

(1995) 03 MAD CK 0059

In the Madras High Court

Case No : Appeal No. 552 of 1987 and Memorandum of Cross Objection No. 12 of 1995

Special Tahsildar (Adi Dravidar Welfare)

APPELLANT

Vs

Abdul Reguman

RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 4(1), 5A

Citation : AIR 1996 Mad 198

Hon'ble Judges : Abdul Hadi, J;A.r. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J

1. The State Is the appellant in the above appeal which is directed against the order passed by the Subordinate Judge, Srivilliputhur u/s 18 of the

Land Acquisition Act in Land Acquisition Original Petition No. 7 of 1984 dated 10-5-1985.

2. The extent of the land measuring 3 acre 60 cents situate in the village of Sivakasi in the Taluk of Sathur in the Registration Sub District of

Sivakasi, in the District of Rama-natnapuram and registered in the name of respondents-claimants was declared by the Government Gazette dated

23-2-1983 as needed for the provision of house sites to the Adidraavidars of Sengulam Kanmoi Poromboke etc. The Notification was issued by

the Government on the representations made by Adidraavidars residing in Sengulam Kanmoi Poromboke stating that their habitation is situate in

Kanmoi bunds and they are living in small huts. The Special Tahsildar (Adidraavidar Welfare) and Land Acquisition Officer inspected the habitation

and found that 52 Adidraavidars and 10 non-adidraavidars families needed house-

sites. They recommended for the acquisition of the lands belonging to Abdul Rahman and others to an extent of 3 acres 60 cents of dry land lying in Survey No-14 Sivakasi Village. The Government approved the proposal in G.O.Ms. No. 2815, S.W.D. dated 24-11-1982. The Notification u/s 4(1) of the Land Acquisition Act I of 1894 was published in the Tamil Nadu Government Gazette dated 8-12-1982 at page 24, and enquiry u/s 5A of the Act was conducted by the Land Acquisition Officer on 17-1-1982 at Government Chavadi Sivakasi. Individual Notices were also sent on the pattadars as per rules. One of the Land owner Mr. Abdul Rahman appeared for enquiry and gave consent in writing on his behalf and on behalf of the legal heir of his deceased brother. The Draft declaration u/s 6 and Draft Direction u/s 7 of the Land Acquisition Act was approved in G.O.Ms. No. 611 SWD dated 18-2-1993 and notifications were published in the Government Gazette dated 25-2-1983. The Special Tahsildar, Sattur registered statistics for a period of three years from the Sub Registrar's Office, Sivakasi. It appears that he has taken the particulars about 1436 sales during the period of three years. The Special Tahsildar rejected 1100 sales covered by sale Items 1, 2 to 1431 since they are situated at a distance of more than 6 to 8 furlongs from the lands under Acquisition. He has stated that the sales have not been taken for consideration as there are no sales within 2 furlongs from the lands under acquisition.

3. The lands covered by sale Items 418 etc. up to 1303 (32 sales) which relate to the sale of vacant sites, well rights and pathway rights, etc. have been left out from consideration since those sales were combined sales. The sale Item 1317 relates to sale of wet land and therefore, the said sale, according to the Special Tahsildar, cannot be compared with acquisition land as the land under acquisition is dry land. Hence, he has not taken this sale for comparison. The lands covered by sale Items 4, 31 etc. to 1422 (8,3 sales) relate to sale of lands with different "tarams". Since the soil fertility and character of these lands are different than the land under acquisition, the sales have not been taken for comparison. The lands covered by sale Items 23, 24 etc. up to 1434 (24 sales) relate to the sale of higher value. Therefore, the land acquisition officer discarded these sales since according to him, the sales cannot be compared with the prevailing market price

of similar lands in the village. Moreover it is stated that the market value of these lands are high as they are situated near the crowded locality. The lands covered by sale Items 22, 61, etc. up to 1433 (132 sales) were also not taken for comparison since according to the Special Tahsildar they have fetched lower rates than the prevailing market price of similar lands in the village. However, sale Items 416 and 1432 (2 sales) have also not been taken into consideration for comparison as the portion of lands are covered in three survey numbers. The sales of lands in Item Nos. 79, 80 etc. up to 1390 (61 sales) were also not taken into account, as they were similar to the acquisition land. But are little far away from the acquisition lands. Since the sale which has taken place in the vicinity of the acquisition site i.e., in S. No. 146 has been taken for consideration, the Officer-has not taken these items of sale for comparison.

4. For fixing the market value, the Land Acquisition Officer has taken into consideration the document No. 2306 dated 16-6-1981. An extent of 5-1/2 cents in Survey No. 146 has been sold for Rs. 1980/- under the above referred to document. The sale took place in the year 1981.

According to the Special Tahsildar the said land has been taken as basis since the said land is of the vicinity of the acquisition land and the vendor

and vendee are different persons. According to him the rate works out to Rs. 36,000/- per acre, and the costs of acquiring 3 acres and 60 cents of dry land including 15 per cent solatium comes to Rs. 1,49,000/-

5. One of the claimant Abdul Rahman who appeared for himself and on behalf of the legal heirs of his brother at the time of award enquiry has

stated that the value of Rs. 36,000/- per acre fixed by the officer was too low and that his lands should be valued at the rate of Rs. 1325/- per cent

as per document No. 4847 dated 4-12-1982, marked as Exhibit A2. The Land Acquisition Officer, however, rejected the representation of the

claimant on the ground that since the sale price of document No. 4847 dated 4-12-1982 quote in the sale deed was for a developed plot and

since the land acquired is a barren waste land for a long time, the Land Acquisition Officer did not take up the said document for consideration.

The claimant by letters dated 28-3-1983 and 28-7-1983 requested the Special Tahsildar to refer the matter to the Civil Court under Sections IS

and 19 of the Land Acquisition Act for fixing enhanced compensation.

6. Before the Subordinate Court of Srivilliputhur, the claimants filed their statement of claim on 8-10-1984. According to the claimants, the land acquisition itself was made by the Special Tahsildar for the purpose of providing house sites for Addi-Dravidars and the acquired property is not a cultivable or cultivated dry land. On the other hand, it is stated that it is a pucca house site, and the acquired land is surrounded by well laid plots on the north and on the east. The claimants claim even prior to the Section 4(1) Notification submitted a lay-out plan dividing the acquired land into 31 plots and the said layout was also forwards to the Director of Town Planning for approval. While the approval of the same was pending, the State Government issued the 4(1) Notification. The claimants therefore submit that the acquired land is a pucca building site even on the date of 4(1) Notification and it should have been evaluated as such. It is also further submitted that the land acquired is within the Municipal Limit of Sivakasi Town and that the town is extending on all sides by leaps and bounds and there is a very great demand for building sites for Industrial, etc. and non-residential and residential purposes. It is also stated that Sivakasi Railway Station is located at a distance of a 2 furlongs from the acquired land. The public offices such as Revenue Divisional Officer's Office, Divisional Development Office and Block Development Office are situate very near to the acquired land. They also brought to the notice of the Subordinate Judge about the purchase made by the Telegraph Department under three registered sale deeds at the rate of Rs. 1061/- per cent, the genuineness of the said two sale deeds and the contents thereof are beyond question inasmuch as the vendee under the same is none-else than the President of Indian Union. The properties comprised in the said sale deeds are at a distance of 2 furlongs from the acquired land. In the circumstances, the claimants submitted that the compensation of Rs. 1325/- per cent on the basis of the document dated 3-12-1982 to the property in Survey No. 148 (Exhibit A.2) situate close to the acquired land should be fixed as compensation for the acquired land.

7. On behalf of the claimants one Mr. Abdul Rahman was examined. None was examined on the side of the State. Exhibits A.1 to A.8 were marked on the side of the Claimants and Exhibits B.1 to B.3 were marked on the side of the State. P.W. 1 in his evidence reiterated the statements

of the claim made by him before the Subordinate Judge. He deposed that the property sought to be acquired is situate 350 to 400 feet away from

Railway Good shed and that E.S.I. Hospital, railway line and R.T.O. Office are located nearby. He also deposed in his evidence giving an

operative study of Exhibits A.2 to A.5. While referring to Exhibits A.3 to A.5, he has stated that the said land was sold at Rs. 1061/- per cent and

that the said land is inferior in quality and situate in lower level. There is no cross-examination by the State with regard to the above allegations. He

has also stated in his evidence about the submission of his lay-out plan and the reason for non-sanction of the said plan because of the Land

Acquisition proceedings. In the cross-examination nothing is elicited from him to controvert or discredit the statement made by him before the

Subordinate Judge in his written statement dated 8-10-1984 and also his oral testimony. It is his specific case that the land acquired by the Central

Government for. Telegraphic Department is situate 2 furlongs away from the lands sought to be acquired and the railway line is situate at 1 furlong

away from the said land. He has further deposed that several plots have already been sold and several persons have constructed houses in the area

which are included in the land sold under Exhibit A.2, and that the lands sold under Exhibit A.2 is similar to the claimants land which is now

acquired. There is no cross-examination at all on these points as well.

8. Learned Subordinate Judge on a consideration of the oral evidence tendered by the claimant and documents filed by him and marked as

Exhibits A.1 to A.8 and that of Exhibits B. 1 to B.3 filed by the State, fixed the market value of the said lands at Rs. 1325/- per cent less 20 per

cent for passage together with 30% solatium and interest as per the provisions of the Act. While fixing the compensation, the learned Subordinate

Judge has compared the sale deeds Exhibits A.2, A.3, A.4 and A.5. Exhibits A.3 to A.5 are the sale deeds dated 22-9-1982 executed by A. N.

Raghavan, A. N. Madhavan and N. Hariharan, respectively in favour of the Central Government represented by the Divisional Engineer,

Telegraphs. Under Exhibit A.3, the Government of India purchased an extent of 27 cents in S. No. 158/1 and 10 cents of land in S. No. 159/1 B

of Sivakasi village at the rate of Rs. 1061/- per cent inclusive of all the interests of the vendor for the said land. Exhibit A.4 is the sale deed for Rs.

39,391/- wherein the Divisional Engineer Telegraphs purchased an extent of 26 cents in S.No. 158/2 and 5 cents in S. No. 159/5 cents in S. No.

159/1C of Sivakasi village with a well in it, at the rate of Rs. 1061/- per cent. Exhibit A.5 is the sale deed for Rs. 39,257/-, herein again the

Telegraphs Department has purchased an extent of 37 cents in S. No. 159/1A of Sivakasi Village at the rate of Rs. 1061/- per cent inclusive of all

interests of the vendor for the said land. It is not in dispute that these lands were purchased by the Telegraphs Department by private negotiations.

On the basis of Exhibit A.2, the Subordinate Judge has fixed the compensation. Exhibit A2 is a sale deed for Rs. 13,500/-executed on 3-12-1982

by one N. Ramachandran in favour of one V. Perumal, the third party, for an extent of 10 1/2 cents at the rate of Rs. 1325/- per cent. It is also not

in dispute that the claimants have applied for sanction of lay out long prior to the acquisition of the lands in question. Exhibit A.6 is the proposed

lay-out of house sites in R.S. No. 141, Exhibit A7 is the receipt issued by the Municipality for the sanction of lay-out. It is dated 27-9-1982.

These two documents, in our opinion, will go to show that the land which is sought to be acquired by the Government is a House-site and,

therefore, the learned Subordinate Judge has fixed the value of these lands as house-site. Learned Additional Government Pleader has contended

that while fixing the market value, the learned Subordinate Judge has erred in relying upon Exhibit A.2 which was executed just three days before

4(1) Notification. He further contended that the said sale had been created only for the purpose of obtaining more compensation. He has further

urged that the Court below has erred in rejecting the document Exhibit B. 1 on the ground that the sale deed came to be executed 1-1/2 years

prior to the date of application u/s 4(1) Notification. According to him the land under Exhibit A.2 is not similar to the acquired land with respect to

"tharam" and quality etc. He has further contended that the sale deeds under Exhibits A.3 to A.5 are situated in a very important and busy localities

and so, the value would not reflect the correct market value of the acquired landed property. He also urged that the learned Subordinate Judge

ought not to have taken into consideration Exhibit A.2 which is in respect of a small extent of 10-1/6 cents of land and as such that sale deed

should not be relied upon for fixing the compensation with respect to larger extent of land. We are unable to accept any of the contentions of the

learned Additional Government Pleader. As already seen the claimants have let in both oral and documentary evidence. On behalf of the claimants

the Abdul Rahman has examined himself as P.W. 1 We have already considered the evidence of P.W. I in paras supra. According to him the lands

are situated within the Municipal limits of Sivakasi Town with all advantages and facilities and nothing is elicited from P.W. 1 in cross examination

by the State. He has also specifically stated in his evidence that the lands sold under Exhibits A.3 to A.5 are situate in a lower level when

compared with the lands sold under Exhibit A.2 and, therefore, the Subordinate Judge should have fixed the market value only as per Exhibit A.2

at the rate of Rs. 1325/- per cent.

9. Mr. Sivaji, learned counsel for the claimants, however, submitted that the arguments of the learned Additional Government Pleader do not merit

any acceptance since the land Acquisition Officer himself has relied upon Exhibit B.1 sale deed which is also a very small extent of 5-1/2 cents.

We see force in his submission. Therefore, we reject the contention of the learned Additional Government Pleader that the learned Subordinate

Judge ought not have taken into account Exhibit A.2 while fixing the compensation, learned Subordinate Judge has in our view rightly placed

reliance on Exhibits A.3 to A.5 and also the oral testimony of P.W.1 in fixing the compensation. We have also perused the plan Exhibit A.1. The

lands sought to be acquired by the State is in Survey No. 141 and Survey No. 148 is situate very near to Survey No. 141 and to the north of

railway line. Survey Numbers 158 and 159 are also situate very near to survey number 141 but to the south of the railway line, Survey No. 146

sold under Exhibit B. I is also situate north of the railway line. Admittedly, all the above survey numbers are situate within the Municipal limits of

Sivakasi Town. Therefore, we are of the view that the learned Subordinate Judge has adopted the sale deed Exhibit A.2 in fixing the market value

for the land since it is proved beyond doubt that the land under acquisition is a pucca house-sites. This apart the claimants also have established

their case that the lands under acquisition is a house site and that they have already applied for approval of the lay out with the authorities

concerned and paid the necessary fee as well. There is no contra evidence let in by the State to disprove the oral testimony of the claimant. When

the land acquired is admittedly situate within the Municipal limits and also covered by fully developed area on all sides there is nothing wrong or

illegal on the part of the Court below for fixing the market value at Rs. 1325/- per cent less 20% since Sivakasi. Railway station is located at a

distance of 2 furlong from the acquired land. This apart Public Offices, such as R.T.O., Block Development Office etc. are situate very near to the

acquired lands. Above all the land in question was required by the State only for the purpose of providing free house sites for Adidraavidars.

Therefore, reliance placed on the inspection report of the acquisition Officer will be of any assistance to the State. It is also not disputed that the

acquired land is very close to the Public High way from Sivakasi to Srivilliputhur. The contention of the learned Additional Government Pleader

that the sale deeds under Exhibit A. 2 has been created only for the purpose of obtaining more compensation is to be straight way rejected.

Learned Additional Government Pleader is not in a position to substantiate the said contention. Likewise, his contention that value mentioned in

Exhibits A.3 to A.5 would not reflect the correct market value of the acquired land, is liable to be rejected since the purchase was made by the

President of Indian Union for the purpose of locating the Telegraphs Department. Therefore, none of the contentions raised by Additional

Government pleader merit any acceptance. Therefore, all the contentions of the learned Additional Government Pleader are rejected.

10. The claimants have filed cross objections stating that the deductions of 20% for pathway by the Subordinate Judge is not justifiable and

arbitrary and also disproportionate to the acquired extent. According to Mr. Sivaji learned counsel for the claimant, the total claim of Rs. 1325/-

per cent should have been awarded without any deduction either towards pathway or otherwise. Reliance was placed on Exhibits A.3 to A.5 and

also the oral evidence of the claimants. Oral evidence of the claimants clearly proves that the land in question are situate in a developed area and,

therefore, the houses can be straight-way built in lands acquired, and it does not require any further improvements or development. According to

the learned counsel for the claimants, the learned Subordinate Judge having found that the lands in question is within the Municipal Limits and

having all the facilities namely, very near to the Bun-gaios, Gandhi Nagar Teacher's Colony, Cinema Theatre, Railway Station and Good shed

close to hospital, Thiruthangal road and Srivilliputhur road, Government Officers and the non-availability of vacant land within the Municipal limit

erred in not awarding the lawful claim of the cross-objectors to entirety. We see much force in this contention. Learned Subordinate Judge in his

order has not given any reasons for deducting 20% for pathway from and out of the market value fixed at Rs. 1325/-. We fail to understand as to

why 20% deduction was made by the learned Subordinate Judge when there is ample evidence to show that the land acquired is situate in a fully

developed area. On his own findings, the learned Subordinate Judge ought to have noted the points and fixed the market value at Rs. 1325/- per

cent without any deduction whatever. The Supreme Court in Bhagwathulla Samanna v. Special Tahsildar and Land Acquisition Officer, (1991)

SCC 506 has observed as follows :

..... a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area

in order to compare with the small plots dealt with under the sale transaction, However, in applying this principle of deduction it is necessary to

consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factors. If smaller area within the

large tract is already developed and situated in an advantageous position suitable for building purpose and have all amenities such as roads,

drainage, electricity, communications etc. then the principle of deduction simply for the reasons that it is part of the large tract acquired, may not be

justified.

In our view the observation made by the Supreme Court is squarely applicable to the case on hand. Admittedly, the land in question is already in a

developed area and situated in an advantageous position and quite suitable for building purpose. It is also proved in evidence that the land in

question has all the amenities such as roads, drainage, electricity, communications etc. Therefore, we are of the view that the learned Subordinate

Judge is not justified in deducting 20% from the market value. We therefore set aside that part of the order of the learned Subordinate Judge, fixing

the market value at Rs. 1325/- per cent -- Less 20%. The cross objection is, therefore, allowed and the order of the Subordinate Judge is

modified to this extent.

11. The Supreme Court also in the above judgment has observed that

In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the

relevant notification. It is useful to consider the value paid for similar land at the material time under genuine transactions.

In the instant case the claimants have produced before the Subordinate Judge Exhibits A.3 to A.5 to consider the value paid under the said sale

deeds for similar lands at the material time. There cannot be any dispute that the lands purchased by Telegraphs Department under Exhibits A.3 to

A.5 are not genuine transactions. Therefore, the value paid under Exhibits A.3 to A.5 can very well be taken as guideline as basis for fixing the

market value and compensation for the land acquisition. The Supreme Court has also observed that

..... in given circumstances it would be permissible to take into account the price fetched by the small plots of land.

As pointed out earlier, the land acquisition officer himself has relied on the sale deed under Exhibit B. 1 which is also in respect of a small plot of an

extent of 5-1/2 cents. The land sold under Exhibit A.2 is of an extent of 10-1/6 cents. Likewise Exhibit A.3 to A.5 are also of the extent of 37

cents each. Therefore, in the given circumstances there is nothing wrong or irregular or illegal on the part of the Subordinate Judge to take into

account the price fetched for small plots of land. Therefore, the order of the court below is in order except to the deduction of 20% made from the

market value awarded. We having been persuaded not to take a different view other than the view taken by the learned Subordinate Judge, we

dismiss the appeal by the State with costs. Cross objection is allowed for the reasons indicated in the earlier part of this order.

12. Order accordingly.