

(2002) 11 MAD CK 0102

In the Madras High Court

Case No : Appeal Suit No's. 347 to 349 of 1991 and Cross Objection No's. 222 to 224 of 1992

Special Tahsildar (Land Acquisition), Adi Dravidar Welfare

APPELLANT

Vs

Chinna Ramaswami, Nagarajan and Periya Ramsami

RESPONDENT

Date of Decision : 07-11-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2002) 11 MAD CK 0102

Hon'ble Judges : A.S. Venkatachalamoorthy, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : M.E. Rani Selvan, for the Appellant; A. Sivaji, for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Venkatachalamoorthy, J.—For providing house-sites to Adi Dravidas, an extent of 3.80 acres owned by three different persons, was acquired. The said acquired lands are comprised in S. Nos.538/1B1; 538/2A and 538/1A1 in Ehirkottai Village, Sattur Taluk. The Notification u/s 4(1) of the Land Acquisition Act was published in the gazette dated 27.11.1985. The Land Acquisition Officer thereafter proceeded in the matter and enquiry contemplated under the Act was made by him to fix the market value of the land. Ultimately, the Land Acquisition Officer passed an award viz., Award No.2/86-87 dated 30.06.1986. The Land Acquisition Officer came to the conclusion that the market value of the land has to be taken as Rs.76.92 per cent.

2. All the three land owners/respondents sought for reference under Section-18 of the Land Acquisition Act to a civil court to fix the market value. The references were taken on file by the learned Subordinate Judge, Ramnad at Madurai and the same were numbered as LAOP Nos.138/88, 139/88 and 140/88. The Reference Court disposed of all the three L.A.O.Ps by a Common Judgment. The present Appeals have been filed by the State against the said Judgment, questioning the correctness of the market value fixed by the Reference Court.

3. The respondent/land owners also filed Cross Objections viz., Cross Objection Nos.222 to 224 of 1992.

4. Heard the learned counsel for the State as well as the Cross Objectors/land owners.

5. Learned Special Government Pleader appearing for the State would contend that fixation of market value by the Reference Court is very much on the higher side and even the document viz., Ex.A1 wherein an extent of 5 cents was sold in the adjoining Survey Number fetched only Rs.400/- per cent just eight months prior to Section 4(1) Notification in this case. Further more, even that rate of Rs.400/- per cent cannot be adopted because that was a sale in respect of a small bit of land whereas the acquired lands are of larger extent. Even assuming that the lands owners could have developed their lands as house sites, necessary deductions should be made towards development charges and certain extent/area has to be utilised for the formation of roads.

6. Learned counsel appearing for the Land Owners on the other hand would contend that it cannot be said that the transaction under Ex.A.1 is not a comparable sale and it cannot be said that the area acquired is larger when compared to the subject matter of Ex.A1. According to him, between 5 cents and one acre there may not be a serious difference and the wastage by way of forming road would be very negligible. According to the learned counsel, Section 4(1) Notification in this case was much after the transaction under Ex.A1 and as there was increase in prices that also should be taken into consideration and the the Reference Court should have fixed a higher market value. Learned counsel would also contend that the Reference Court erred in not awarding any amount by way of severance compensation.

7. Two questions arise for consideration viz.,

(i) What is the market value that has to be taken? And

(ii) Whether the respondents/land owners are entitled for severance.

8. As already mentioned, the extent involved is totally 3 acre 80 cents comprised in three different survey numbers owned by three different persons and from each of them an extent of more than one acre has been acquired. The Reference Court has placed reliance on two documents while fixing the market value of the land, they are, Exs.A-1 and A-2.

As far as Ex.A-1 is concerned, it is a certified copy of the sale transaction dated 18.3.1985 wherein an extent of 5 cents comprised in S. No.539 was sold for Rs.2,000/-. Hence, the property that was sold under Ex.A-1 was at the rate of Rs.400/- per cent. S. No.539 abuts the acquired lands. There is no dispute between the parties that both these lands are similar in nature. The claim of the land owners that the lands are fit for plotting out and selling by way of house sites, has not been denied by the Revenue. Hence, on the question of potentiality of the land, Ex.A-1 is a comparable transaction.

9. Coming to the location, it is an admitted fact that the acquired lands abut the road whereas the extent sold under Ex.A-1 does not abut the road. The other plus factor is that there is a time gap of nearly nine months between the Ex.A-1 transaction and Section 4(1) Notification in this case. The Officer examined on behalf of the Revenue has admitted that during the period three years prior to Section 4(1) Notification, there had been steady increase in the value of the land. So, some allowance has to be given for the time gap. This is a factor in favour of the land owners.

10. As regards the situation of the land, that is, as to whether it is situated in an important area, while the land owners would claim so, the witness examined on behalf of the State would emphatically deny it. From a perusal of the evidence of these two witnesses, one thing is clear that since it is not permissible to locate the factories viz., match factories and factories manufacturing crackers cannot be located in the municipal area and the same being located outside the municipal area and the site generally chosen is not the one abutting the main road but one which is interior at least by two furlongs from the road. RW-1, who was examined on behalf of the State has admitted in his evidence that there are factories and workshops one mile away from the acquired lands. From the above, it is clear that the acquired lands are situated neither in a very important area nor in a remote area.

11. Learned counsel appearing for the State then would strongly contend that the value as reflected in Ex.A-1 cannot be adopted because what was sold under Ex.A1 is only an extent of 5 cents of land whereas here, in all three cases, the lands acquired are more than one acre. According to the learned counsel, at least 40% deduction must be given. To develop the land for housing plots, the lands owners have to necessarily spend some amount so also certain extent will go for the formation of roads.

12. Of course, there is some substance in what the learned counsel for the State pleads. That is the minus factor and for which at least 25% deduction must be made. Let us now proceed to do some guess work. The sale consideration under Ex.A1 runs to Rs.400/- out of which, we deduct 25% ie., Rs.100/- and arrive at a figure of Rs.300/-. The plus factors are, that the acquired lands abut the road and Section 4(1) Notification was nine months after Ex.A-1 sale transaction. Therefore, we are inclined to add a sum of Rs.75/- per cent considering these two plus factors and arrive at a figure of Rs.375/- per cent.

We are not taking into consideration Ex.A2 since the land which is subject matter of Ex.A2 is located far away and the extent sold thereunder is only 11/2 cents.

13. We are surprised that a stand has been taken by the Revenue that Ex.A1 and Ex.A2 transactions are taken into consideration to boost up the price. The transaction under Ex.A2 was in the year 1983 and Ex.A-1 was about 9 months prior to Section 4(1) Notification. It is not known on what basis such a point has been raised by the Revenue.

14. When a part of land is acquired, the remaining extent may be cut down into two parts, say for instance when the acquisition is a strip of land for formation of a (Railway) line or a channel. It may be that only a portion of a land may be acquired and the left over area may not be suitable for the purpose to which it was or might have been used. The intention of the legislature in enacting Section 23(1) is that where a part of a person's land is compulsorily taken from him, the owner should be paid compensation for the injury done to his other properties apart from the value of the land acquired. The compensation is also payable when the land is cut into two parts by virtue of acquisition as referred above.

15. If one piece was compulsorily taken, the owner would, as a general rule, be entitled to compensation for damage for severance and injurious affection to the remainder and the true measure of compensation when part of an entire area is taken is the depreciation in value of the remaining area. Let us quote the relevant portions from the judgment of a Division Bench of the Bombay High Court reported in AIR (29) 1942 Bom 105 (Government v. Century Spinning & Manfg. Co), which read thus:-

" The lands under acquisition and the remaining land having been owned by the same person and being near to each other were so situated that the possession and control of each would give an enhanced value to all of them, so that, as pointed out by Halsbury, Hailsham Edn., Vol.6, para.46 t Page 48 if one piece was compulsorily taken, the owner would, as a general rule, be entitled to compensation for damage for severance and injurious affection to the remainder : see also (1889) 14 A.C. 1537. The true measure of compensation when part of an entire area is taken is the depreciation in value of the remaining area."

16. In Balammal and Others Vs. State of Madras and Others, the Supreme Court clarified by holding that where there is nothing to prove that the owners had sustained any loss by reason of the severance of the land acquired from their other lands nor is there any evidence to prove that by reason of the acquisition the remaining lands were injuriously affected or the earnings of the owners were affected, nor is there any evidence to show that there was any damage resulting from diminution of the profits of the land between the time of the publication of the declaration and the time of taking possession of the lands, the owners cannot claim compensation in respect of the damages due to severance of their land.

17. Courts have ruled that when the front portion in a property, that is to say, which abuts the road is acquired and even if it is a small area when compared to the left out area, certainly, there is a diminution in value of the unacquired land.

Refer:- a) Smt. Tribeni Devi and Others Vs. Collector of Ranchi,

b) Gajanan Vinayak Vs. Assistant Collector, Salsette,

c) AIR 1955 NUC (Ajm) 4805 (Collector vs. Principal, Mayo College, Ajmer)

18. While considering a case claiming severance compensation, the question

would be what is it that the court must look for?

A Division Bench of the Sind High Court in the ruling reported in AIR 1933 Sind 21 (Secretary of State vs. Dinshaw) ruled that in estimating the compensation for severance, both the actual and prospective use of the land must be considered.

19. Coming to the present case, as far as A.S.347/91 is concerned, an extent of 0.50.0 Ares out of 0.57.0 was acquired, leaving a small extent of land viz., 7 Ares. In A.S. No.348/91, out of 55 Ares, 45 Ares were acquired, leaving a small area of 10 Ares. So far as A.S.No.349/91 is concerned, out of 66 Ares 59 Ares were acquired, leaving a small extent of 7 Ares. Admittedly, in all these cases, the respondents/land owners were enjoying the lands by cultivating the same. The respondent in A.S.No.347 of 1991 has been examined as PW-1 in this case. This witness has categorically stated that to the left out lands ie., the land not acquired in all the three cases, there is no approach and one has to pass through the acquired lands. This witness has deposed that the small extent that are in their possession, now after acquisition, cannot be used for any purpose. This witness has, in the cross examination, stated that since the lands that are in their possession, now are behind the acquired lands, it would be difficult for them to sell the same. The witness, who has been examined on behalf of the Revenue, has not stated anything as to for what purpose the respondents/land owners can use the remaining lands (the extent apart from the acquired lands).

20. From the above discussion, it is clear that the lands which the respective land owners are owning apart from the acquired lands cannot be cultivated as they are small bit of lands as it would be uneconomic and the chances of persons coming forward to buy in order to construct houses will also be bleak. In those circumstances, certainly, the value of the unacquired property would have gone down.

21. Then, the question is, what is the value that can be fixed. Learned counsel appearing for the respondents/cross objectors would place reliance on a ruling of Punjab and Haryana High Court reported in 1988 LACC (P&H) 310 (State of Punjab vs. Amar Nath and others) and contend that in that case the Court awarded severance compensation at the rate of 50% of the market price. In fact, the learned counsel, by drawing our attention to the facts of that case, would contend that the case of these respondents/land owners would stand definitely on a better footing in every aspect. The learned counsel is right in his submission to some extent. As we already pointed out, the left over area (unacquired lands) cannot be cultivated in the sense, it would not be profitable to cultivate the lands. At the same time, it would be difficult for the respondents/land owners to find a purchaser since it is situated in the back side of the colony and any purchaser would have to fence the plot properly apart from the fact that it has no access. At this juncture, the learned counsel would rely on a Division Bench Ruling reported in AIR 1958 Madras 214 (L.A. Collector vs. S. Vaidyanatha).

22. Taking into consideration the facts and circumstances and also doing some guess work, this Court is inclined to hold that the respondents/land owners shall be paid a sum of Rs.200/- per cent in respect of the unacquired lands by way of severance compensation.

23. In the result, we hold,

(a) the market value of the acquired land shall be at the rate of Rs.375/- (Rupees three hundred and seventy five only) per cent;

(b) the respondents/land owners in all the appeals shall be entitled for a severance compensation in respect of the unacquired lands at the rate of Rs.200/- (Rupees two hundred only) per cent.

(c) On the severance compensation, the respondents/land owners shall be entitled for solatium, interest on solatium, additional amount u/s 23-1A of the Land Acquisition Act and for interest at the rate of 9% per annum after taking possession and thereafter 15% for the subsequent period.

24. In this view of the matter, the appeals are allowed in part. The Cross objections stand allowed in part to the extent indicated above.