
(2015) 03 MAD CK 0078

In the Madras High Court

Case No : A.S. No. 234 of 2004, Cross Objection No. 4 of 2015, C.M.P. Nos. 7008 of 2004 and 3042 of 2006

Special Tahsildar (LA)

APPELLANT

Vs

Ganesan

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

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

Citation : (2015) 03 MAD CK 0078

Hon'ble Judges : V.M. Velumani, J.

Bench : Single Bench

Advocate : S. Bharathi, Government Advocate, for the Appellant; M. Thilakar for A. Sivaji, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.M. Velumani, J.—This First Appeal and the Cross Objection have been filed against the judgment and decree dated 22.11.2002, made in L.A.O.P. No. 233 of 2001 on the file of Subordinate Court, Aruppukottai.

2. The parties are referred to as per their rank in the First Appeal.

3. The appellant acquired 1.67.0 Hectares of land belonging to the respondent in Kovilankulam Village, Aruppukottai Taluk. After following the procedure laid down in the Land Acquisition Proceedings, the appellant by Award No. 1/93-94, dated 29.11.1993, fixed the market value of the land acquired at Rs.94.08 per cent. As per Section 18 of the Land Acquisition Act 1894, the respondent requested to refer the matter to competent Court for deciding the quantum of compensation, as he objected to the amount of compensation fixed. The reference made was numbered as L.A.O.P. No. 233 of 2001.

4. Before the learned Subordinate Judge, Aruppukottai, the respondent was examined himself as P.W.1 and two other witnesses, namely, Gurunathan and Ganesan were examined as P.W.2 and P.W.3 respectively and two sale deeds,

dated 27.03.1989 and 03.09.1990 were marked as Exs.P1 and P2. On the side of the appellant, one Souhath Ali, Special Tahsildar, was examined as R.W.1 and Exs.R1 to R4 were marked.

5. The learned Subordinate Judge considered the evidence and the Judgments referred to, fixed the value of the land at Rs.3,914/- per cent and after deducting 42% towards development charges, fixed Rs.2,270/- per cent as value of land and granted 30% solatium and interest @ 9% from the date of acquisition for one year and thereafter, 15% p.a. till deposit into Court.

6. Against the said Judgment and Decree, the appellant has filed A.S. No. 234 of 2004 and the respondent has filed Cross Objection (MD) No. 4 of 2015.

7. The learned counsel for the appellant argued that the learned Subordinate Judge erred in enhancing the compensation from Rs.94.08 to Rs.2,270/-. The learned Subordinate Judge failed to note that the appellant has taken into account the correct sale deed to arrive at market value and the lower Court failed to give any reason for rejecting the same. The respondent did not produce any proper document for enhancement of market value. The sale deeds relied on by the respondent relates to smaller extent and larger extent of land was acquired. Hence, the consideration paid for smaller extent cannot be applied to a larger extent. The Court below failed to give proper deductions for development for Housing Scheme. The Court below ought to have given deduction of 65% for development charges. 42% deduction given by the Court below was very much low. In the circumstances, the learned Government Advocate relied on the following Judgments:

(i) Smt. Basavva and others Vs. Special Land Acquisition Officer and others, , wherein in paragraph 3, it has been held as follows:

3. Having given our consideration, the question that arises for consideration is whether the High Court has committed any error of law in fixing the compensation at the rate of Rs. 56,000 per acre? On the principle of deductions in the determination of the compensation, this Court in K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), has considered the entire case law and has held that the Court, in the first instance, has to consider whether sales relating to smaller pieces of lands are genuine and reliable and whether they are in respect of comparable lands. In the event the Court finds that such sales are genuine and reliable and the lands have comparable features, sufficient deduction should be made to arrive at the just and fair market value of large tracts of land. The time-lag for real development and the waiting period for development are also relevant consideration for determination of just and adequate compensation. Each case depends upon its own facts. For deduction of development charges, the nature of the development, conditions and nature of the land, the land required to be set apart under the building rules for roads, sewerage, electricity, parks, water etc. and all other relevant circumstances involved are to be considered. In this case the facts recorded by the High Court

are that Ex. P-10 sale deed is dependable sale but it is in respect of a small plot of land situated at a distance of more than 1 km. It is also found that the land in the area is not developed and there is no development towards that area. The High Court also noted that it takes years for development in those lands though the lands are capable of being used for non-agricultural purpose. On those findings the High Court held that the market value under Ex. P-10 cannot form the sole basis but keeping in view the developments the lands are capable of fetching compensation at the rate of Rs. 56,000 after deducting 65%. For developmental charges, that deduction between 33-1/3 to 53% was held to be valid by this Court in several judgments. In Smt. Basavva and others Vs. Special Land Acquisition Officer and others, 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in view the fact that the lands under Ex. P-10 were situated at far- flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12%, i.e. $53 + 12\% = 65\%$ in determination of the compensation. On the basis of the rationale referred to above, the principle adopted by the High Court cannot be said to be illegal. Thus considered, we hold that there is no justification for interference in the finding recorded by the High Court or to further increase the compensation. (ii) K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, wherein in paragraphs 9 and 10, it has been held as follows:

9. The judgment of the A.P. High Court in Revenue Divisional Officer v. Dasari Ganga Raju [1992 Supp ALA Cas 403. relied on by the counsel, proceeded on a wrong assumption of law and directed not to deduct any amount towards any developmental charges since the land was acquired for bus stand purpose. As stated above the principle is not for what purpose the land was acquired. Had the owner sold the land in open market as house sites, would he be entitled to use the entire land for building purpose? That would be the yardstick. Therefore, the ratio therein is not correct in law.

10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation under Section 23(1), as on the date of notification under Section 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads and for other amenities and his requirement to

expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and further deduction towards development charges @ 33-1/3%, as ordered by the High Court, was not illegal.

(iii) The Special Tahsildar (L.A.,) Adi Dravidar Welfare, Srivilliputhur Vs Palraj Pillai [A.S. No. 604 of 2001, dated 08.04.2010], wherein in paragraph 6, it has been held as follows:

6. It is seen that the adjoining properties have been developed into housing plots and the acquired land is found to be having potential of becoming house sites. Therefore, there is nothing wrong on the part of the Tribunal in relying upon Exs.A-2, A-3 and A-5 through which house plots were sold. Though there are conflicting judgment with regard to deduction to be made, a three Judges Bench of the Supreme Court in Karnataka Urban Water Supply and Drainage board, etc. Vs. K.S. Gangadharappa and Another etc., held that there is no Strait-Jacket formula with regard to deduction to be made towards development charges. Therefore, 30% deduction made by the Tribunal is found to be reasonable and the same is confirmed. 8. Per contra, the learned counsel for the respondent/cross objector contended that the Court below failed to take note of the advantages of the acquired land and the value was increasing day-by-day. The property in question is within the Municipal limit and is well developed. The deduction of 42% towards development charges is on the higher side. The Court below ought to have accepted the value as stated by the respondent and the respondent is entitled to 12% in addition to solatium.

9. Heard the learned counsel appearing for the parties.

10. I have perused the materials on record and considered the arguments of the learned counsel appearing for the parties.

11. The appellant fixed the market value in question as Rs.94.08 per cent on the ground that the land is a dry punja land, based on the settlement arrived at 40 years before the acquisition. The appellant failed to take note that subsequently a number of Industries, Educational Institutions and Houses have come into existence in that locality. The respondent has let in evidence to prove that number of Houses and Industries have come up in and around the acquired land. R.W.1, who was examined on behalf of the appellant had admitted that there are number of Houses and Industries in and around the acquired land. The appellant also acquired the land after spot inspection of land and being satisfied with the suitability of the property for construction of Houses. Further, the land acquired is within the Municipal limits. Therefore, the learned Subordinate Judge has correctly held that the market value has to be fixed treating the land as house sites.

12. The contention of the learned Government Advocate that the learned Subordinate Judge erred in taking into consideration the sale deed of smaller extent. This contention is untenable. It is well settled that the sale price of smaller extent can be taken into consideration to arrive at a market value of

larger extent. The only condition is to deduct the amount for development charges. In case of larger extent being acquired for housing scheme, deductions must be made for Roads, Sewerage, Electricity and Parks etc.

13. In the present case, the learned Subordinate Judge, has taken into consideration the sale deed, which was executed two years before acquisition and rightly rejected the sale deed, which was executed 3-1/2 years earlier to acquisition. Taking into consideration the extent of Data sale deed, the learned Subordinate Judge has deducted 42% of market price towards development charges. This deduction is not very much less as contended by the learned Government Advocate or on the higher side as contended by the respondent/cross objector. The land is acquired for housing scheme. The appellant has to make provisions for roads, parks and other public places. Therefore, the deduction of 42% is proper and valid.

14. The contention of the respondent/cross objector is that the learned Subordinate Judge failed to take into consideration the increase of market value of land and ought to have increased the market value of the land acquired which would have fetched, when the L.A.O.P. was heard and decided. The learned Subordinate Judge had rejected this contention holding that the time taken by the Courts to decide the quantum of compensation cannot be a reason for granting enhanced compensation. The reason given for the said decision, is valid and there is no reason to interfere with the said decisions.

15. The learned Subordinate Judge has considered the issue in a proper perspective and has given valid reasons for arriving at the enhanced compensation. There is no error or infirmity in the Judgment and Decree dated 22.11.2002, passed in L.A.O.P. No. 233 of 2001, by the learned Subordinate Judge, Aruppukottai.

16. For the reasons stated above, I hold that A.S. No. 234 of 2004 and Cross Objection (MD) No. 4 of 2015 are liable to be dismissed.

17. In the result, the First Appeal and the Cross Objection are dismissed. No costs. Consequently, connected miscellaneous petitions are close.