
(1960) 03 MAD CK 0011
In the Madras High Court
Case No : Appeal No. 587 of 1956

Hidayath Unnissa Begum

APPELLANT

Vs

Special Deputy Collector, Tiruchirapalli

RESPONDENT

Date of Decision : 21-03-1960

Acts Referred:

Land Acquisition Act, 1894 — Section 27(2)

Citation : AIR 1961 Mad 174

Hon'ble Judges : Jagadisan, J; Balakrishna Aiyar, J

Bench : Division Bench

Advocate : A.V. Narayanaswami Iyer, for the Appellant; Govt. Pleader and A. Ramanathan, for the Respondent

Final Decision : Dismissed

Judgement

Balakrishna Aiyar, J.—At the instance of the Municipal Commissioner, Tiruchirapalli, Government acquired for purposes of a bus stand an

extent of 14,438 sq. ft. in T. S. No. 2250 of Tiruchirapalli town. The notification u/s 4(1) of the Land Acquisition Act was published on 11-6-

1952. On 31-3-1953. the Land Acquisition Officer passed an award determining the compensation payable at as. 8 a sq. ft. On 24-4-1953, one

Hidayat Unnissa Begum being one of the persons interested in the land filed an application before the Land Acquisition Officer claiming

compensation at Rs. 5 per sq. ft. and asking that a reference be made to court.

Accordingly, on 20-5-1953, the Land Acquisition Officer made a reference to the Subordinate Judge of Tiruchirapalli. On 12-3-1956, the learned

Subordinate Judge passed an award fixing the compensation at Rs. 1-4-0 a sq. ft. As regards costs, he directed that the Collector should pay the

claimant Rs. 215-10-0 as costs and that the claimant in her turn should pay to

the Collector costs amounting to Rs. 500. The dissatisfied claimant has now come to this court in appeal. Her case is that in any case compensation should have been awarded at the rate of Rs. 3 a sq. ft.

2. The property in question lies inside an area to the north of which runs a street called Singara Tope Street. To the west is a highway called the

Western Bouleward Road. To the south is a theatre called Gaiety Talkies. But this property does not abut on either the Singara Tope St. or the

Western Bouleward road. Access to Singara Tope St. is had by two passages, one about 4 feet wide and the other about 9 feet wide.

Near the points where these passages enter Singara Tope St. are located a barber's shop, another petty shop, a electric shop, a furniture shop and

a building which is described as a furniture stores. To the south are a few thatched sheds and a workshop apparently attached to the electric shop.

A little to the east of the land which has been acquired is a structure labelled diamond factory. The most attractive feature of this plot, according to

Mr. Narayanaswami Iyer, learned counsel for the claimant, is its proximity to the various colleges in Tiruchirapalli and the railway station.

3. The dimensions of the property acquired are 86 ft. x 161 ft. 101 ft. x 149 ft. It will be appreciated that this property is much too small for the

location of any large industry. But, of course, it can be used for housing some cottage industry or other. It is hardly likely that any commercial or

trade establishment would take up this place because it does not abut on any public thoroughfare.

Mr. Narayanaswami Iyer pointed out that the Gaiety Talkies are immediately to the South and the proximity of the theatre is an advantage to

anybody who desires to install a commercial or trading establishment on the plot. But then, even if anybody visiting the talkies desires to enter the

plot, he cannot do so directly from the Gaiety Talkies. He will have to go a long way round via the West Bouleward Road and Singara Tope St. to

enter the plot. The proximity of the Gaiety Talkies to this area cannot, therefore, materially add to its value.

4. If we consider the suitability of this plot for the construction of houses, it will be readily appreciated that persons whose income enables them to

maintain cars are not likely to choose this place at all, in view of the fact that, apart from other circumstances, access to it is only by a narrow

passage 9 feet wide. The place can however be used to construct houses for people in the lower income groups. But people in those categories

will not be able to pay very extravagant prices

5-6. The oral evidence adduced in this Case about the value of this land is of little value.

(After considering the evidence his Lordship proceeded:) The only concrete basis for valuing this property is to be found in Ex. A-2. That is a

document which was executed on 25-11-1952, and whereunder an extent of 33 ft. x 38 ft. of land in T.S. No. 24-25 was sold to the Muslim

Literary Society at the rate of Rs. 2-8-0 a sq. ft. We do not think that that price can be applied to the property we are now concerned with.

In the first place, the property purchased by the Muslim Literary Society was a very small bit, viz., 1255 sq. ft. that is to say, it was only a little

more than half a ground in area. A person who purchases a very small bit of land for his convenience may be prepared to pay something more than

its fair value. In the second place, the property covered by Ex. A-2 has direct access from a public street or lane.

In the third place, that purchase was effected subsequently to the notification u/s 4(1) of the Land Acquisition Act. In matters of this kind, it is

impossible to completely eliminate the subjective element. The learned Subordinate Judge fixed the price at Rs. 1-4-0 a sq. ft., and we are unable

to say that in doing so he made a mistake, We are, therefore, not prepared to interfere with the value he was fixed.

7. As already stated, the learned Subordinate Judge directed that the claimant should receive costs amounting to Rs. 21.5-10-0 and pay costs

amounting to Rs. 500. There was some argument as to whether this order is in accordance with the provisions of Section 27 of the Land

Acquisition Act That section runs as follows:

(1) Every such award shall also state the amount of costs incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court shall be of opinion that the

claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs

should be made or that he should pay a part of the Collector's costs.

Sub-section (2) may be broken up in this way (1) When the award of the Collector is not upheld, the court shall ordinarily direct the Collector to

pay costs; (2) But the court is not bound to do so in every such case. If the court should from the opinion, that the claim of the applicant was

extravagant, or that he was so negligent in putting his case before the Collector, then the court may make a different order as regards costs. (3)

The court may in such cases direct that some deduction be made from the costs of the claimant or that he should pay a part of the Collector's

costs.

The controversy was over what the last set of words mean. It was suggested that the Court can do only one of the two things: (a) either make a

deduction from the costs of the claimant; or (b) make a direction that he should pay a part of the Collector's costs; but that it cannot do both. In

other words, the argument was that the word "or" towards the end of the sub-section should be read disjunctively. We have given some thought to

the matter and have reached the conclusion that to construe the word "or" disjunctively would be to impose on the discretion of the court a

limitation which may produce hardship and which could not have been intended.

Ordinarily, when a litigant succeeds in part and fails in part, the order most commonly made is to the effect that he should pay and receive

proportionate costs. And very often that would be the most equitable order to make. If the word "or" is read disjunctively, courts would be

precluded from passing an order of this nature. At page 238 of "Maxwell on the Interpretation of Statutes" 10th Edn. it is stated "To carry out the

Intention of the legislature, it is occasionally found necessary, to read the conjunction, "or" and "and" one for the other." The present seems to be a

case in which this rule may be properly applied. In this view, the court may order that a certain amount be deducted from the costs of the claimant

or it may order that the claimant should pay part of the Collector's costs or it may do both.

8. That being so, the appeal fails in toto and is dismissed with costs.