Sundaramurthy 6. S. Radha 7. A.J. Kalpana 4 Y. Srinivasulu 9/2005 869/1009 5 R. Mala 10/2005 870/1009 6 E.R. Kalai 12/2005 871/1009 7 P. Venkatarathinama 13/2005 872/1009 8 P. Seshaiah 14/2005 873/1009 9 K. Chandra Babu 15/2005 874/2009 10 1.A.J. Radha 19/2005 875/2009 2.A.J. Kalpana 11 P. Varaprasada Rao 22/2005 876/2009 12 G. Kothandapani 21/2005 773/2009 13 1. V.R. Sarjoja 18/2005 777/2009 2. H. Prabhavathi 3. A. Premila 4. U. Panchami 5. R. Priya 6. R. Jayaprakash* *(3rd respondent is transposed as 6th appellant) 14 Padma 11/2005 7/2010 15 K.N. Sampath 20/2005 706/2010 16 P. Sanjeevi 2/2005 707/2010

7. On behalf of the claimants, it was contended that the court below by merely referring to its earlier judgment in LAOP No. 14 of 2002, did not look into the other materials placed before it, namely Exs.C.1 to C.5 and C.7. In that process, it denied substantial compensation to which the land owners are entitled to. Alternatively, it is submitted that the Reference Court inasmuch as relying upon the previous judgment passed in LAOP No. 14 of 2002 dated 14.11.2006 was concerning the previous award passed in that area in Award No. 3/2001 marked as Ex.C.8. Therefore, the market rate of compensation is reflected in the said award. Then the present award came to be passed after three years. Therefore, necessary appreciation on the land cost was not given by the court below.

8. Apart from that, Mr. K. Padmanabhan, learned Counsel appearing for the

appellants in A.S. Nos. 773 and 777 of 2009 also submitted that in his cases, they had demanded Rs. 40 Lakhs per ground as a compensation. Because of their inability to meet the exorbitant court fee, they have restricted their claim for additional compensation at the rate of Rs. 30 Lakhs per ground, which works out to Rs. 1250/- per Sq.ft. In this context, the learned Counsel also submitted that they had produced two sale deeds Exs.C.1 and C.2, which are more comparable to the lands which are acquired. Therefore, they are entitled for a higher compensation.

9. It is seen from the records that Section 4(1) Notification was issued on 25.1.2001. The award in 1/2004 came to be passed on 31.5.2004. The acquiring authority considered 1290 sale transactions, which had taken place three years before the date of 4(1) Notification, namely 31.8.1998 to 24.9.2001. In Ex.C.1, which is the Sale Deed dated 9.2.1998, the land has been sold at Rs. 40 Lakhs per ground. Ex.C.2 is the Sale Deed dated 10.12.1997. Ex.C.3 is the Sale Deed dated 29.12.2003. Ex.C.4 is the Sale Deed dated 17.4.1998. Ex.C.5 is the Sale Deed dated 26.10.1999. In the sale transactions shown, the land has been sold at the rate of more than Rs. 2,000/- per Sq.ft.

10. R.W.1, who deposed on behalf of the acquiring authority states that in LAOP No. 14 of 2002, the very same Reference Court on 14.11.2006 had fixed the compensation at Rs. 825/- per Sq.ft. The Topo Map, which has been marked as Ex.C.6 shows the lay out of the area in Survey No. 160/3 in part and 163/2 in part and the lands were sold as house sites, which are adjacent to the market rate. R.W.1 also admitted that some of the sale transactions were examined for a period of three years and that the documents show that the sale transactions had taken place at the rate of Rs. 1250/- to 1925/- per Sq.ft in that area. There is no reason given for fixing the lower rate of compensation. The Reference Court recorded these facts, but, yet arrived at the compensation on the basis of its previous judgment, which is rather unfortunate.

11. Though Mr. V. Ravi, learned Special Government Pleader (AS) contended that the acquiring authority had considered the previous judgment only, which reflected the market rate of compensation in the same area and for the subsequent acquisition, there should not be any higher rate of compensation. He further contended that the judgment under appeal does not require any higher rate of compensation.

12. However, as rightly contended by the learned Counsel for the claimants that if the Reference Court had to arrive at the market rate of compensation, which shall reflect the ground reality. If it wanted to rely upon its own earlier judgment, which had become final and that judgment in LAOP No. 14 of 2002 dated 14.11.2006 related to award in 3/2001 (marked as Ex.C.8), then the proper escalation on the compensation ought to have been given. Inasmuch as in the subsequent three years, appreciation of value of the land would have taken place. Hence, the judgment under appeal requires interference.

13. The Supreme Court vide its judgment in Mandal Revenue Officer and Anr. v. C.R. Bhagwanth Rao reported in (2005) 10 SCC 478 has held that if witnesses produced the sale agreements, which were in stamp papers, in cross-examination their genuineness or consideration is not questioned and accepted by the Reference Court, then the High Court should not interfere in the finding of fact. In the present case, the court below did not take into account the exemplars produced in Exs.C.1 to C.5 and also Ex.C.7. On the other hand it choses to follow its own earlier judgment without giving due credit to the appreciation towards the cost of the land.

14. The Supreme Court in Revenue Divisional Officer-Cum-L.A.O. Vs. Shaik Azam Saheb etc. etc., while considering the guidelines provided u/s 23 of the Land Acquisition Act held that if any subsequent sale deeds are produced with reference to the notification issued earlier, suitable yearly escalation on the price can be made from the base year. In that case escalation was fixed at the rate of 10%.

15. Very recently, the Supreme Court in Civil Appeal No. 36 of 2004 in A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy by judgment dated 11.8.2010 has held in paragraph 22 that potential value of the land to be used for future purpose can also be the relevant factor for determining the market rate of compensation. In paragraph 22, it was observed as follows:

22. Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, in so far as it relates to the use to which is reasonably capable of being put in the immediate or near future, must be given due consideration. The present acquired land has all the potentiality to be used as building sites, even in the immediate future, as it is located at a place in and around which building activity has already started. The evidence on record also clearly indicates that acquired land is abutting the main road. The acquired land is also surrounded by schools, Panchayat Union office, shops and residential building in all three sides. The High Court also found, as a matter of fact, that the area where the acquired land is situated is fit for construction of houses. On an overall consideration and appreciation of the records, we feel that the deduction due to the small size of the exemplar land can easily be set off with the corresponding increase in price of the acquired land when compared with the land in Ex.A.3 from the point of view of potential value.

16. When these precedents are applied, then the judgment rendered by the Reference Court in fixing the compensation at Rs. 825/- per Sq.ft on the basis of its own earlier judgment relating to LAOP No. 14 of 2002 is clearly on the lower side. It is no doubt true that the exemplars produced by the claimants were not considered by the court below. In fact, even C.W.1 had deposed in cross-examination that the neighbouring lands were acquired only at the rate of Rs. 825/- per Sq.ft. Taking into account all these factors, this Court is of the view that the market rate fixed at the rate of Rs. 825/- per Sq.ft should be properly accelerated and taking into account the subsequent appreciation in the land cost,

as held by the Supreme Court. If 10% appreciation is granted at the rate fixed by the court below, then the compensation will easily work out to Rs. 1097/- per Sq.ft. If that is rounded off, it will work out to Rs. 1100/- per Sq.ft. In most of the Appeals, the claimants have restricted their claim only to Rs. 1,100/- barring A.S. Nos. 773 and 777 of 2009. If the fair rate of compensation is fixed at Rs. 1100/- per Sq.ft, then there is no justification for the claimants in those two appeals to get higher compensation considering that the lands acquired are from the very same area and for the very same purpose.

17. Hence, all the Appeal Suits are allowed to the extent indicated above. The compensation payable to the appellants to be worked out at the rate of Rs. 1,100/- per Sq.ft together with other statutory payments to which they are entitled to. However, under the peculiar facts and circumstances of the case, the parties are allowed to bear their own costs. It is ordered that though a common judgment is pronounced, the learned Special Government Pleader (AS) and the learned Standing Counsel for Chennai Metropolitan Development Authority are entitled to get separate set of fees.

