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(1999) 03 MAD CK 0035

In the Madras High Court

Case No : A.S. No. 167 of 1988

Special Tahsildar (LA) Adi Dravidar Welfare, Saidapet — APPELLANT

Vs

M. Naganathan — RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Lands Acquisition Act, 1869 — Section 18, 23, 4(1), 51

Citation : (1999) 2 CTC 630

Hon'ble Judges : P. Thangavel, J

Bench : Single Bench

Advocate : Mr. V. Ravi, Additional Govt. Pleader, for the Appellant; Mr. R. Gandhi, for Mr. T.S. Sivagnanam, for the Respondent

Judgement

1. Appeal against the order dated 16.6.1987 in L.A.O.P. No. 374 of 1986 on the file of the learned Sub Ordinate Judge, Tiruvallur.

2. The Irulars of Madarpakkam Village, Gummidipoondi Taluk, Tiruvallur District represented to the Government of Tamil Nadu allotment of

house sites to them for construction of houses with required amenities. The Government of Tamil Nadu proposed to acquire 1.53 acres of dry land

in Survey No. 108/5 B belonging to one Elumalai and 5 acres in Survey No. 108/6 belonging to the claimant Thiru M. Naganathan totalling to 6.53

acres in Madarpakkam village, Gummidipoondi Taluk, Tiruvallore District for allotment of house sites to Irulars of Madarpakkam village.

Accordingly the Government of Tamil Nadu acquired the abovesaid lands measuring 6.53 acres by issuing notification u/s 4(1) of the Land

Acquisition Act, 1894 (hereinafter referred to as the Act) in Tamil Nadu Government Gazette dated 27.11.1985 after approving the draft

notification u/s 4(1) of the Act in G.O.Ms.No. 2302/SWD dated 7.11.1985.

3. The Special Tahsildar, (Land Acquisition) Adi Dravidar Welfare, Saidapet, Madras (hereinafter referred to as the Referring Officer) after

holding enquiry fixed the market value of the land acquired from the claimant Thiru M. Naganathan and another at Rs. 5,000 per acre or Rs. 50

per cent and passed an award in Award No.2 of 1985-86 dated 31.3.1986. Aggrieved at the award passed by the Referring Officer, the claimant

Thiru M. Naganathan requested the Referring Officer to refer the matter u/s 18 of the Act to the competent Court for fixing proper and correct

market value for the land acquired from him after taking into consideration of the claim made by the claimant with regard to the lands acquired from

him.

4. The learned Subordinate Judge, Tiruvallore (hereinafter referred to as the Reference Court) has taken the matter under reference on his file and

after considering the material evidence placed before the court fixed the market value of the land at Rs. 850 per cent apart from granting solatium

of 30 per cent and interest at 15 per cent per annum. Aggrieved at the award passed by the Reference Court the Referring Officer, as appellant,

has come forward with this appeal.

5. Point for determination is whether there are grounds to interfere with the order passed by the Reference Court.

6. Point: Admittedly the Government of Tamil Nadu acquired the land of the claimant Thiru M. Naganathan measuring 5 acres in Survey No.

108/6 in Madarpakkam village alone with land of one another person totalling to 6.53 acres by issuing notification u/s 4(1) of the Act in Tamil

Nadu Government Gazette dated 27.11.1985 at the instance of Irulars of Madarpakkam village for allotment of house sites to them to construct

houses with required amenities. The Referring Officer after holding enquiry fixed the market value of the land acquired for the abovesaid purpose at

Rs. 5,000 per acre or Rs. 50 per cent and passed an award in award No.2 of 1985-86 dated 31.3.1986. The market value fixed by the Referring

Officer, according to the estimation of the claimant, is too low and therefore at his instance the matter came before the Reference Court u/s 18 of

the Act for fixing proper and correct market value after taking into consideration of the claim made by the claimant for the acquired land.

7. The claimant Thiru. M.N. Naganathan has examined himself as C.W.1 while

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Thiru K. Sundaramurthy, Referring Officer, has examined himself

as. R.W.1 before the Reference Court. The claimant has produced Ex.A1 to A3 to establish that the market value fixed for the land acquired from

the claimant is too low and the said land will fetch higher market value. Ex.A1 dated 30.1.1985 is the copy of the sale deed executed for

Rs.12,920 at Rs. 1,520 per cent with regard to 3,692 sq.ft. of house site in Survey No. 168 in Madarpakkam village. Ex.A.2 dated 10.4.1985 is

the copy of sale deed executed for Rs. 15,750 at Rs. 750 per cent with regard to 21 cents in Survey No. 115 of 84 in Madarpakkam village.

Ex.A.3 dated 26.8.1985 is the copy of the sale deed executed for Rs.6,164 at Rs. 880 per cent with regard to 3055 sq.ft in Survey No. 164/15 in

Madarpakkam village. All the sale deeds referred to above had come into existence within ten months from the date of issue of Section 4(1)

notification dated 27.11.1985. The Referring Officer has not chosen to produce any document as to how he has arrived at the market value for the

acquired land. The claimant is not a party to Ex.A1 to A3. There is no acceptable evidence on the side of the claimant with regard to the location,

tharam, amenities like access etc. and the distance between the acquired land and the lands covered under Exs. A1 to A3. The claimant has not

chosen to examinece either the vendors or the vendees of Exs. A1 to A3 to prove the abovesaid facts.

8. The Apex Court in Meharban and others etc. etc. Vs. State of U.P. and others, has held as follows:

It is settled legal position that the Court, while determining the compensation must sit in the armchair of a willing and prudent vendor and put a

question whether the market value sought to be determined would be capable of fetching that hypothetical price and should determine a just and

adequate compensation for the land acquired. Since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence

though certified copies marked under Sections 51A are available. So, all the sale deeds stand excluded. It is the duty of the court to take all the

relevant factors into account before determination of the compensation.

The Apex Court in the State of Jammu and Kashmir v. Mohammed Mateen Wani and others, 1998 (4) A.D. SC 367, has held that sale instances,

although produced on record, are not deemed to have been proved unless the

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vendors or vendees of the sale instances are examined by the

claimants and that the sale instances relating to smaller area cannot be said to be comparable sale instances to determine the market value of big

chunk of acquired land.

9. Therefore the sale deeds marked u/s 51A are though available, the said documents stand excluded for want of proof of such documents in view

of the non-examination of the vendors or vendees of such documents by the claimant. Further the sale instances with regard to similar extent of

land cannot be comparable sale instances for land acquired in larger extent. In view of the said position Exs. A1 to A3 should be excluded for

want of proof of such documents. If the abovesaid documents are excluded, there is absolutely no evidence on the side of the claimants to establish

that they are entitled to higher market value than that of the market value fixed by the Referring Officer. Likewise there is also no evidence on the

side of the Referring Officer as to how he has fixed the market value of the lands at Rs. 5,000 per acre or at Rs.50 per cent. The Referring Officer

himself would admit during cross-examination that if sale deeds of recent origin before issue of Section 4(1) notification are considered, it may be

possible to fix the market value of the land acquired from the claimant at different rate.

10. The Hon''ble Apex Court. in Union of India (UOI) and Others Vs. Sunil Chandra Saha and Another, has held as follows:

Both the claimant and the Land Acquisition Officer merely market the sale deeds without examining either the vendor or vendee to bring on

record the circumstances under which the sale deeds came to be executed, the distance of the lands to the acquired lands, the nature of the

respective lands and whether they would offer comparable sales to determine just and fair market value of the acquired lands. In the absence of

such relevant material evidence, it would be difficult to determine compensation in respect of the acquired lands. The appeals are allowed

accordingly. The award and decree of the Reference Court as followed by the High court stand setaside. The cases are remitted to the Reference

Court for disposal.

The parties are at liberty to adduce such legal evidence as is necessary to determine the true and correct market value of the land prevailing as on

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the date of notification.

11. In view of the said position, the award passed by the Reference Court has to be setaside but with direction to the said Court to permit both

parties to let in further oral and documentary evidence to fix the market value of the land acquired from the claimant as on the date of issue of

Section 4(1) notification. Accordingly the award passed by the Reference Court is setaside and the matter is remitted back to the Reference Court

with direction to permit both parties to-let in further oral and documentary evidence to fix the market value of the land acquired from the claimant

as on the date of issue of Section 4(1) notification.

12. The learned Additional Government Pleader contends that the Reference Court has committed an error in granting interest at 15% per annum

on compensation which includes solatium of 30%. The learned counsel appearing for the claimant, though not preferred counter claim, contends

that the claimant is entitled to additional amount at 12% per annum from the date of issue of Section 4(1) notification till the date of passing of

award or taking possession of the acquired land and that such relief has to be granted under the provisions of the Amended Act, 68 of 1984. The

Hon''ble Apex Court in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, and Tehri Hydro Development

Corpn. Vs. S.P. Singh and Others, has held that the claimants are not entitled to interest on solatium and on additional amount u/s 23(1-A) of the

Land Acquisition Act, 1894. In view of the said decisions, grant of interest on solatium by the Reference Court cannot be sustained. The claimants

are entitled to additional amount as mentioned above, if the award was passed on or after 30.4.1982 as per the Amended Act, 68 of 1984. In this

case the award was passed by the Referring Officer on 31.3.1986. The grant of additional amount is a statutory obligation of the Court. Therefore,

as rightly contended by the learned counsel for the claimant, the claimant is entitled to additional amount at 12% per annum from the date of issue

of Section 4(1) notification till the date of passing of award or taking possession of the acquired land whichever is earlier. It is also made clear that

this additional amount will not attract interest in view of the decisions referred to above. The reliefs sought for by the learned Additional

Government Pleader and the learned Counsel for the claimant were not granted

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in this appeal, since the order of the Reference Court is setaside

and is remitted back to the Reference Court to fix the market value of the land in the light of the observation made above. Both parties are at

liberty to agitate their claims before Reference Court. The point is answered accordingly.

13. In fine, the appeal is allowed and the order of the Reference Court is setaside. The matter is remitted back to the Reference Court with

direction to permit both parties to let in further oral and documentary evidence to fix the market value of the land acquired from the claimant as on

the date of issue of section 4(1) notification. The Reference Court is hereby directed to dispose of the matter within three months (exclusive of

period of vacation) from the date of receipt of the copy of the judgment of this court. Both parties are directed to bear their own costs.

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