
(2002) 09 MAD CK 0175

In the Madras High Court

Case No : Review Application No. 69 of 2001 in A.S. No. 591 of 1994

Jayaraman and Appar

APPELLANT

Vs

The Union of India (UOI)

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Land Acquisition Act, 1894 — Section 4(1), 51A

Citation : AIR 2003 Mad 29 : (2002) 4 LW 204 : (2002) 3 MLJ 732

Hon'ble Judges : P. Thangavel, J;P. Sathasivam, J

Bench : Division Bench

Advocate : M. Balasubramaniam, for the Appellant; T. Murugesan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Thangavel, J.—This Review Application has been filed by the respondents as review applicants against the judgment and decree dated 23.02.2001 and made in A.S. No.591 of 1994 on the file of this Court.

2. The lands of the review applicants in Ward No. G Block No.3 and T.S. No.17/7 in Keezhaveli Village, Karaikal Commune and Taluk were acquired for construction of a Stadium to provide playground facilities to the students of schools and colleges at Karaikal by the Union of India, the first respondent herein, through the Land Acquisition Officer - cum - Sub-Collector (Revenue), Karaikal, Pondicherry, the second respondent herein, by issuing a notification u/s 4(1) of the Land Acquisition Act on 26.12.1989 after getting approval of the Government in G.O. Ms. No.82 dated 14.12.1989 and after following the procedure to be followed for acquisition of the lands under the said Act. The second respondent, after taking into consideration of the data sale deeds in sales statistics, fixed the market value of the lands acquired from the review applicants at Rs.2550/- per Are. The matter was referred to the Reference Court, at the request of the review applicants, and the Reference Court, after taking into

consideration of the material evidence placed before the said Court, fixed the market value of the land at Rs.13,500/- per Are in L.A.O.P. No.37 of 1993 on the file of the Reference Court (Additional District Judge, Pondicherry at Karaikal). Aggrieved at the Award passed by the Reference Court on 24.01.1994 in L.A.O.P. No.37 of 1993 referred to above, the respondents herein as appellants have filed the appeal in A.S. No.591 of 1994 on the file of this Court. The said appeal was heard along with another appeal in A.S. No. 583 of 1994 filed against one A.V.Subramanian by the respondents herein as appellants.

3. After considering the submission made on both sides, this Division Bench of this Court has fixed the market value of the lands acquired from the review applicants and also the respondent in A.S. No.583 of 1994 at Rs.7000/- per Are, reducing the market value fixed by the Reference Court, by common judgment dated 23.02.2001. It is against the judgment delivered by this Division Bench of this Court, the respondents in A.S. No.591 of 1994 as review applicants have come forward with this Review Application.

4. The learned counsel appearing for the review applicants, inter alia, contends as follows: (i) The document marked as Ex.A.4 in L.A.O.P. No.37 of 1993, which document was marked as Ex.A.15 in L.A.O.P. No.42 of 1993 by one Pattammal, Banumathi and Kabeerdas, should have been accepted as accepted by the Reference Court in view of proving of the said document by examining G.Kabeerdas in L.A.O.P. No.42 of 1993 and should not have been rejected by this Division Bench while arriving at the market value of the land under consideration; (ii) The Division Bench, which has accepted the potential value of the lands as house sites, ought to have accepted the market value fixed at Rs.13,500/- per Are by the Reference Court and it should not have been reduced; (iii) The learned Government Pleader, Pondicherry, had cited irrelevant and incorrect decisions contrary to the facts and records and based on such decisions referred to by the learned Government Pleader, Pondicherry, the Division Bench ought not to have acted, since Section 51(A) of the Land Acquisition Act enables the Court to admit the document in evidence without any one of the parties to the document being examined as per the law laid down by the Honourable Apex Court; (iv) The learned Government Pleader, Pondicherry, as an officer of Court, ought to have brought to the notice of this Division Bench about the Award passed in L.A.O.P. No.19 of 1990, marked as Ex.A.5 in L.A.O.P. NO.37 of 1993 by the review applicants, which stood unaltered for want of filing of appeal even though the said fact has not been brought to the notice of this Division Bench by the learned counsel appearing for the review applicants at the time of arguing the appeal. It is on these grounds, the learned counsel appearing for the review applicants wants this Division Bench of this Court to interfere with and review the judgment and decree passed by this Division Bench on 23.02.2001.

5. Per contra, the learned Government Pleader, Pondicherry, contends that the document Ex.A.4 marked in L.A.O.P. No.37 of 1993 on the file of the Reference

Court, Karaikal, has not been proved then as per the law laid down by the Honourable Apex Court, that the Division Bench has fixed the market value of the lands acquired for construction of the stadium taking into consideration of the sale deed to which the respondents in connected appeal are parties just before the issue of notification, that the decisions cited before this Division Bench are the correct legal positions suitable to the facts and circumstances of the case and no law has been misquoted before the Division Bench, that the decision extracted in the Review Application without mentioning the mode of citation is the law laid down by the Honourable Apex Court subsequent to the delivery of the judgment by this Division Bench of this Court, that even in the said decision, the Honourable Apex court has observed that there is no compulsion on the part of the Court to accept the transaction recorded in the document produced before Court, but it is open to the Court to treat them as evidence and not bound to treat them as reliable evidence, that the fact of passing an Award in L.A.O.P. No.19 of 1990 remained unaltered for want of filing an appeal is a matter to be pleaded and proved by the review applicants to the satisfaction of the Court and having failed to comply with the requirements, the learned counsel appearing for the review applicants cannot find fault with the Government Pleader, Pondicherry, or the Division Bench of this Court, that in any event, there can be no appeal in the guise of a Review Application by raising the above said grounds questioning the market value fixed by this Division Bench and that, therefore, the Review Application is not maintainable.

6. In State of U.P. and another Vs. Rajendra Singh, , the Honourable Apex Court was pleased to hold that it is settled law that the sale transactions filed either in the narration of Award or documents, without examination of either the vendee or the vendor, is not evidence. It has also been held that it is the duty of the Court to carefully assess the evidence on the touchstone of human conduct and prudent purchaser.

7. In Meharban and others etc. etc. Vs. State of U.P. and others, , the Honourable Apex Court was pleased to hold that since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence though certified copies marked u/s 51-A of the Land Acquisition Act are available and that, therefore, all the sale deeds stand excluded. It has also been held that it is the duty of the Court to take all the relevant factors into account before determination of the compensation. The same principle has been laid down by the Honourable Apex Court in A.P. STATE BOARD TRANSPORT CORPORATION, HYDERABAD vs. P.VENKAIAH AND OTHERS 1997 1 SCC 128 by following the decision rendered in Meharban and others etc. etc. Vs. State of U.P. and others, . The law laid down by the Honourable Apex Court was in force as referred to above while the judgment by this Division Bench was delivered on 23.02.201.

8. The learned counsel appearing for the review applicants, while extracting the principles laid down by the Honourable Apex Court in the Review Application, has wantonly omitted to quote the mode of citation of the case in which certain

observations were made by the Honourable Apex Court subsequent to the delivery of the judgment by this Division Bench of this Court. The portion extracted by the learned counsel for the review applicants is from the decision rendered by the Honourable Apex Court in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, . In the latest decision rendered after the delivery of the judgment by this Division Bench of this Court in this case, the Honourable Apex Court was pleased to observe that when the Section says that certified copy of a registered document "may be accepted as evidence as the transaction recorded in such document", it enables the Court to treat what is recorded in the document, in respect of the transactions referred to therein, as evidence. The Honourable Apex Court has also observed that the words "may be accepted as evidence" in the Section indicate that there is no compulsion on the Court to accept such transaction as evidence, but it is open to the Court to treat them as evidence. The Honourable Apex Court emphasizes that merely accepting them as evidence does not mean that the Court is bound to treat them as reliable evidence and the Court cannot, therefore, be faulted for relying on the sale transactions recorded in documents though no one was examined for proving such transactions. Discretion, either to accept or to reject the document even though such document may be accepted as evidence without examining a party to the document, has been given to the Court in the said decision. The law laid down by the Honourable Apex Court in the case cited above, to hold the judicial field, has been rendered subsequent to the delivery of the judgment by this Division Bench in the case on hand and, therefore, the Division Bench cannot anticipate such decision while it rendered the judgment in this case after hearing both sides based on the law as laid down by the Honourable Apex Court then in this country. In view of the said decision, the contention raised by the learned counsel appearing for the review applicants that the learned Government Pleader, Pondicherry, has cited decisions contra to the law then in force, which have allegedly misled this Court, cannot be accepted. The contention raised by the learned counsel for the review applicants relying on the principles laid down in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, , which was rendered subsequent to the delivery of the judgment in these appeals by this Division Bench, cannot advance the case of the review applicants in any respect.

9. Ex.A.4, which stands not proved as per law then in existence, was rightly not considered by this Division Bench. The alleged fact of proving the said document by examining one of the parties to the document in L.A.O.P. No.42 of 1993, which has nothing to do with and which was not considered along with the connected appeals inclusive of A.S. No.591 of 1994, will not help the review applicants in any respect unless the said document has been proved as known to law then.

10. In Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., , the Honourable Apex Court has held as follows:

"The best evidence of the value of property are the sale transaction in respect of the acquired land to which the claimant himself is a party, the time at which the property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out. They are all relevant factors."

11. There are material evidence available on record to show that the respondent in A.S. No.583 of 1994 (connected appeal) and his wife were parties to the sale transaction in connection with a portion of the land, which is adjacent to the land acquired, for construction of the stadium from the said respondent prior to the issue of notification u/s 4(1) of the Land Acquisition Act and the said document has been taken into consideration in arriving at the market value as per the principles laid down by the Honourable Apex Court in the case referred to above. It is relevant to point out that the land of the review applicants as well as the land of the respondent in connected appeal in A.S. No.583 of 1994 were acquired in one and the same notification for construction of stadium.

12. In Land Acquisition Officer and Sub-Collector, Gadwal Vs. Smt. Sreelatha Bhoopal and another, , the Honourable Apex court has held that it is well settled legal position that small pieces of land cannot offer the same market value when a large tract of land is purchased in an open market by a willing and prudent purchaser. The same principle has been laid down by the Honourable Apex Court even in The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omana Tumari and others etc., , K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), , and in State of Jammu & Kashmir Vs. Mohammad Mateen Wani and Others, .

13. The Honourable Apex Court in K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, has held that taking into consideration of the extent of land acquired and also the purpose for which the land is acquired, certain percentage has to be deducted for providing amenities like roads, etc. and in the facts and circumstances of that case, it was held that deducting 53% to arrive at the market value will meet the ends of justice. It is after taking into consideration of these facts, this Division Bench of this Court has fixed the market value of the land at Rs.7000/- per Are.

14. In Pal Singh and others Vs. Union Territory of Chandigarh, , the Honourable Apex Court was pleased to hold that the market value of the land can be determined by relying on a judgment of a Court on two conditions, namely, (i) it must have been a previous judgment of that Court; and (ii) it must have been proved by the person relying upon such judgment by adducing evidence aliunde that due regard being given to all attendant facts and circumstances, which could furnish the basis for determining the market value of the land acquired.

15. In this case, neither the review applicants nor their counsel have brought to the notice of this Division Bench of this Court about the decision allegedly rendered by the Reference Court fixing the market value against which allegedly

no appeal has been filed by the respondents herein. While the review applicants themselves have not brought to the notice of this Division Bench of this Court or not proved as required under the law as cited above, the review applicants cannot blame the learned Government Pleader, Pondicherry, in this regard. This contention will not also have any merit in view of the admission made by the learned counsel for the review applicants.

16. The learned Government Pleader, Pondicherry, placed reliance on the decision reported in *PARSION DEVI AND OTHERS vs. SUMITRI DEVI AND OTHERS* 1998 1 L.W. 106 in support of his contention that this Review Application cannot be sustained in the light of the grounds urged as above. In that case, the Honourable Apex Court was pleased to hold as follows:

"It is well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1, CPC. In *Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh* 1965 (5) SCR 174 this Court opined:

"What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction, which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error." (emphasis ours)

..... This Court once again held that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC.

Under Order 47, Rule 1, CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47, Rule 1, CPC. In exercise of the jurisdiction under Order 47, Rule 1, CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered, has a limited purpose and cannot be allowed to be "an appeal in disguise".

..... There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction."

17. In this Review Application, the grounds urged by the learned counsel for the

review applicants would disclose that an answer to the review sought for in this Review Application has to be detected by the process of reasoning and, therefore, it cannot be an error apparent on the face of the record. It is an appeal in the disguise and, therefore, such an appeal under the guise of a Review Application, to re-hear and correct the judgment already delivered by the Division Bench of this court, cannot be entertained. In view of the foregoing reasons, as rightly contended by the learned

P. Sathasivam, J.

and

P. Thangavel, J.

Government Pleader, Pondicherry, this Review Application cannot be sustained.

18. In fine, the Review Application is dismissed. No costs.