

(2011) 04 MAD CK 0190
In the Madras High Court
Case No : S.A. No. 231 of 2009

Land Acquisition Officer and Special Tahsildar (ADW)	APPELLANT
Vs	
Varadhan	RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 24, 4, 4(1), 8

Citation : (2011) 04 MAD CK 0190

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Revathi, for the Appellant; T.P. Manoharan, for the Respondent

Final Decision : Allowed

Judgement

G. Rajasuria, J.—Animadverting upon the enhanced compensation awarded by the Appellate Court, viz., the Sub Court, Kallakurichi vide

its judgment and decree dated 05.08.2008 in C.M.A. No. 3 of 2002 modifying the award passed by the Land Acquisition Officer/Special

Tahsildar (ADW), Kallakurichi in Award No. 1/2001-02 dated 10.01.2002, the Land Acquisition Officer has filed this second appeal.

2. Compendiously and concisely, the relevant facts absolutely necessary and germane for the disposal of this second appeal would run thus:

a) The Government effected Notification u/s 4(1) of the Land Acquisition Act on 26.02.2000 intending to acquire an extent of 0.84.5 hectares of

land in Veerasozhapuram(East), Kallakurichi for the purpose of carving out the said area into house sites and allot the same in favor of the landless

Adi Dravidar people. Out of the said larger extent, the claimant/Respondent's land measured an extent of 0.65.5 hectares. The Land Acquisition

Officer gathered as many as 38 sample sale deeds and ultimately took as

exemplar documents, only the sale deeds relating to agricultural lands.

Accordingly, awarded compensation treating the acquired land only as agricultural land, by assessing its value in a sum of Rs. 64,220/- with other

statutory entitlements. Ultimately, the award was passed in a total sum of Rs. 73,853/- including solarium and interest as per law in favor of the

b) Being aggrieved by the said award, the land owner preferred appeal before the appellate authority, viz., the learned Subordinate Judge,

Kallakurichi.

c) During enquiry, the land owner Varadhan examined himself as PW1 along with P.Ws.2 and 3 and marked Exs.P1 to P4. On the side of the

Land Acquisition Officer no one was examined and no document was marked. Ultimately the Sub Court enhanced the compensation at the rate of

Rs. 19,760/- per are and awarded the total compensation in a sum of Rs. 14,77,060/- .

3. Challenging and impugning the enhancement of the compensation awarded by the Appellate Authority, this second appeal has been preferred by

the Government on various grounds and also suggesting the following substantial questions of law:

1. Whether the court below erred in not appreciating the provisions of Section 8 of Act 31/1978 inasmuch as the section specifically provides that

the future usage of the land shall not be taken into consideration for the fixation of market value?

2. Whether the court below had erred in not appreciating the fact that the Land Acquisition Officer had placed reliance on Ex.P1, the data sale

deed since the land conveyed under the said document and the land acquired were similar in nature and classification?

3. Whether the court below had erred in placing reliance on Ex.P1 to P4 for fixation of market value without any discussion or finding as to the

similarity in the nature of land conveyed under the said sale deed and the land acquired?

4. Whether the court below erred in not making any deduction towards the development charges especially when the fixation of market value was

placed upon sale deed Ex.P1 to P4 where under a small extent of land classified as house site had been conveyed?

(extracted as such)

4. My learned predecessor, while admitting the second appeal virtually adapted the aforesaid substantial questions of law Nos. 1 to 3 as such.

5. The learned Government Advocate appearing for the Appellant/Land Acquisition Officer would set forth and put forth her arguments thus:

i) The appellate authority without any rhyme or reason simply assumed as though the land owner prayed for awarding a lesser compensation of Rs.

8,000/- percent, which was below the actual market value and accordingly assessed the compensation per are in a sum of Rs. 19,760/- . None of

the documents filed on the side of the land owner would justify the findings given by the appellate authority.

ii) The appellate court has erred in placing reliance on Ex.P4, which is only a ""Form I Notice"" sent by the Special Tahsildar/Deputy Collector

Stamps. Absolutely, no deduction was made towards development charges while placing reliance on Ex.P1 and Ex.P4 by the appellate authority.

iii) It is settled law that if a sale deed relating to a small piece of plot/ house is taken as exemplar document, necessary deductions should be made

as per the decisions of the Hon"ble Apex Court; but, no such deduction was made by the appellate authority even though the land acquired from

the land owner was only an agricultural land.

Accordingly, she prays for setting aside the judgment and decree of the appellate authority.

6. In a bid to torpedo and pulverize and to take the edge off the arguments of the learned Government Advocate, the learned Counsel for the land

owner/Respondent would put forth and set forth his arguments, which could tersely and briefly be set out thus:

a) The area just adjacent to the land acquired, is a well developed site comprised of housing plots. The survey Number 208 was divided into

various plots and were sold also long prior to the publication of Section 4(1) Notification.

b) Exs.P1 to P3 would establish and evidence, demonstrate and display that those are sale deeds concerning plots sold for higher price even long

prior to the publication of Section 4(1) Notification and the appellate authority, did not take into account Ex.P3 the sale deed dated 25.05.2004,

which emerged after the publication of Section 4(1) Notification. However, the appellate authority correctly placed reliance on Ex.P1 the sale deed

dated 11.02.1997 and also Ex.P4 and assessed the valuation.

c) The purpose of acquisition is only for carving out the land acquired into plots and for allotting the same to Adi Dravida Community people as

house sites and in such a case, the court below was justified in enhancing the compensation and no interference in this regard is required.

7. All these points are taken together for discussion as they are inter-linked and inter-woven, inter-connected and entwined with one another.

8. At the outset itself, I would like to fumigate my mind with the recent decision of the Hon"ble Apex Court reported in Special Land Acquisition

Officer Vs. Karigowda and Others, . and certain excerpts from it would run thus:

What method should be adopted for determining the fair market value of the acquired land

70. To examine what method could be adopted for determining the market value of land and criticism of the method adopted by the Land

Acquisition Collector, by the courts, that the same is not in accordance with law, we must notice various methods which are normally adopted by

the courts for determining the fair market value of the land and which of the method can be more properly applied in the facts and circumstances of

this case.

71. Sections 23 and 24 of the Act spell out the have and have-nots, applicable to the scheme of awarding compensation by the Collector but do

not describe the methodology which should be adopted by the courts in determining the fair market value of the land at the relevant time. By

development of law, the courts have adopted different methods for computing the compensation payable to the landowners depending upon the

facts and circumstances of the case. The courts have been exercising their discretion by adopting different methods, inter alia the following methods

have a larger acceptance in law:

(a) Sales statistics method.-In applying this method, it has been stated that, sales must be genuine and bona fide, should have been executed at the

time proximate to the date of notification u/s 4 of the Act, the land covered by the sale must be in the vicinity of the acquired land and the land

should be comparable to the acquired land. The land covered under the sale instance should have similar potential and occasion as that of the

acquired land (Faridabad Gas Power Project, NTPC Ltd. v. Om Prakash 12, Shaji

Kuriakose v. Indian Oil Corpn. Ltd. 13 and Ravinder Narain

v. Union of India 14).

(b) Capitalization of net income method.-This method has also been applied by the courts. In this method of determination of market value,

capitalization of net income method or expert opinion method has been applied (Union of India v. Shanti Devi 15, Executive Director v. Sarat

Chandra Bisoi 16 and Nelson Fernandes v. Land Acquisition Officer 8).

(c) Agricultural yield basis method.-Agricultural yield of the acquired land with reference to revenue records and keeping in mind the potential and

nature of the land-wet (irrigated), dry and barren (banjar).

72. Normally, where the compensation is awarded on agricultural yield or capitalization method basis, the principle of multiplier is also applied for

final determination. These are broadly the methods which are applied by the courts with further reduction on account of development charges. In

some cases, depending upon the peculiar facts, this Court has accepted the principle of granting compound increase at the rate of 10% to 15% of

the fair market value determined in accordance with law to avoid any unfair loss to the claimants suffering from compulsive acquisition. However,

this consideration should squarely fall within the parameters of Section 23 while taking care that the negative mandate contained in Section 24 of

the Act is not offended. How one or any of the principles a fore stated is to be applied by the courts, would depend on the facts and circumstances

of a given case.

It is quite obvious that the judgment rendered by the appellate court is far from satisfactory. Without adhering to the well established principles in

assessing the compensation, the appellate authority simply assumed as though the claim of the land owner in a sum of Rs. 8000/- per cent was far

below the actual market value of the land prevailed at the time of publication of Section 4(1) Notification. In fact, Section 4(1) Notification was

dated 26.02.2000 as found exemplified from the award itself; but the appellate authority assumed as though the cut off date for assessing the value

should be 29.10.2001.

9. I would like to point out that the Land Acquisition Officer was not justified in blindly placing reliance on the exemplar documents relating to

agricultural land. Indubitably and indisputably, unarguably and unassailably, survey No. 208/8, which is adjacent to the land acquired was already

converted into plots as revealed by Exs.P1 to P4 and in such a case, I am at a loss to understand as to how the land acquisition officer was

justified in awarding compensation to the land acquired in S. No. 208/3B and 208/6 treating it only as agricultural land but without treating it as an

area capable of being converted into plots. It is also quite axiomatic that the Government itself is going to divide the land acquired into plots.

Wherefore, I am having no hesitation in holding that the Land acquisition officer was not justified in placing reliance on the documents concerning

agricultural lands and in assessing the compensation.

10. The core question arises as to whether the first appellate court was justified in simply relying on Ex.P1 and Ex.P4, without in any manner

applying the formula relating to assessment of agricultural land as potential house sites. In the process of valuing agricultural land as potential house

sites, the cited decision *supra* would unambiguously and unequivocally, highlight and spotlight the fact that necessary deduction should be made.

But the appellate court did not choose to apply the above said formula and award the compensation, warranting interference in the second appeal.

In fact, the approach of the appellate authority was obviously perverse and illegal and it should necessarily be interfered with.

11. Ex.P4 is only a ""Form I notice"" sent by the Special Tahsildar/Deputy Collector (stamps) and it cannot be relied on as an exemplar document.

Further more, Ex.P4 refers to a document relating to the year 1999, which emerged shortly before the publication of Section 4(1) Notification and

as such, no reliance could be placed on the same and further more Ex.P4 is not an exemplar document at all but it is only a notice, wherefore it

should not have been relied on by the appellate court for any purpose.

12. Ex.P3 sale deed is dated 25.05.2004, which emerged long after the publication of Section 4(1) Notification and that also cannot be taken into

account. Ex.P2 is the sale deed dated 15.01.1994, which is relating to Survey No. 267/9, which and it is not anywhere near to the land acquired

and as such that also cannot be relied taken as an exemplar document.

13. Ex.P1 the sale deed dated 11.02.1997, is the only document, which could be relied on, because, it is relating to the land situated in Survey

No. 208/8, which is adjacent to the land acquired. It refers to a housing site measuring a total extent of 2 1/2 cents, which was valued in a sum of

Rs. 10,900/- , so to say, at the rate of Rs. 4,360/- percent. Section 4(1) Notification was dated 26.02.2000. As such, three years anterior to the

emergence of Section 4(1) Notification, Ex.P1 emerged and it can be relied upon. By no stretch of imagination it could be labeled or dubbed as a

document deliberately brought about for obtaining higher compensation.

14. While holding so, I am of the view that for the three years" period, enhancement has to be given and accordingly, at the rate of 10% increase

per year, so to say, totally 30% increase if given, the value comes to Rs. 5,668/- percent. In view of the decision of the Hon"ble Apex Court

referred to supra, the court has to offset the price because the exemplar document refers to a smaller extent of house site, whereas the land

acquired was an agricultural land, which is having the potentiality of being converted into plots. Hence, 20% should be deducted by way of

offsetting the price.

15. It is quite obvious that the vast extent of land acquired should be converted into house sites by the Government by providing streets and also

other amenities and as per the well established and recognized principles, 33 1/2% has to be deducted towards such development charges. As

such, totally the deduction comes to 53 1/2 % and it could be rounded off to 53%..

16. Accordingly, the compensation should be assessed adhering to the following formula:

Value of land per cent Rs. 4,360/-

Enhancement at the rate of 10% per year for 3 Rs. 1,308/-

years (436 x 3)

Total value percent Rs. 5,668/-

Rs. 5668 x 2.46 cents [Rs.13,943.28 per are] Rs. 7,390/-

Deduction at 53% on Rs.13,943/-

Net value per are Rs. 6553/-

Rs.6,553 x 65.5 are Rs. 4,29,221.50

Rounded off to Rs. 4,29,222/-

In the result, along with the aforesaid amount of Rs. 4,29,222/- [Rupees four lakhs twenty nine thousand two hundred and twenty two only] the

land owner is entitled to other statutory entitlements like solarium and interest.

17. Accordingly, the substantial question of law No. 1 is decided to the effect that the appellate court erred in not appreciating the provisions of

Section 8 of Act 31/1978 in fixing the market value.

18. The substantial question of law No. 2 is decided to the effect that the court below has not erred in placing reliance on Ex.P1, the data sale

deed since the land conveyed under the said document and the land acquired were similar in nature and classification.

19. The substantial question of law No. 3 is decided to the effect that even though the court below placed reliance on Ex.P1 for fixation of market

value, it failed to apply the correct formula in assessing the compensation.

20. Accordingly, this second appeal is partly allowed as above, by modifying the judgment and decree of the appellate court.