

(2015) 03 MAD CK 0077

In the Madras High Court

Case No : C.R.P. (NPD) (MD) No. 367 of 2006 and C.M.P. No. 3800 of 2006

Special Tahsildar, Land Acquisition Officer (ADW)

APPELLANT

Vs

V. Navanathan

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

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

Citation : (2015) 4 MLJ 316

Hon'ble Judges : Pushpa Sathyanarayana, J.

Bench : Single Bench

Advocate : Govindan, Special Government Pleader, for the Appellant; V. Venkatasamy, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pushpa Sathyanarayana, J.—This Civil Revision Petition is focussed against the order dated 30.01.2004 passed by the learned Subordinate Judge, Paramakudi, in L.A.C.M.A. No. 1 of 2002 in fixing the quantum of land value in respect of Punja Lands acquired in Survey Nos. 519/1A and 519/2A, Urappuli village, Paramakudi Taluk, Paramakudi.

2. The facts in nutshell would run thus:

Pursuant to the Notification dated 26.4.2000 issued under Section 4(1) of the Land Acquisition Act [for short, "Act"], the punja lands of the respondent / claimant which were situated in S. Nos. 519/1A and 519/2A in Urappuli village, Paramakudi Taluk, Paramakudi, to an extent of 0.28.0 Hectares and 0.00.5 Hectares respectively, were acquired for the purpose of providing house sites for the Adi Dravida Arundhathiyar community people residing in the same village. After complying with the formalities, the Land Acquisition Officer had fixed the quantum of compensation of the acquired lands in respect of the respondent / claimant at Rs. 35,420/- and accordingly, passed Award No. 15/2000-01 dated 09.03.2001, whereas on the matter on being appealed to the Sub Court at the

instance of the claimant, the compensation was fixed at Rs.9,000/- per cent and in total, it was quantified at Rs.6,39,000/- in addition to 30% towards solatium and interest at 9% per annum. 3. Being aggrieved by and dissatisfied with it, the Government preferred the instant Revision Petition on the main ground that the enhancement awarded by the Court is exorbitantly higher and disproportionate to the actual land value available in the vicinity.

4. The point for determination in this Civil Revision Petition is as to what should be the value to be fixed for the land acquired?

5. Contending that Order 41 and other provisions of CPC have not been applied by the Court below to the proceeding arising out of Act 31/78, the learned Special Government Pleader would develop his argument that the lands measuring lesser extents should not be considered while fixing the market value for large extents of lands. He would further submit that certain land owners due to necessity and urgency might have purchased small extent of adjoining lands at higher prices and that such higher price value cannot reflect the true value of the acquired lands. As such, according to him, the enhanced compensation awarded by the Court below was arbitrary and not based on the guidelines prescribed under the Land Acquisition Act. It is his specific contention that the documents filed by the Land Acquisition Officer were not considered by the Court below. Adding further, learned Special Government Pleader contended that 1/3rd of the award amount should have been deducted for development charges. The learned Government Advocate also attacked the judgment of the Court below on the ground that it has wrongly granted 30% towards solatium and sought for the interference of this Court.

6. Assailing the contentions made by the learned Special Government Pleader, learned counsel appearing for the respondent/claimant would submit that the acquired land is situate in NH 49 Madurai - Rameswaram National Highways and it is in the midst of developed area as the same is surrounded by residential houses and SIDCO is very near to the acquired land. While supporting the judgment of the Court below, learned counsel for the claimant would submit that the acquired land has been declared as extension area by the Paramakudi Municipality.

7. Heard the learned Special Government Pleader representing the State / revision petitioner and the learned counsel appearing for the respondent / claimant and perused the records.

8. It is to be borne in mind that determination of market value of acquired land depends upon the location of lands and potentiality for development has to be taken into consideration. For ascertaining market value of the land, while situation and its access are relevant, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. The question whether the land has potential value or not, is primarily one of fact depending upon its condition,

situation, user to which it is put or is reasonably capable of being put. Determination of market value must reflect not only value at the time of declaration but also its potential value to be taken into account.

9. Insofar as the fixation of market value of the land acquired is concerned, it is seen that the Land Acquisition officer has considered one data sale land falling in S. No. 409/7 and based on the same, fixed the market value of acquired land at Rs.44,000/- per Acre. But a mere perusal of the records would show that the data land is infertile and is situate 1 Km away from the acquired land and 2 Kms. away from the Madurai - Rameswaram Highways and, therefore, the said document could not be considered for the fixation of the market value of the lands acquired by the Government.

10. In this backdrop, it is just and necessary to analyse the documents Exs. C.2 to C.4 marked by the claimant, which he would greatly rely upon. A perusal of Ex. C.2 Inam settlement executed by one Manokaran in favour of one Prema would show that an extent of one cent in S. No. 55/3 was valued at Rs.6970/-. Ex.C-3 is sale deed dated 29.12.1999 relating to 872 sq.ft. in S.No. 331/1D which was sold at Rs.5232/- per cent. Ex. C.4 sale deed is dated 11.3.2001 as per which the lands in S. Nos. 331/2, 3 were sold at the rate of Rs.9724.55 per cent. It is pertinent to note that the said rate was arrived at even before the issuance of Notification under Section 4(1) of the Act. The Court below, on appreciating the evidence and the materials available, found that Exs. C.2 to C.4 are sale deeds which can be considered and arrived at an average sale value of Rs.7300/- per cent, which, this Court feels, is correct. Hence, there is no doubt that it could be taken as a sample for assessing the value of the acquired land. Taking into consideration the escalation of prices every year and also the fact that the lands, in question, were acquired in the year 1999, the learned Judge, applying additions for the five years, wherein the cost of lands should have definitely increased, and the quantity of the land acquired, has rightly fixed the value at Rs.9000/- per cent further granting a solatium of 30% and interest at 9% on the additional amount from the date of Notification or taking possession of the land, whichever is earlier, which, in the considered opinion of this Court, warrants no interference.

11. As regards the development charges is concerned, the Hon''ble Apex Court as well as this Court in a catena of decisions have held that deduction towards development charges is not automatic but depends upon the nature of the development and the stage of development. Where the development has already taken place, there is no need to deduct any amount towards the same. While determining compensation under Section 23(1) of the Act, as on the date of notification under Section 4(1), the Court has to consider the situation of the land development, if already made, and other relevant facts as on that date. If the acquired land is a stripe of land abetting the main road, then the question of development charge would not arise at all for the reason that the person who may have the house building there would have ingress and egress by using the

available road which is adjacent to the land.

12. At this juncture, it would not be out of place for this Court to make a mention of the observation made by the Hon''ble Supreme Court in Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others, that the deduction towards development charges cannot be made in a straight jacket formula and should depend on the facts of each case.

13. Also, it would be worthwhile to refer to the judgment of the Hon''ble Apex Court in Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, wherein it has been held that while determining the amount towards development charges, the purpose for which the land acquired is relevant to decide as to whether any deduction for development charges at all can be made.

14. No doubt, in the instant case, from the materials available on record, it is seen that the lands are acquired for housing. It is not disputed that there are residential houses in the locality and the lands acquired can be used as house sites and do not require any further deduction towards development charges. Development necessarily means providing indispensable amenities like formation of roads, adjoining pavements, electricity connection and water connection, telephone connection, etc. It is not the case of the appellants that in the lands acquired, there are hillocks that need to be leveled or low lying land that need to be filled up. Therefore, when such indispensable amenities are already available, the deduction need not be done. It is also pertinent to note that the lands acquired are situate near NH 49 Madurai - Rameswaram National Highways and in the extended area of Paramakudi Municipality surrounded by SIDCO Industrial Estate and other industrial units. The other important factor is the proximity of the acquired land to the nearby villages. As such, from the above facts, it is reasonable and proper to conclude that the land acquired are potential house sites and the surrounding area is a residential area and that acquired land is on the midst of developed area is to be kept in view. Further more, the land owner / respondent himself has lost heavily on account of compulsory acquisition of potential house sites as the lands are already developed. On an overall consideration and appreciation of the records, this Court feels that the deduction towards development charges can easily be set off with the corresponding increase in price of the acquired land from the point of view of potential value. The Court below has rightly granted 30% solatium and is also right in not deducting any amount towards development charges.

In the above circumstances, this Court is not inclined to interfere with the well considered judgment of the Court below made in L.A.C.M.A. No. 1 of 2002 and the Civil Revision Petition is dismissed as misconceived. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.