(1998) 03 MAD CK 0141

In the Madras High Court

Case No : Appeal No''s. 891/89 and 832 and 833 of 1990

Special Tahsildar (Land Acquisition), Vembakottai Reservoir Scheme, Srivilliputhur — APPELLANT

Vs

Seeni Naicker and two others — RESPONDENT

Date of Decision : 18-03-1998

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23(1), 23(1A), 23(2), 28

Citation : (1998) 03 MAD CK 0141

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : V. Ravi, Additional Government Pleader AS, for the Appellant; K. Mohanram, R. Alagarswamy and Mr. A Sivaji, for the Respondent

Judgement

K. Sampath, J.—These three appeals have arisen against the decisions of the Subordinate Judge''s Court, Srivilliputhur, in references u/s

18of the Land Acquisition Act, Act 2 of 1894. We will first notice the details relating to A.S. No. 891 of 1989 which is against the decision of the

learned Subordinate Judge, Srivilliputhur, in L.A.O.P. No. 72 of 1987. The Special Tahsildar, Vembakottai Reservoir Scheme, Unit-I,

Srivilliputhur is the appellant. Irrigated garden lands in small bits in S. Nos. 1041/2-B belonging to the respondent were acquired Section 4(1)

Notification was published on 10.8.1983 and the award was passed on 26.5.1986 in Award No. 12 of 1986. The Land Acquisition Officer fixed

the value per acre at Rs. 5,000 and worked out the award amount at Rs. 6,786.70. At the instance of the respondent there was a reference to the

Subordinate Judge''s Court u/s 18of the Act. The learned Subordinate Judge fixed the compensation at the rate of Rs. 60,000 per acre. Aggrieved the appeal has been filed. The Land Acquisition Officer relied on a sale deed Ex. B-5 dated 17.11.1981 which was in respect of an extent of 1.11

acres in S. No. 817. The Subordinate Judge relied on Ex.A-1 dated 16.9.1982 which was in respect of 2-1/2 cents in S. No. 1357/5 and fixed

the compensation at Rs. 60,000 per acre.

2. It is the submission of the learned Additional Government Pleader that the reliance placed on Ex.A-1 by the learned Subordinate Judge was

clearly wrong as the sale was in respect of a small extent of land of 2-1/2 cents whereas the land acquired was of a total extent of 83 cents. The

learned Government Pleader relied on the following two decisions in support of his contention:

1. Saunu Vs. Collector, Land Acquisition, and

2. Pehlad Singh and Another Vs. Union of India (UOI),

According to the learned Additional Government Pleader the property acquired was agricultural land whereas Ex.A-1 land relied on by the learned

Subordinate Judge was non-agricultural land situate in a different village and it was in respect of a small bit of 2-1/2 cents, which could not be a

proper guide for fixing the compensation for the lands acquired. There was no demand for house site in the small hamlet where the acquired lands

were situate. According to the learned Additional Government Pleader, the claimant/respondent had himself given a written statement that the lands

were worth Rs. 20,000 per acre. All the other owners had also accepted the award and the respondent/claimant alone had questioned the award.

The learned Government Pleader also submitted that the present land acquisition was different from other cases where the land owners and the

beneficiaries were different, while in the present case the canals and field bothies benefited directly for the land through which they passed. Only a

fraction of the extent acquired was utilised as canal and field bothies. A major portion continued to be under the actual possession and enjoyment

of the land owners though they received compensation also for their portion.

3. Mr. Mohanram, countering the arguments of the learned Additional Government Pleader, submitted that the Subordinate Judge had fixed the

compensation on the basis that the lands acquired were potential house sites and this was spoken to by the claimant as P.W. 1 and P.W. 2, the

vendee under Ex. A-1 relied on by the claimant. The witnesses on the side of the claimant had spoken to the existence of several match factories

and dynamite factories in and around the village and that the village was not a small hamlet as claimed by the Land Acquisition Officer, but it had a

population of five thousand people. The learned counsel also submitted that as against the evidence on the side of the claimant, the Land

Acquisition Officer did not lead any evidence to controvert the evidence on the side of the claimant. Neither the vendor nor the vendee under

Ex.B-3 on the basis of which the Land Acquisition Officer fixed the compensation was examined. There was absolutely no rebuttal evidence and in

view of that, the compensation awarded by the Subordinate Judge should be confirmed.

4. Before proceeding further, it would be worthwhile to refer to the legal principles to be followed for fixing the compensation in respect of the

lands acquired. From a survey of the various decisions of the Supreme Court, this Court and the other High Courts, the broad guidelines that

emerge for quantifying the compensation can be tabulated as under. The tabulation is not exhaustive, but has been done more with a view to serve

as an aid to arrive at a decision in the three cases under consideration.

(1) Section 18of the Land Acquisition Act, 1894 is not an appeal, but an independent proceeding in which the value of the land must be proved by

evidence before Court. Materials relied on by the Land Acquisition Officer cannot be relied on unless those materials are produced and proved

before court.

(a) Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another,

(b) Major Pakhar Singh Atwal and others Vs. State of Pujab and others, ; and

(c) Unreported decision dated 25.10.1989 in A.S. No. 447 of 1987 and Memorandum of Cross-objections.

(2) The amount offered by the Land Acquisition Officer forms an offer and it is for the claimants--on whom is the onus, to adduce relevant and

material evidence to establish that the acquired lands are capable of fetching higher market value and that the amount offered by the Collector was

inadequate and that he proceeded on a wrong premise or principle. Once this initial burden is discharged, the burden shifts to the Collector to

adduce sufficient evidence to sustain the award.

(a) Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala,

(b) Parameshwari Devi (dead) by L.Rs. etc. Vs. Punjab State Electricity Board and Another,

(c) The Special Land Acquisition Officer and another etc. etc. Vs. Sri Siddappa Omanna Tumari and others etc.,

(3) ''Comparable sales method of valuation of land'' is one of the three recognised methods for arriving at fair market value of die land acquired,

the other two being opinion of experts and capitalisation method. The underlying principle to fix a fair and reasonable market value with reference

to comparable sale is to reduce the element of speculation. In a comparable sale the features are:

(i) It must be within a reasonable time of the date of the notification;

(ii) It should be a bona fide transaction;

(iii) It should be a sale of the land acquired or land adjacent to the land acquired; and

(iv) It should possess similar advantages location, size, shape, tenure, potentiality, etc. of land under comparable sale should be compared

favourable with the acquired land. These should be established by adduction of material evidence by examining either the vendor or the vendee or

persons having personal knowledge of the sale transactions:

(a) Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala,

(b) M/s. Printers House Pvt. Ltd. Vs. Mst. Saiyadan (Deceased) by L. Rs., and others, and

(c) Union of India (UOI) and Others Vs. Sunil Chandra Saha and Another,

(4) The sale statement by itself without examining cither vendors or vendees or persons attesting sale deeds is not admissible in evidence:

The Collector, Raigarh Vs. Harisingh Thakur and Another,

(5) The guiding star or acid test would be the conduct of a hypothetical willing vendor who would offer the lands and a willing purchaser in normal

human conduct would be willing to buy as a prudent man in normal market conditions as on the dale of the Notification u/s 4(1), but not an anxious

buyer dealing at arm''s length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value:

(a) Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, and

(b) Gulzara Singh and Others Vs. State of Punjab and Others,

(6) The note of caution administered by the Supreme Court has also to be referred to. In land acquisition references before Civil Courts, when

witnesses give oral evidence in support of the claims of claimants for higher compensation, the ineffective cross-examination of such witnesses is

not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts

on behalf of the State. The courts are not obligated to accept such statements of witnesses as true if, tested on the touchstone of probabilities, they

become unreliable:

(a) Chaturbhuj Pande and Others Vs. Collector, Raigarh, and

(b) P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others,

(7) The decision must be based on sound discretion. Stray sale deeds of small extents of lands cannot be applied to large tract of lands for

projects. It is the duty of the Court to maintain balance between diverse interests:

K. Posayya and Others Vs. Special Tahsildar,

However, when genuine and reliable sale deeds of small extents are considered to determine market value, the same will not form sole basis to

determine market value of large tracts of land. Sufficient deduction should be made to arrive at just and fair market value of large tract of lands.

Sale value of even a small developed plot of land can form basis for determining value of a large tract of acquired land if it is also fully developed

with all facilities requiring little or no further development.

Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality,

(8) If the land in dispute is within the municipal limit and located just on the edge of an inhabited locality of the town, it would be sufficient to

establish its potential value as building sites.

Dadu Yogendra Nath Singh and Others Vs. The Collector, Seoni,

(9) the land has to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act, but its potential value also has to

be taken into consideration.

(a) Smt. Tribeni Devi and Others Vs. Collector of Ranchi,

(b Hasanali Walimchand (Dead) by L.RS. Vs. State of Maharashtra,

(10) It is the paramount duty of the Judge to keep before him the even scales to adopt pragmatic approach without indulging in figment of

imagination and assess the value, which is capable to fetch reasonable market value. The market value of the land acquired cannot also be freezed

at the rate fixed for similar land acquired about a year previously:

Ranjit Singh and others Vs. Union Territory of Chandigarh,

(11) The market value as determined by the High Court in another case can be admitted in evidence provided it is a previous and not a subsequent

one and if it is shown that it could furnish basis of determining market value of the acquired land.

Pal Singh and others Vs. Union Territory of Chandigarh,

(12) The Court of appeal would not normally interfere with the assessment of compensation unless there is wrong application or misapplication of

the relevant factors or principles of compensation. Generally speaking, the Appellate Court interferes not when the judgment under appeal is not

right, but only when it is shown to be wrong.

Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another,

(6) Bearing the above principles in mind if we examine the materials on record, it would be found as follows:

The sale deed relied on by the Land Acquisition Officer is in respect of a property far away from the acquired land as would be evident from Ex.

B-l plan. It is also to be noticed that the Land Acquisition Officer has not examined either the vendor or the vendee or the attestor to Ex. B-3 to

support the valuation arrived at by him. We are therefore left with Ex. A-1, which is nearly a year prior to Section 4 (1) Notification. That sale is in

respect of 2-1/2 cents and in the year 1983. The value for an acre on the basis of Ex. A-1 works out to more than Rs. 63,200. No doubt, the sale

under Ex. A-1 is in respect of 2-1/2 cents. But, the lands sought to be acquired are also in bits varying from 11 cents to 24 cents, the total adding

up to 83 cents. They are indeed irrigated garden lands. However, P.Ws. 1 and 2 have spoken to the potential value of the acquired land as house sites. But, this evidence has to be taken with a pinch of salt. Just because there was no contra evidence we cannot base our conclusion merely on

the value found in Ex. A-1. From the plan it is seen and it is also referred to by the learned Subordinate Judge that Ex. A-1 land is nearer to the

acquired land than Ex. B-3 land. It is also to be noticed that irrigation facility was being extended and it is very doubtful whether it could have been

possible to sell the acquired lands as house sites. The sale of small bits of lands can be taken as the standard for the acquired lands provided

necessary reduction is made. The sale under Ex. A-1 as already stated was nearly a year prior to Section 4 (1) Notification. The price works out

at the rate of Rs. 63,200 per acre. A year hence if we hike the price by 12%, it would come to Rs. 70,584 per acre and if we make a reduction of

40% the value would work out to Rs. 42,350 per acre.

5. We have already noticed that die oral evidence on the side of the claimant remains uncontroverted. We have also noticed that match factories

and dynamite factories had sprung up in and around the village. Though suggestions had been put to the witnesses and the witnesses had denied

those suggestions, the Land Acquisition Officer had not adduced any independent evidence.

6. In these circumstances, taking into consideration the various principles which have evolved over the years, I am of the view mat Rs. 42,350 per

acre would be a fair and reasonable compensation in respect of the acquired lands. The decision of the Subordinate Judge will stand modified and

the appeal will stand allowed to the extent indicated above.

7. So far as the other two appeals are concerned, the learned Subordinate Judge has fixed the compensation on the basis of the value arrived at in

L.A. O.P. No. 72 of 1987. In view of the decision of the Supreme Court already referred to, I hold that the value fixed in A.S. No. 891 of 1989

can be fixed for the lands covered by A.S. Nos. 832 of 1990 and 833 of 1990 also. The decisions of the learned Subordinate Judge in those two

cases will stand modified to the extent indicated in A.S. No. 891 of 1989, that is to say, the value of the lands will be worked out at the rate of Rs.

42,350 per acre. There will be no order as to costs in all the appeals.

These appeals having been set down this day for being mentioned pursuant to the order of this Court dated 16.3.98 and made herein and in the presence of die aforesaid advocates the court delivered the following.

JUDGMENT 18.3.1998

8. The matter is coming up today at the instance of the learned Additional Government Pleader for being mentioned.

9. The question is whether the claimants would be entitled to interest on solatium. The learned Additional Government Pleader relied on the

judgment of the Supreme Court reported in Tehri Hydro Development Corpn. Vs. S.P. Singh and Others, for the position that claimants are not

entitled to interest on solatium and on additional amount u/s 23 (1-A) of the Land Acquisition Act 1894. However Mr. A. Sivaji, learned counsel

for the claimant in A.S. No. 833/90 relied on the judgment of the Supreme Court in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, in

which one of the learned Judges who constituted the Bench in Tehri Hydro Development Corpn. Vs. S.P. Singh and Others, was also a party and

submitted that the claimant would be entitled to interest on solatium. However in Yadavrao P. Pathade (Dead) by Lrs. and Others Vs. State of

Maharashtra, the judgment in Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala, was referred to and dissented from on the following

terms: ""It is true that in ''Periyar case'' this Court had held that interest on solatium is part of the component u/s 23 (1). Unfortunately, neither the

provisions were considered nor the distinction of the above provisions had been brought to the notice of this Court at that time. Therefore, a

mistaken view was taken to hold that interest on solatium is part of the component of compensation u/s 23 (1) of the Act.

The decision reported in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others,) is also an authority for

proposition that no interest is payable on solatium u/s 23 (2) and on additional amount u/s 23 (1-A). This is also a three member Bench decision.

10. Mr. A. Sivaji brings to my notice one other earlier decision of the Supreme Court by a three Judges Bench reported in Union of India (UOI)

Vs. Shri Ram Mehar and Others, In paragraph 6 of the judgment the Supreme Court has observed as follows:-

It seems to us that the term ''market value'' has acquired a definite connotation by judicial decisions. Any addition to the value of the land to the

owner whose land is compulsorily acquired which addition is the result of such factors as are unrelated to the open market cannot be regarded as a

part of the market value. It is significant and has been noticed at an earlier stage also that according to the other sections which appear in the

principal Act interest is payable on such amount which is either a part of compensation or is the total compensation payable itself. If market value

and compensation were intended by the legislature to have the same meaning it is difficult to comprehend why the word ''compensation'' in

Sections 28 and 34 and not ''market value'' was used. The key to the meaning of the word ''compensation'' is to be found in Section 23(1) and that

consists (a) of the market value of the land and (b) the sum of 15% on such market value which is stated to be the consideration for the

compulsory nature of the acquisition. Market value is therefore only one of the components in the determination of the amount of compensation. If

the legislature has used the words ''market value'' in Section 4 (3) of the Amending Act of 1967 it must be held that it was done deliberately and

what was intended was the interest should be payable on the market value of the land and not on the amount of compensation otherwise there was

no reason why the Parliament should not have employed the word ''compensation'' in the aforesaid provision of the Amending Act.

Ultimately, the Supreme Court held as follows:- ""For the reasons given above we are unable to accept the view of the High Court that market

value in Section 4(3) of the Amending Act means the same thing as compensation and includes the amount of 15% payable u/s 23(2) on the

market value of the land. This appeal, therefore, succeeds to the extent that the amount awarded to the claimants shall be computed in accordance

with our decision"".

The Supreme Court has interpreted the word ''compensation'' to include solatium and interest is awarded on the amount of compensation and not

on the market value.

AR. Lakshmanan, J. in Union of India (UOI) Vs. Shri Ram Mehar and Others, and the learned Judge held that the claimant would be entitled to

interest on solatium. It is settled law that as between co-equal Benches, the Court is entitled to follow that decision which commends itself to it.

Where the conflict is between two decisions both pronounced by a Bench consisting of the same number of Judges and the Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it would, then be by at liberty to follow

that decision which appears to it more correct whether such decision be the later or the earlier one. The only requirement would be that, that the

two apparently conflicting decisions must directly relate to and expressly decide the question that arose between the parties. In Union of India and

another vs. K.S. Subramanian (1976 SC 2433), the Supreme Court has observed as follows:

The proper course for a High Court is to try to find out and follow the opinions expressed by larger Benches of the Supreme Court in preference

to those expressed by smaller Benches of the Court. That is the practice followed by the Supreme Court itself. The practice has now crystallised

into a rule of law declared by the Supreme Court. If, however, a High Court is of opinion that the facts expressed by the larger Benches of the

Supreme Court are not applicable to the facts of the case, it should say so giving reasons supporting its point of view.

As has been pointed out by the Supreme Court in Union of India (UOI) Vs. Shri Ram Mehar and Others, the legislature had its own reasons for

drawing a distinction between market value and compensation. I am therefore inclined to follow the earlier decision of the Supreme Court cited

supra. I am of the view that this ratio of the decision will apply to the instant case and I respectfully follow the same. Consequently, the contention

of the Additional Government Pleader that the claimants would not be entitled to interest on solatium will have to be rejected. The claimants would

be entitled to interest on solatium.

