(2011) 03 MAD CK 0157

In the Madras High Court

Case No : A.S. No. 16 of 2004

P.P.M.S. Nagarajan	APPELLANT
Vs	
Revenue Divisional Officer	RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 4(1)

Citation : (2011) 03 MAD CK 0157

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

Bench : Single Bench

Advocate : A. Sivaji, for the Appellant; D. Gandirajan, Additional Govt. Pleader, for the Respondent

Judgement

P.R. Shivakumar, J.—All the three appeals have been preferred against the awards dated 21.10.2003, passed by the learned Subordinate

Judge, Virudhunagar in L.A.O.P. Nos. 2/1998, 3/1998 and 1/1998 respectively. The claimants in the respective L.A.O. Ps. are the Appellants in

the corresponding appeals. All the three L.A.O. Ps. were heard jointly, common evidence was adduced and they were disposed of by a common

order. In addition, common issues are involved in all the three appeals. Hence, all the three appeals were heard jointly and are being disposed of

by a common judgment.

2. A total extent of 56,170 square feet of dry land comprised in S. Nos. 24/3C2, 804/2A, 805/1 and 806/3B in Allampatti, Aruppukottai Taluk

was acquired for the purpose of construction of E.S.I. Dispensary and Staff Quarters. Notice u/s 4(1) of the Land Acquisition Act, 1894 was

issued on 05.04.1990 and publication of the same was effected on 09.05.1990. After enquiry, the Revenue Divisional Officer, Aruppukkottai, the

Respondent herein/Referring Officer passed an award in his award No. 4/1993 dated 05.02.1993 fixing the market value of the acquired land at

the rate of Rs. 7/- per square foot and allowing other statutory benefits as per the provisions of the Act. Not satisfied with the amount awarded as

compensation, the land owners, namely the Appellants herein/claimants received the compensation awarded by the Land Acquisition Officer under

protest and requested for making a reference to the Court u/s 18 of the Land Acquisition Act for fixing reasonable compensation. Accordingly,

separate references were made in respect of different sets of claimants to the Sub Court, Virudhunagar by the Respondent herein, which were

taken on file as L.A.O.P. Nos. 1/1998, 2/1998 and 3/1998.

3. Out of the above said total extent of 56170 square feet, 28904-11/16 square feet was owned by the Appellants in A.S. No. 919/2004

(Claimants in L.A.O.P. No. 1 of 1998), an extent of 26,545-5/16 square feet was owned by Appellant in A.S. No. 16 of 2004 (Claimant in

L.A.O.P. No. 2 of 1998) and the balance extent of 720 square feet was owned by the Appellant in A.S. No. 693 of 2004 (Claimant in L.A.O.P.

No. 3 of 1998). The Land Acquisition Officer awarded a total sum of Rs. 3,28,821/- to the claimants in L.A.O.P. No. 1 of 1998, Rs. 3,09,981/-

to the claimant in L.A.O.P. No. 2 of 1998 and Rs. 8,191/- to the claimant in L.A.O.P. No. 3 of 1998. To have a clear understanding, particulars

are shown in the following chart:

Sl. L.A.O.P. S.No. Extent in Square feet Total compensation

No. Awarded by the

Land Acquisition

Officer

1. 1/1998 24/3C2, 804/2A, 805/1, 28,904-11/16 Rs.3,28,821/-

806/B

2. 2/1998 804/2A, 805/1, 806/3B 26,545-5/16 Rs.3,09,981/-

3. 3/1998 804/2A 720 Rs. 8,191/-

4. The claimants did not have any objection for the measurement or the classification of the land, but they were aggrieved by the fixation of the

market value of the land as on the date of 4(1) Notification at Rs. 7/- per square foot. They wanted the market value, as on date of 4(1) notification, to be fixed at the rate of Rs. 25/- per square feet. In the L.A.O. Ps., based on the pleadings made in the form of claim statement and

written objections, the parties adduced evidence.

5. The learned Subordinate Judge, Virdunagar on appreciation of evidence came to the conclusion that the claimants had proved their claim to

have a higher amount fixed as the market value of the acquired land and consequently, to get enhanced compensation. The Court below fixed the

market value of the acquired land at the rate of Rs. 11/- per square foot and on that basis assessed the total compensation and consequently

enhanced compensation. It has directed payment of enhanced compensation with other statutory benefits, namely solatium, additional market value

and interest in accordance with Section 23(2), 23(1-A) and 28 of the Land Acquisition Act.

6. Aggrieved by and challenging the awards of the learned Subordinate Judge, Virudhunagar passed in L.A.O.P. Nos. 1/1998, 2/1998 and

3/1998, the respective claimants therein have come forward with A.S. Nos. 919/2004, 16/2004 and 693/2004 respectively, so far as the

disallowed portions of the claims are concerned.

7. The points that arise for consideration in these appeals are as follows:

1) Whether the market value fixed by the Court below for the acquired land at the rate of Rs. 11/- per square foot is not correct? and

2) Whether the Appellants in each one of the appeal are entitled to get more amount than what has been awarded by the Court below as enhanced

compensation?

8. The arguments advanced by Mr. A. Sivaji, learned Counsel for the Appellants and Mr. D. Ghandhirajan, learned Government Advocate for the

Respondent were heard and the materials available on record were perused.

9. There is no dispute regarding the measurement of the land acquired for the purpose of constructing E.S.I. Dispensary and Staff quarters. The

Appellants/ claimants also do not have grievance over the compulsory acquisition of their lands. On the other hand, their only grievance is that the

amount awarded as compensation by the Land Acquisition Officer was grossly inadequate and that even the amount awarded by the Court below

as enhanced compensation is on the lower scale which requires upward revision. The Land Acquisition Officer himself has valued the land taking a square foot as the unit for valuation on the premise that the property was either a developed house sites or did have the potential to be developed

into house sites in the near future. For fixing the market value of the acquired land as on the date of 4(1) notification, the Land Acquisition Officer

relied on a sale deed dated 16.09.1989, which was registered as document No. 1378/1989 in the office of the Joint Sub-Registrar, Virudhunagar

in respect of an extent of 2119.687 square feet in T.S. No. 29/5 of Allampatti Village with the observation that 2,119.687 square feet of land had

been sold for a sum of Rs. 7,53,152.40, which worked out to a rate of Rs. 7/- per square foot. The Land Acquisition Officer fixed the marked

value of the acquired land at the above said rate for assessing the compensation to be paid to the Appellants/claimants.

10. The selection of the data land and the sample sale as reflecting the market value of the acquired land as on the date of 4(1) notification was

assailed by the Appellants herein/claimants before the Court below. Besides assailing such a selection, they had also taken a stand that the market

value of the acquired land ought to have been fixed at a rate not less than the amount reflected in Ex.C.1, where under the land comprised in the

very same survey number had been sold nearly five years prior to the date of 4(1) notification, at the rate of Rs. 19.58 per square foot.

11. One Murugesh S/o.P.P.M.S. Nagarajan, Appellant in A.S. No. 16 of 2004 (Claimant in L.A.O.P. No. 2) figured as the sole witness on the

side of the Appellants herein/claimants. The sale deed dated 14.08.1985, under which an extent of 1.65 cents equivalent to 720 square feet

comprised in T.S. No. 804/2 (Part) was sold as a house site to one Subramanian (Appellant in A.S. No. 693/2004/claimant in L.A.O.P. No. 3 of

1998) by V.M.S.M. Ramasamy (3rd Appellant in A.S. No. 919 of 2004/4th claimant in L.A.O.P. No. 1 of 1998) has been produced as Ex.C.1.

The combined field map produced on the side of the claimants has been marked as Ex.C.2. As against the said evidence adduced on the side of

the claimants, one Ramasamy, Deputy Tahsildar was examined as R.W.1 and four documents were marked as Exs.R.1 to R.4. The first three

documents can not be given importance as they are the award of the Land Acquisition Officer, the Topo Sketch and the sales statistics collected

by the Land Acquisition Officer. Certified copy of the sale deed, based on which the land Acquisition Officer fixed the market value of the land, has been produced as Ex.R.1.

12. When both the parties have produced documents showing earlier sales that have taken place in the vicinity of the acquired land, the sale deed

which would reflect the correct market value shall be preferred to fix the market value of the acquired land. When both the sale deeds of are of

equal probative value, then the sale deed under which the property was sold at a higher rate shall be preferred, unless it is established that the land

sold under such a document was of special importance to the purchaser, who would have offered a fabulous price or the sale had taken place due

to pressing necessity of the vendor in which case, it would have been sold for a pittance or a lower price. In this case, though Ex.R.4 has been

produced to show that the land in T.S. No. 29/5 was sold on 16.09.1989 at the rate of Rs. 7/- per square foot, the said land is proved to be

located at a considerable distance from the acquired land and that the said land did not have the facilities available to the acquired land. It has also

been established by the claimants that the acquired land was located at a developed area, whereas the land concerned in Ex.R.4 was only in a

developing area. On the other hand, Ex.C.1 is nothing but a sale deed under which the Appellant in A.S. No. 693 of 2004/claimant in L.A.O.P.

No. 3 of 1998 had purchased 720 square feet in the acquired land itself. Infect, the entire land purchased by him under Ex.C.1 has been acquired

by the Government. When a sale deed pertaining to the acquired land itself is available, it shall be unreasonable and unethical to refer to sales that

have taken place in respect of lands situated at a considerable distance, unless the sale itself is said to have fetched more amount than the actual

value or that the sale transaction itself had taken place keeping in mind the proposed acquisition.

13. R.W.1, in his evidence, has admitted that Ex.C.1-sale deed came into existence five years prior to the date of 4(1) notification and that at that

point of time, the parties could not have contemplated that the land would be acquired by the Government. He was also not in a position to deny

the suggestion that the sale deed reflected the actual market value and the actual price for which the property was sold. It should be noticed that

under Ex.C.1 sale deed, the said property was purchased by the Appellant in A.S. No. 693 of 2004 (Claimant in L.A.O.P. No. 3/1998) from the

3rd Appellant in A.S. No. 919 of 2004 (4th claimant in L.A.O.P. No. 1 of 1998). As it has not been proved by evidence that the sale should have

taken place keeping in mind the possibility of the land being acquired by the Government and since there is a larger time gap, namely 5 years from

the date of sale and the date of 4(1) notification under the Land Acquisition Act, the said sale cannot be suspected to be one made with a view to

get more amount as compensation. Simply because the sale had taken place between the claimants in the L.A.O. Ps. concerned in these appeals,

the genuineness of the sale cannot be suspected. Therefore, the Court below has rightly arrived at a conclusion that Ex.C.1 shall be the basis on

which the market value of the acquired land should be fixed. There is no scope, whatsoever, to find fault with the decision made by the Court

below to take the sale under Ex.C.1 as the basis for fixing the market value of the acquired land.

14. It is true that a small piece of land having an extent of 720 square feet was the subject matter of the sale under Ex.C.1. When such a sale is

sought to be made the basis for fixing the market value of a larger extent on the premise that larger extent could be developed into house site,

certain percentage should be allowed as deduction towards developmental charges. Such deductions may vary from 20% to 50% or even 65%

depending upon the extent of development made in and around the acquired land as on the date of 4(1) notification. If the land is situated in an

area wherein there is a slow pace of development, deductions shall be at an higher percentage. If the land is situated in a developed area or a fast

developing area, deductions shall be at a lower percentage. In this case, evidence has been adduced to show that prior to acquisition, the land in

question is situated in a developed area and in fact a part of the land acquired, namely 720 square feet of the land concerned in L.A.O.P. No. 3 of

1998, had been purchased as a house site by the Appellant in A.S. No. 693 of 2004 (claimant in L.A.O.P. No. 3 of 1998) in 1985 itself under

Ex.C.1. Therefore, the contention of the Appellants/claimants that the acquired land was amidst developed and fast developing area and hence,

lessor percentage alone should have been allowed as deductions towards developmental charges. The said contention of the Appellants/claimants

cannot be discountenanced, since there is justification and substance in it. The Court below itself has chosen to allow only 33 1/3% as deductions towards developmental charges. This Court is of the considered view that the said percentage of deduction allowed by the Court is quite

reasonable.

15. We have seen supra that the market value of the acquired land as on the date of 4(1) notification should be fixed on the basis of Ex.C.1.

Though the Court below chose to take Ex.C.1 as the basis for fixing the market value, it has arbitrarily fixed a lower rate than the one reflected in

Ex.C.1 and again allowed a deduction from such rate. The procedure adopted by the Court below amounts to double deduction, which is

impermissible in law. In fact, since the sale under Ex.C.1 had taken place in respect of the acquired land itself five years prior to the date of

notification, there is every possibility of holding that the market value of the acquired land as on the date of 4(1) notification could have even

increased. When that is so, fixing an amount which is lower than the one reflected in Ex.C.1 as the market value of the acquired land as on the date

of 4(1) notification cannot be justified. Therefore, this Court arrives at a conclusion that the market value of the acquired land should be fixed

straightaway on the basis of the sale consideration reflected in Ex.C.1, giving certain deductions towards developmental charges when it applies to

a larger extent of land.

16. So far as the appeals in A.S. No. 16 of 2004 and A.S. No. 919 of 2004 are concerned larger extents of land, namely 26,545-5/16 square

feet and 28,904-11/16 square feet respectively have been acquired. Therefore, while applying the above said rate of Rs. 19.58 per square foot

reflected in Ex.C.1, 33-1/3% should be deducted towards developmental charges to arrive at the correct market value of the acquired land

concerned in A.S. No. 16 of 2004 and A.S. No. 919 of 2004 (L.A.O.P. Nos. 1 and 2 of 1998). But such a method cannot be adopted in so far

as A.S. No. 693 of 2004 (L.A.O.P. No. 3 of 1998) is concerned for the simple reason that the said property itself had been purchased under

Ex.C.1 by the claimant therein for a sale consideration at the rate of Rs. 19.58 per square feet. As observed earlier reducing the market value from

the same would be not only unreasonable but also unethical. Therefore, so far as the appeal in A.S. No. 693 of 2004 (L.A.O.P. No. 3 of 1998) is

concerned, taking into account the fact that the land concerned in the same is only a small piece of land having an extent of 720 square feet and the

further fact that the said land itself had been purchased by the claimant therein in the year 1985 itself at the rate of Rs. 19.58 per square foot, this

Court deems it fit to disallow any deductions towards developmental charges in respect of A.S. No. 693 of 2004 (L.A.O.P. No. 3 of 1998).

17. As indicated above, the awards passed by the learned Subordinate Judge, Virudhunagar in each of the L.A.O.P. concerned in these appeals

are to be modified. Accordingly, the compensation amount payable to the Appellants in each one of the appeal are calculated as follows:

A.S.No.16 of 2004 (L.A.O.P.No.2 of 1998):

1)Market value of the acquired land

(26,545-5/16 square feet) at the rate

of Rs.19.58 per square foot without

deduction = Rs.5,19,757

2)33-1/3% deductions towards

development charges = Rs.1,73,252 3)Market value

as on the date of 4(1)

notification after allowing

deduction of developmental charges = Rs.3,46,505

4)Solatium at the rate of 30% under

Section 23(2) of the Land

Acquisition Act = Rs.1,03,952

5)Additional market value under Section

23(1-A) calculated at the rate of 12%

from the date of 4(1) notification

i.e., 09.05.1990 till date of award

i.e., 05.02.1993 as possession was

taken subsequently (2 year 8 months

and 27 days) = Rs.1,14,000

6)Total amount of compensation = Rs.5,64,357

7)The amount awarded by the Land

Acquisition Officer = Rs.3,01,981

8)The enhanced compensation to which

the appellant/claimant is

entitled = Rs.2,62,376

A.S.No.919 of 2004 (L.A.O.P.No.1 of 1998):

1)Market value of the acquired land

(28,904-11/16 square feet) at the rate

of Rs.19.58 per square foot without

deduction = Rs.5,65,953

2)33-1/3% deductions towards

development charges = Rs.1,88,651 3)Market value

as on the date of 4(1)

notification after allowing

deduction of developmental charges = Rs.3,77,302

4)Solatium at the rate of 30% under

Section 23(2) of the Land Acquisition

Act. = Rs.1,13,191

5)Additional market value under Section

23(1-A) calculated at the rate of 12%

from the date of 4(1) notification

i.e., 09.05.1990 till date of award

i.e., 05.02.1993 as possession was

taken subsequently (2 year 8 months

and 27 days) = Rs.1,24,132

6)Total amount of compensation = Rs.6,14,625

7)The amount awarded by the Land

Acquisition Officer = Rs.3,28,821

8)The enhanced compensation to which

the appellant/claimant is

entitled = Rs.2,85,804

A.S.No.693 of 2004 (L.A.O.P.No.3 of 1998):

1)Market value of the acquired land

(720 square feet) at the rate

of Rs.19.58 per square foot on the

date of 4(1) notification = Rs. 14,098

2)Solatium at the rate of 30% under

Section 23(2) of the Land Acquisition

Act. = Rs. 4,229

3)Additional market value under Section

23(1-A) calculated at the rate of 12%

from the date of 4(1) notification

i.e., 09.05.1990 till date of award

i.e., 05.02.1993 as possession was

taken subsequently (2 year 8 months

and 27 days) = Rs. 4,638

4)Total amount of compensation = Rs. 22,965

5)The amount awarded by the Land

Acquisition Officer = Rs. 8,191

6)The enhanced compensation to which

the appellant/claimant is

entitled = Rs. 14,774

Note: No deduction towards development

charges is made in this case.

18. It is admitted on behalf of the Respondent/ referring officer that possession was taken immediately after passing of the award. Hence, the

Appellants/claimants shall be entitled to get interest on the above said amount fixed as enhanced compensation from 05.02.1993, the date of

possession till date of payment in accordance with Section 28 of the Land Acquisition Act. The rate of interest shall be 9% p.a. for a period of one

year from 05.02.1993 and thereafter, till payment 15% p.a. Accordingly, the point for determination is answered. The Appellants shall also be entitled to proportionate cost.

19. In the result, (a) A.S. No. 16 of 2004 is allowed in part and the award of the learned Subordinate Judge, Virudhunagar made in L.A.O.P. No.

2 of 1998 is modified by fixing the enhanced compensation at Rs. 2,62,376 (Rupees Two Lakhs Sixty Two Thousand Three Hundred and

Seventy Six only), which amount shall be paid to the Appellant/claimant with interest at the rate of 9; p.a. for one year from 05.02.1993, the date

on which possession was taken by the Government and thereafter, at the rate of 15% p.a. till payment. The Appellant is also entitled to get

proportionate costs.

(b) A.S. No. 693 of 2004 is allowed in part and the award of the learned Subordinate Judge, Virudhunagar made in L.A.O.P. No. 3 of 1998 is

modified by fixing the enhanced compensation at Rs. 14,774/- (Rupees Fourteen Thousand Seven Hundred and Seventy Four only), which

amount shall be paid to the Appellant/claimant with interest at the rate of 9% p.a. for one year from 05.02.1993, the date on which possession was

taken by the Government and thereafter, at the rate of 15% p.a. till payment. The Appellant is also entitled to get proportionate costs.

(c) A.S. No. 919 of 2004 is allowed in part and the award of the learned Subordinate Judge, Virudhunagar made in L.A.O.P. No. 1 of 1998 is

modified by fixing the enhanced compensation at Rs. 2,85,804/- (Rupees Two Lakhs Eighty Five Thousand Eight Hundred and Four only), which

amount shall be paid to the Appellants/claimants with interest at the rate of 9% p.a. for one year from 05.02.1993, the date on which possession

was taken by the Government and thereafter, at the rate of 15% p.a. till payment. The Appellants are also entitled to get proportionate costs.

