(2011) 01 MAD CK 0196

In the Madras High Court

Case No : A.S (MD) No. 204 of 2006

Kamalambal APPELLANT

Vs

The Special Tahsildar RESPONDENT

Date of Decision : 18-01-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 28, 4, 54

Citation : (2011) 01 MAD CK 0196

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : P.T.S. Narendravasan, for the Appellant; D. Gandhiraj, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The claimant in L.A.O.P. No. 25 of 1986, on the file of the Subordinate Judge, Sivagangai has come forward with

the present appeal u/s 54 of the Land Acquisition Act, seeking enhancement of compensation for the land acquired from her for a public purpose

by the Government contending that the amount awarded by the court below as compensation is inadequate.

2. 1.65 acres(0.66.0 hectares) of land comprised in S. No. 141/3 in Kanchirangal village, Sivagangai District was acquired by the Government for

the construction of a Master Plan Complex in Sivagangai. After award enquiry, the Land Acquisition Officer awarded compensation under his

Award No. 2/85-86, dated 12.12.1986 taking the market value of the acquired land as on the date of 4(1) notification to be Rs. 11,720/- per

hectare. Not satisfied with the quantum of compensation awarded by the Land Acquisition Officer, the Appellant/claimant received the amount awarded by the Land Acquisition Officer as compensation under protest and made a request for making a reference u/s 18 of the Land Acquisition

Act to the court for fixing a reasonable amount as compensation. Accordingly, a reference was made u/s 18 of the Land Acquisition Act to the

Court of Subordinate Judge, Sivagangai and the same was taken on file as L.A.O.P. No. 25 of 1986.

3. After getting the statement of the claimant and objections of the Referring Officer, the learned Subordinate Judge, Sivagangai conducted a trial in

which one witness was examined on the side of the claimant and four documents were marked as Ex.C1 to C4 on the side of the claimant. one

witness was examined on the side of the Referring Officer. A xerox copy of the data sale selected by the Land Acquisition Officer and the

Combined Field Map showing the topography of the acquired land were marked as Ex.R1 and R2. The learned Subordinate Judge, at the

conclusion of trial, passed an award on 13.02.1989 fixing the market value at the rate of Rs. 450/- per cent and Rs. 15,000/- as the value of the

well found in the acquired land.

4. Aggrieved by the same and claiming more amount as compensation, the Appellant herein preferred an appeal before the High Court, Madras in

A.S. No. 1185 of 1990. The High Court, after hearing, allowed the appeal, set aside the award of the learned Subordinate Judge and remanded

back the L.A.O.P to the court below for refixing the amount of compensation after giving further opportunities to both parties to adduce additional

evidence. Accordingly, after such remand, one more witness was examined on the side of the Appellant herein/claimant as C.W.2 and two more

documents were marked as Documents Ex.C5 and Ex.C6. The Appellant/claimant had prayed for the fixation of compensation taking the market

value at the rate of Rs. 3,052/- per cent and the value of the well at Rs. 20,000/-. The learned Subordinate Judge, after considering the evidence

brought on record including the additional evidence adduced after remand, fixed the market value of the acquired land at Rs. 600/- per cent,

determined the amount of enhanced compensation on that basis and passed an award granting other statutory benefits also. As the market value

fixed and consequently the amount determined by the court below as compensation is far below the claim of the Appellant/claimant, the

Appellant/claimant has come forward with the present appeal on various grounds set out in the appeal memorandum.

5. The point that arises for consideration in this appeal is ""whether the amount fixed by the learned Subordinate Judge is a reasonable

compensation or is inadequate requiring upward revision?

6. The arguments advanced by Mr. PT.S. Narendravasan, learned Counsel for the Appellant and by Mr. D. Gandhiraj, learned Government

Advocate were heard. The materials available on record were also perused.

7. A reference u/s 18 of the Land Acquisition Act, 1894 is not an appeal against the award passed by the Land Acquisition Officer and the court

to which such reference is made is not an appellate forum. The claimant in a reference u/s 18 of the Land Acquisition Act occupies the position

akin to that of a Plaintiff and the Referring Officer occupies the position equivalent to that of a Defendant in a suit and the reference itself is to be

tried as a original proceeding before the court to which the reference is made. The amount awarded as compensation by the Land Acquisition

Officer is an offer made by the Government for the compulsory acquisition of the land from the claimant. That is the reason why provision has been

made to the effect that the court to which the reference is made cannot reduce the amount of compensation. The claimant, who occupies the

position of a Plaintiff, shall have to prove by evidence that he is entitled to an amount which is higher than the amount awarded by the Land

Acquisition Officer, as compensation. In case, he fails to do so, he is bound to fail and a decision is to be rendered holding the claimant not entitled

to any enhanced compensation.

8. Keeping the said legal position in mind, the case on hand has to be considered. The land in question was acquired by the Government for the

construction of a Master Plan Complex at Sivagangai. The notification u/s 4(1) of the Land Acquisition Act was made on 18.05.1985. Therefore,

for fixing a reasonable amount as compensation, the market value of the land as on the date of 4(1) notification should be ascertained. The

Appellant/claimant has produced a registration copy of the sale deed dated 28.12.1984, made in respect of S. No. 112/1D as Ex.C2. Similarly a

registration copy of another sale deed dated 06.04.1988 concerning S. No. 32/9 part has been produced as Ex.C3. Another sale deed, dated

15.09.1982 executed by one S.R. Balasubramanian(CW2) in favour of one Jayaraman has been produced as Ex.C6. Ex.C4 has been produced

to show that the acquired land was situated within the Municipal limits of Sivagangai Municipality. Ex.C2 and Ex.C6 evidence the sale of lands in

the surrounding area within the municipal limits at the rate of Rs. 4/- per sq.ft.

9. It was contended by the claimant that, under Ex.C3, a land in S. No. 32/9 had been sold at the rate of Rs. 7/- per sq.ft and enhanced

compensation should be worked out on the said basis. However, the Referring Officer did contend before the court below that in respect of

another land acquired for the very same purpose, compensation was awarded taking the market value of the said land at the rate of Rs. 400/- per

cent in L.A.O.P. No. 6 of 1987. Accepting the said contention, but, however fixing the market value at Rs. 450/- per cent, the court below had

passed the earlier award in this case. The said decision was set aside by the High Court and the matter was remitted back to the court below for

fresh disposal of the case after giving an opportunity to the parties to adduce additional evidence. Though the sale under Ex.C2, had taken place

between C.W.2 and his brother, it was found by the court below that such sale had taken place six months prior to the date of 4(1) notification

and the land concerned in the said document had been sold at the rate of Rs. 4/- per sq.ft. Similarly, under Ex.C6 also the adjacent land had been

sold at the rate of Rs. 4/- per sq.ft. The learned Sub-ordinate Judge came to the conclusion that those sale deeds could not be construed to be

sales that had been effected for showing an escalated market value in anticipation of the property concerned in this appeal being acquired by the

Government. The court below has chosen to correctly hold that the market value as on the date of 4(1) notification should be fixed on the basis of

Ex.C2 and Ex.C6.

10. Though Ex.C2 and Ex.C6 reflected the market value at the rate of Rs. 4/- per sq.ft and the land concerned in those sale deeds were within a

distance of 100 sq.ft from the acquired land, the learned Subordinate Judge, without assigning any reason, has arbitrarily fixed the market value at

the rate of Rs. 600/- per cent. This Court is not in a position to find any justification in such an arbitrary fixation. Comparative method is the best

method of finding out the market value of land. The court below has also chosen to adopt the said method by selecting the sale deeds under Ex.C2

and Ex.C6 as the data sales reflecting the market value of the land in question as on the date of 4(1) notification. However, the court below has

committed an error in not fixing the market value of the acquired land at the rate that is reflected in those sale deeds and in arbitrarily fixing the

market value at Rs. 600/- per cent. This Court is of the considered view that the contention of the learned Counsel for the Appellant that the court

below having chosen to rely on Ex.C2 and Ex.C6 as reflecting the market value of the acquired land, ought to have adopted the value reflected

therein and that had it been done, the market value of the acquired land ought to have been fixed at the rate of Rs. 4/- per sq.ft, which is equivalent

to Rs. 1,744/- per cent, is sound and tenable.

11. However, since the properties sold under Ex.C2 and Ex.C6 were sold as house-sites and the acquired land is a larger extent of 1.65 acres, if

the same is to be valued as house-site taking its potentiality to be developed into house-sites, certain amount of deduction has to be made for

developmental expenditure, so that the same can be compared with the developed site. Such deductions may range from 20% to 60%.

Considering the location of the land and the extent of the land, this Court deems it fit to allow a deduction of 40% towards developmental

expenses as the acquired land is to be valued as a land having the potential to be developed into house-sites. The market value of 1.65 acres at the

rate of Rs. 4/- per sq.ft (equivalent to Rs. 1744/- per cent) shall be Rs. 2,87,760.00/-. 40% of the said amount comes to R.1,15,104.00/-.

Therefore, the market value of the acquired land as on the date of Section 4(1) notification is to be fixed at Rs. 2,87,760.00-

Rs.1,15,104=Rs.1,72,656/-. In additional to the market value as on the date of Section 4(1) notification, additional market value should be

calculated at the rate of 12% p.a. from the date of 4(1) notification till the date of the award or date of taking possession by the Government

whichever is earlier as per Section 23(1-A) of the ''Act''. The court below has not done it. The said amount is to be calculated and added to the

market value. So far as the well is concerned, though the Appellant had claimed before the court below that the amount of Rs. 15,000/- awarded

by the Land Acquisition Officer was inadequate, the court below has not altered the amount. Therefore, no change in the amount of compensation

for the well is proposed. The reasonable compensation to which the Appellant shall be entitled is worked out as follows:

i) Market value as on the date

of notification under Sec.

4(1) of the Act = Rs. 1,72,656.00

ii) 30% of the market value = Rs. 51,796.80

as per Section 23(2) of the Act

iii) Additional market value from the

date of 4(1) notification

(18.05.1985) till the date of

award(27.12.1995) at 12%p.a.

calculated on the market value

as per Section 23(1-A) of the Act

1,72,656x12x223

---------------- = Rs. 12,658.29 365x100

iv) Value of the well = Rs. 15,000.00

Total compensation = Rs. 2,52,111.09

v) Amount awarded by the

Land Acquisition Officer = Rs. 22,970.40

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vi) Enhanced compensation = Rs. 2,29,140.69

Rounded to Rs. 2.29,141.00

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12. In the result, the appeal is allowed and the award of the court below is modified by enhancing the total award of compensation to Rs.

2,52,111.09/- and thus fixing the enhanced compensation payable to the claimant at Rs. 2,29,140.69/- rounded to Rs. 2,29,141/-. For the said

amount, as per Section 28 of the Land Acquisition Act, the Appellant shall be entitled to an interest at the rate of 9% p.a., for one year from

28.12.1985, the date admitted on behalf of the Respondent as the date on which the possession was taken and after the expiry of the said period

of one year, till the date of payment, @ 15%p.a. The Appellant shall be entitled to recover proportionate cost from the Respondent.

