

**(2010) 12 MAD CK 0267**  
**In the Madras High Court**  
**Case No : Appeal Suit No. 464 of 2007**

Special Tahsildar (LA) Unit II

APPELLANT

Vs

N. Baskar and Others

RESPONDENT

**Date of Decision :** 08-12-2010

**Acts Referred:**

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

**Citation :** (2010) 12 MAD CK 0267

**Hon'ble Judges :** S. Palanivelu, J; K. Mohan Ram, J

**Bench :** Division Bench

**Advocate :** V. Ravi, SGP AS, for the Appellant; R. Subramanian, for Respondent 1 in all appeals for R1 to R3 in A.S. No. 542 of 2007 and for R3 to R6 in A.S. No. 543 of 2007 and C. Kathiravan (CMDA), for Respondent 2 in all appeals and for R4 in A.S. Nos. 542 and 545 of 2007, for the Respondent

## Judgement

K. Mohan Ram, J.—The above appeals have been filed by the Special Tahsildar, Land Acquisition (Unit II) Outer Ring Road Project, Chennai Metropolitan Development Authority, challenging the common judgment and decree dated 29.6.2006 passed in L.A.O.P. Nos. 337 and 339 of 2003 and L.A.O.P. Nos. 17, 19, 31, 32, 33, 34, 35, 95, 97, 103, 203 and 204 of 2004 on the file of the Additional District and Sessions Judge (Fast Track Court No. IV) Ponamallee.

2. The lands of the Respondents/ claimants are situated in Malayambakkam Village, Sriperumbudur Taluk, Kancheepuram District. The lands were acquired for the purpose of formation of the Outer Ring Road connecting the Sub urban areas of Chennai Metropolitan City from Kundrathur Village to Minjur via Ponneri, Avadi. A notification u/s 4(1) was issued on 12.07.2000. After following the due procedure under the Land Acquisition Act, an award came to be passed by the Acquiring authority in Award No. 2/2003-04 dated 15.07.2003. The Acquiring Authority, fixed the market rate of compensation at Rs. 600/-per cent.

3. On the survey of the lands, the authorities recorded that the lands were having deep pits and to level the lands, it requires lot of land fill. In many cases

land fill will cost more than the compensation to be paid at the rate of Rs. 600/- per cent. Therefore, it was noted that a token payment of Rs. 1 per cent can be fixed. The aggrieved land owners objected to the lower rate of compensation and hence the matter was referred to the determination of market value by the jurisdictional Reference Court. Subsequently, the matters were assigned to the Fast Track Court IV, Poonamallee for determination of the market value. Those references were registered as different LAOP numbers starting from 337 of 2003 to 382 of 2003, 415, 416 and 418 of 2003. The matters were grouped together and jointly tried by the Addl. District and Sessions Court (Fast Track Court No. 4) Poonamallee.

4. Before the Reference Court, on behalf of the claimants, one Ramamoorthi, (claimant in L.A.O.P. No. 340 of 2003) was examined as C.W.1 as a common witness. On their side, 3 documents were filed and marked as Exs.C.1 to C.3. On behalf of the acquiring authority, the then Special Tahsildar Abdul Wahab was examined as R.W.1 and two documents were filed and marked as Exs.R.1 and R.2. The requisitioning authority viz., CMDA examined one Mrs. Bhuvaneswari, who was the Assistant Planning Officer of CMDA as R.W.2 and on the side of the requisitioning authority, the Outer Ring Road Map was filed as Ex.RB1.

5. It is on the basis of these materials (both oral and documentary), the Reference Court fixed the market value at Rs. 12,000/-per cent and accordingly awarded compensation together with other statutory payments like solatium, Additional compensation and interest by a common judgment dated 29.06.2006, which is under appeal in these appeals.

6. It is seen from the records that the acquiring authority before determining the market value considered the various sale transactions that took place three years before the date of 4(1) notification viz., from 27.07.1997 to 28.07.2000 which are registered in the Sub Registrar's office at Kundrathur. Out of these 370 sale transactions, the authority rejected various documents on the following grounds:

(i) they were beyond 1.6 k.m. (ii) they were sold as house sites (iii) they were sold for other than agriculture purpose (iv) Poramboke land (v) lands which are having small area (vi) lands which are also not having comparable land and (vii) fancy rates have been sold

He also for various reasons rejected the documents in Sl. Nos. 33, 67, 221, 222, 267 and 317.

7. The authority considered the document in Sl. No. 57, which related to Survey No. 1071. It was found that in Survey No. 1071/1, the land to the extent of 0.36.0 cents were found to be agricultural land and paddy was grown. The said land was sold on 02.04.1998 under document No. 1457 and the sale consideration worked out to Rs. 21,600/-at the rate of Rs. 600/-per cent. Considering that the same is closer to the acquired land, the authority recommended Rs. 600/-per cent. He also found that even the acquired land they were classified as Punjai land but the crop pattern showed that they are Nanjai

land and only agricultural operations were carried out on the basis of water received from Sembarambakkam lake as a last point. Only few acres were shown as agricultural lands. The other lands were used for non agricultural purpose. It is also found that the substantial portion of the land was having deep pits and therefore it required a lot of development work to be done before being put to use for the purpose for which the acquisition was made. It is under these circumstances, he recommended the compensation at the rate of Rs. 600/ per cent.

8. Before the Reference Court, on behalf of land owners, Exs.C1 to C3 were filed. In respect of Ex.C3 dated 27.05.1999 it is seen that the land is in Survey No. 236/2. The Court below found that such land is in the neighbouring village viz., Kozhumanivakkam and where that land was sold at Rs. 16,000/-per cent on 27.05.1999. Therefore it was not taken into account. Ultimately, the Court below found that under Ex.C.1 the land was sold at Rs. 14,824/-per cent on 04.06.1998 and under Ex.C.2, which also in the same village, it was sold for Rs. 11,772/-on 23.06.2000. The land under Ex.C.1 is situated 1 k.m. away on the left side of the Outer Ring Road and the land under Ex.C.2 is also 1 k.m. away on the right side of the Outer Ring Road. The Court below found that Ex.C.1 is comparable with all respects to the lands which is under acquisition and therefore, it took Ex.C1 as the basis for determining the market value.

9. Since the document is dated 04.06.1998 and that the 4(1) notification came to be issued after two years, the Court below found that due appreciation in value should be given since that document was already two years old. On that basis, it fixed 10% increase per annum towards the value of the said land and fixed the market value at Rs. 17,790/-per cent. Since the acquiring authority demanded development charges, the Court below fixed the development charges and ordered deduction of 33 1/3% which worked out to Rs. 5,930/-and after deducting the said amount, the market value comes to

10. Heard both.

11. Mr. R. Subramaniam, learned Counsel appearing for the Respondents/ claimants submitted that as against the very same common judgment, totally 44 appeals were filed by the Appellant and since in 28 appeals, as the value of the appeals was below Rs. 15.00 lakhs, those appeals, namely, A.S. Nos. 465, 467 to 472, 474 to 485, 549 to 553, 555 to 558 of 2007, were disposed of by a common judgment, dated 2.9.2010 by Mr. Justice K. Chandru.

12. The learned Counsel further submitted that all the lands were acquired under the same 4(1) Notification and the learned Judge has fixed the market value of the land at Rs. 10,000/-per cent and the lands covered by the above appeals are also situated in the same area and also have the same advantages as that of the lands covered by the other appeals disposed of by the learned Single Judge and therefore, similar market price could be fixed, for the lands acquired, in the above appeals.

13. But Mr. Ravi, the learned Special Govt. Pleader, submitted that Ex.C1, which has been relied upon by the Reference Court for fixing the market value and which has been accepted by the learned Single Judge should not have been taken as data sale deed since the lands covered under Ex.C1 are not comparable with the lands of the claimants.

14. The learned Special Govt. Pleader further submitted that Ex.C1 is a sale deed relating to a village site and poramboke land and that was the reason, it was discarded by the land acquisition officer. He further submitted that the Appellant had to spend Rs. 15.00 lakhs for levelling of the lands as the acquired lands are full of pits and therefore, he submitted that the Reference Court should have deducted 65% towards development charges.

15. In support of the said contention, the learned Special Govt. Pleader relied upon a decision of the Division Bench of this Court, dated 2.12.2009, rendered in the case of the Special Tahsildar (L.A.), SIPCOT Unit, Sriperumbudur, Tiruvallur District v. Lakshmi Narasimman etc., (A.S. Nos. 105 to 197, 608, 637 to 640 of 2008, 515 to 531 of 2007).

16. Further, the learned Special Govt. Pleader submitted that under Ex.C1 an extent of 1590 Sq.ft. situated in S. No. 324/2 of Malayambakkam Village had been sold on 4.6.1998 at Rs. 14,824/-per cent. The learned Special Govt. Pleader submitted that since a smaller extent of land has been sold under Ex.C1 and that too un-developed plot has been sold, higher percentage of deduction towards development charges should have been made.

17. Countering the said submissions, Mr. R. Subramaniam, the learned Counsel for the Respondents/claimants submitted that the aforesaid contentions were raised before Mr. Justice K. Chandru in the connected appeals and only on a consideration of the said submissions, the learned Single Judge fixed the market value at Rs. 10,000/-per cent.

18. The learned Counsel further submitted that the Land Acquisition Officer unreasonably rejected many of the comparable sale transactions on spurious reasons and not based on any guidelines contained u/s 23 of the Land Acquisition Act.

19. The learned Counsel submitted that the purpose for which the land is acquired must also be taken into consideration for fixing the market value and the deduction of development charges. But the Land Acquisition Officer has not taken this aspect into consideration and further submitted that Mr. Justice K. Chandru has considered this aspect and has allowed a deduction of 1/3 rd of the market value taking into consideration the smallness of the land sold under Ex.C.1.

20. The learned Counsel submitted that Mr. Justice K. Chandru has considered number of decisions of the Apex Court for fixing the percentage of deduction made towards development charges. The learned Counsel submitted that the

entire stretch of lands running through the Malayambakkam Village has been acquired for the formation of Outer Ring Road and the acquired lands are contiguous lands and therefore, submitted that the market value fixed in respect of the adjacent lands covered by the appeals, which were disposed of by the learned Single Judge should be fixed to the lands acquired, which are covered by the above appeals.

21. The learned Counsel further submitted that there cannot be two different market values for the lands acquired under the same 4(1) Notification, which are similarly situated and had similar advantages.

22. The learned Counsel in support of his contentions, based reliance on the following decisions:

23. In the decision reported in *Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others*, , the Apex Court, in paragraphs 29 and 30, has laid down as follows:

29. Both the Special Land Acquisition Officer, the District Judge and of the High Court have failed to notice that the purpose of acquisition is for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation. In this context, we may usefully refer the judgment of this Court in *Viluben Jhalejar Contractor v. State of Gujarat*. This Court held that the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges.

30. We are not, however, oblivious of the fact that normally 1/3 rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in *Hasanali Khanbhai and Sons v. State of Gujarat* and *Land Acquisition Officer v. Nookala Rajamallu* had noticed that where lands are acquired for specific purposes, deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise.

24. In the decision reported in *C.R. Nagaraja Shetty (2) v. Special Land Acquisition Officer and Estate Officer and Anr.* (2009) 11 SCC 75), the Apex Court, in paragraphs 12 to 18, has laid down as follows:

12. That leaves us with the other question of deduction ordered by the High Court. The High Court has directed the deduction of Rs 25 per square foot. Unfortunately, the High Court has not discussed the reason for this deduction of Rs 25 per square foot nor has the High Court relied on any piece of evidence for that purpose.

13. It is true that where the lands are acquired for public purpose like setting up of industries or setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable

compensation on account of development charges, however, it has to be established by positive evidence that such development charges are justified. The evidence must come for the need of the development contemplated and the possible expenditure for such development. We do not find any such discussion in the order of the High Court.

14. As if this is not sufficient, when we see the judgment of the Principal Civil Judge (Senior Division), Bangalore, Rural District, Bangalore in the reference proceedings, we find that there is no deduction ordered for the so-called development charges. We are, therefore, not in a position to understand as to from where such development charges sprang up.

15. The learned Counsel appearing on behalf of the Respondents was also unable to point out any such evidence regarding the proposed development. We cannot ignore the fact that the land is acquired only for the widening of the national highway. There would, therefore, be no question of any such development or any costs therefor.

16. In *Nelson Fernandes v. Land Acquisition Officer*<sup>2</sup> this Court has discussed the question of development charges. That was a case where the acquisition was for laying a railway line. This Court found that the land under acquisition was situated in an area which was adjacent to the land already acquired for the same purpose i.e. for laying a railway line. In para 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for the Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation.

17. The Court in *Nelson Fernandes*<sup>2</sup> relied on *Viluben Jhalejar Contractor v. State of Gujarat* *Nelson case 2 SCC 459* where it was held that:, para 29)

29. ... the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges.

Further, in para 30, the Court specifically referred to the deduction for the development charges and observed: (SCC pp. 459-60)

The Court made a reference to two other cases viz. *Hasanali Khanbhai and Sons v. State of Gujarat* <sup>4</sup> and *Land Acquisition Officer v. Nookala Rajamallu* <sup>5</sup> where the deduction by way of development charges was held permissible.

18. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the national highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs 25 per square foot out of the ordered compensation at the rate of Rs 75 per square foot. We set aside the judgment to that extent.

25. In *Sangunthala (Dead) Through Lrs. v. Special Tahsildar (Land Acquisition) and Ors.* (2010) 3 SCC 661), the Apex Court after referring to Nelson Fernandes" case has held that the purpose of acquisition must also be taken note of for deciding the market value.

26. We have considered the aforesaid submissions and perused In the light of the aforesaid legal principles laid down by the It is seen from the records that the 4(1) Notification was given the materials available on record.

27. In the light of the aforesaid legal principles laid down by the Apex Court, the facts of these cases have to be considered.

28. It is seen from the records that the 4(1) Notification was given on 28.7.2000. The Land Acquisition Officer gathered sale statistics from 27.9.1997 to 28.7.2000. There were 370 sales. The Malayambakkam Village lies in between Kundrathoor and Nazerathpet. Even though most of the lands were sold as house sites, there was no house or constructed building.

19. The land acquisition officer rejected 369 sales out of 370 sales on the following grounds:

| -----                        |    |      |       | Sl. No.                | Description                  |
|------------------------------|----|------|-------|------------------------|------------------------------|
| No.                          | of | sale | deeds |                        | rejected                     |
| -----                        |    |      |       | 1.                     | Lands 1.6 k.m.               |
| away from the acquired lands |    |      |       | 89                     | 2. Lands sold as House sites |
| 200                          |    |      |       | 3.                     | Sub divided                  |
| lands 16                     |    |      |       | 4.                     | Pit lands 5                  |
| 5.                           |    |      |       | Far off lands 6        | 6. Not agricultural lands 2  |
| 7.                           |    |      |       | Poramboke              | lands 10                     |
| 8.                           |    |      |       | No proper sale 2       | 9. Joint Venture lands 10    |
| 10.                          |    |      |       | Small lands 9          | 11.                          |
| Uneven lands 12              |    |      |       | 12.                    | Less than market price 1     |
| 13.                          |    |      |       | Mutual exchange sale 5 | 14.                          |
| Highly priced 1              |    |      |       | 15.                    | Sale prior to 3 years 1      |
| -----                        |    |      |       |                        | Total 369                    |

Thus after discarding 369 sale deeds for reasons stated in the above data the land acquisition officer was left with only one sale deed. It was a wet land. This was taken as the data land. There was fresh and new grown paddy crops and chillies in the field. Accordingly, this wet land sale was considered. That land measuring 36 cent in S.No.1071/1 sold for Rs.21,600/- on 2.4.1998 was taken as the data land. The award was accordingly fixed at Rs.600/- per cent of the land.

29. Before the Reference Court, the claimants produced three sale deeds, namely, Exs.C1 to C3. The Reference Court has pointed out that Exs.C1 and C2 are relating to the sale of the land in Malayambakkam Village in S. Nos. 324/2 and 76/4A respectively. These lands are found in the same Malayambakkam Village and within 1.6 k.m. radius of the acquired land. The land under Ex.C1 was sold for Rs. 14,824/-per cent on 4.6.1998, whereas the land under under Ex.C2 was sold for Rs. 11,772/-on 23.6.2000. The land covered under Ex.C1 is situated 1 k.m. away on the left side of the Outer Ring Road and the land covered under Ex.C2 is situated 1 k.m. away on the right side of the Outer Ring

Road, whereas the land covered under Ex.C3 is situated in an adjacent village, namely, Kozhumanivakkam.

30. The Reference Court has pointed out that when the documents are compared, it is found that the land covered under Ex.C1 is closer to the Outer Ring Road or the area acquired. It is not disputed by the Appellant. The lands covered under Exs.C2 and C3 are far away and therefore, the Reference Court has discarded them.

31. The 4(1) Notification is dated 20.6.2000, whereas Ex.C1 is dated 4.6.1998. Therefore, we do not find any error on the part of the Reference Court in basing reliance on Ex.C1. But a perusal of other data sale deeds shows that there has not been much increase in the market value of the lands and therefore, we are unable to agree with the finding of the Reference Court in this regard.

32. The Reference Court has observed that it is a matter of common experience that the price of the land is soaring high due to the development of the city and also due to increased population. Taking into consideration that the development had just started at the time of the acquisition and was boosted up only after the formation of the Outer Ring Road. Further, the Reference Court concluded that 10% hike per annum from the date of sale under Ex.C1 to the date of 4(1) Notification would be a just amount for fixing the market value of the acquired land. But we are unable to sustain the said observation and giving of 10% hike per annum from the date of Ex.C1 to the date of 4(1) Notification for fixing the market value of the land.

33. A perusal of other data sale deeds referred to by the Land Acquisition Officer shows that there is not much hike in the price of the lands covered by those data sale deeds and therefore, the said finding of the Reference Court is set aside.

34. The contention of the learned Special Govt. Pleader based on the decision of the Division Bench of this Court, dated 2.12.2009 referred to above, that more percentage should have been deducted towards development charges is concerned, it has to be pointed out that in the said decision, in paragraph 13, the Division Bench has held as follows:

13. Keeping the above principles in mind, when we examine the case on hand, it is needless to state that the lands were all barren when acquired and the developments had to be made from scratch. The purpose for acquisition by the requisitioning body viz., SIPCOT was for setting up of an industrial park. Further, such a development on that occasion of industrial park was made for multinational companies, NR Is and other major industries to set up their industries in the acquired lands. For that purpose, several other developments by way of road, water facilities, drainage facilities, street lights, hospitals, police station, telecommunication facilities etc., had to be made. It is common knowledge that such developments would necessarily involve crores of rupees to be spent as claimed by the Respondents/claimants before the Courts below. If that be so, the Courts below ought to have applied the maximum percentage of



deduction viz., 53% towards development charges. We therefore hold that the development charges fixed at the rate of 33% and 30% by the Courts below was not justified and instead the development charges to be deducted should be at the rate of 53%.

35. In this context, the above referred to decisions of the Apex Court, have to be kept in mind. In the said decisions, it has been categorically laid down that the purpose for which the land is acquired must also be taken into consideration for fixing the market value and the deduction of development charges. Only taking the purpose of the acquisition into consideration, the Division Bench after noticing that the acquisition in that cases is for the purpose of Industrial Park, allowed the deduction of 53% towards development charges.

36. In Nelson Fernandes" case, the land was acquired for laying Konkan Railway. In that case, no deduction was made towards development charges. Similarly, in the decision reported in C.R. Nagaraja Shetty (2) v. Special Land Acquisition Officer and Estate Officer and Anr. (2009) 11 SCC 75), the land was acquired for widening the national highway and therefore, the Apex Court has held that no deduction can be made towards development charges.

37. In the light of the aforesaid decisions, we are unable to countenance the contention of Mr. Ravi, learned Special Govt. Pleader. But however, this Court cannot ignore the fact that under Ex.C1, the extent of 1590 sq.ft only has been sold, which is a plot smaller in size, whereas the land acquired is of a larger extent and therefore, as has been laid down in a number of decisions of the Apex Court, deduction at the rate of 33 1/3 per cent has to be made.

38. Mr. Justice K. Chandru, has also taken a similar view in the other connected appeals and has given a deduction at the rate of 33 1/3 % for arriving at the market value. Therefore, the deduction at the rate of 33 1/3 % made by the Reference Court is just and proper.

39. If the Compensation is worked out on the basis of the value found in Ex.C1, then the cost of the land in that area at that relevant time come to Rs. 14,824/- per cent. As ordered by the Reference Court, 1/3rd or 33 1/3 per cent is deducted, then the rate will come to Rs. 9883/-and if it is rounded off, then it comes to Rs. 10,000/-. Therefore, we are of the opinion that the market value of the land acquired can be fixed at Rs. 10000/-per cent and the same has to be paid with all other statutory payments to the respective claimants/owners of the land.

40. As rightly contended by the learned Counsel for the claimants/Respondents there cannot be two different market value for the lands, which are similarly situated and had similar advantages and also covered by the same 4(1) Notification and when the learned Single Judge has fixed the market value at Rs. 10,000/-per cent in respect of the lands covered by the connected appeals that also has to be taken into consideration by this Court. We agree with the aforesaid contention of the learned Counsel for the claimants.

41. For the foregoing reasons, the appeals are partly allowed. The market value of the lands covered by these appeals is fixed at Rs. 10,000/-per cent and the claimants are also entitled for other statutory payments. However, taking into consideration of the facts and circumstances of the case, there will be no order as to costs.

42. It is also ordered that though in the above appeals common judgment is pronounced, the learned Special Govt. Pleader and the learned Standing Counsel for CMDA are entitled to claim separate set of fees.

With the above directions, the above appeals are partly allowed. No costs.