(1989) 07 MAD CK 0012

In the Madras High Court

Case No : Appeal No. 34 of 1985

The Assistant Collector, Tiruvallur — APPELLANT

Vs

C. Ramamoorthy (died) and others — RESPONDENT

Date of Decision : 05-07-1989

Acts Referred:

Constitution of India, 1950 — Article 254(2)
Government of India Act, 1915 — Section 107(2)
Land Acquisition (Amendment) Act, 1984 — Section 18, 28, 4(1), 54
Land Acquisition (Tamil Nadu Amendment) Act, 1953 — Section 2
Land Acquisition Act, 1894 — Section 23

Citation : AIR 1990 Mad 185

Hon'ble Judges : Thanikkachalam, J;Ratnam, J

Bench : Division Bench

Advocate : V. Ravi, Addl. Govt. Pleader L.A, for the Appellant; T.R. Mani, for the Respondent

Judgement

Ratnam, J.—This appeal under S. 54 of the Land Acquisition Act, 1894 (hereinafter referred to as ''the Act) at the instance of the Assistant

Collector, Tiruvallur, has been preferred against the order of the Sub-Court, Tiruvallur, in L.A.O.P. No. 25 of 1981, on a reference made to it

under S. 18 of the Act.

2. An extent of 1.65 acres in survey No. 2/2 and another extent of 1.27 acres in survey No. 3/1 with a well in Periakuppam, village, tiruvallur

taluk, Chengalpattu District, classified in the revenue records as ''wet'' were acquired under the provisions of the Act for the construction of a Bus

Depot for Pallavan Transport Corporation. The notification under S. 4(1) of the Act was published on 27-7-1977. Before the Land Acquisition

Officer, the claimant prayed that compensation in respect of the acquired lands should be awarded at the rate of Rs. 1,000/- per cent, in addition to the compensation for the well situate in one of the acquired properties. The Land Acquisition Officer, on a consideration of the sales statistics,

determined the compensation payable in respect of the acquired lands at Rs. 118.80 per cent and also fixed Rs. 2,135/- as compensation in

respect of the well with usual solatium. In doing so, the Land Acquisition Officer took into account an instance of sale of 5.04 acres of land of the

same and soil in survey No. 540/1 on 21-2-1975 as the basis for fixing the market value of the lands under acquisition and considering the time

interval between that instance of sale and the date of publication of the notification under S. 4(1) of the Act, added Rs. 18.80 per cent to the

market value reflected by that instance of sale. Not satisfied with this, the claimant sought a reference to Court under S. 18 of the Act and on a

consideration of the oral as well as the documentary evidence, the Court fixed the compensation at the rate of Rs. 1500/- per cent in respect of the

acquired lands with usual solatium and awarded interest at 4% p.a. from the date of dispossession. It is the correctness of this that is questioned by

the State in Appeal No. 34 of 1985. while the claimant, in the Memorandum of Cross-Objections, has prayed that compensation should be

awarded in respect of the acquired lands at Rs. 1,700/- per cent.

3. We may immediately point out that on behalf of the State no documents were filed in the course of the proceedings before the Court below.

Only the claimant relied upon five instances of sales marked as Exhibits C. 1 to C. 5. From a perusal of Exhibits C. 1 and C. 2, it is found that the

transactions related to composite sales comprising of vacant site as well as superstructures thereon. Exhibits C. 1 and C. 2 cannot, in our view, be

considered to furnish a satisfactory basis for fixing the market value of the acquired lands. That leaves for consideration Exhibits C. 3 to C. 5.

Under Exhibit C. 3 dt. 8-3-1976, an extent of 1 Ground and 1,178 sq. ft. had been sold for Rs. 5,220/- though the market value according to the

guidelines had been mentioned as Rs. 7,455/-. A consideration of the description of property sold under Exhibit C.3 shows that the property is a

well developed building site laid out as plots with provision made for roads as well. The acquired lands are wet lands and, therefore, the instance of

sale under Exhibit C.3 cannot afford a comparable basis for fixing the market value of the acquired lands. Exhibit C.5 is the registration copy of a sale deed dt. 10-6-1974 in respect of a site measuring east-west 34 feet and north-south 53 1/2 feet in survey No. 29/2. A consideration of the

location of the property dealt with under Exhibit C.5 shows that it is not anywhere near the vicinity of the acquired properties. We are of the view

that that instance of sale would not be of any assistance in determining the market value of the acquired lands. We are, therefore, left only with

Exhibit C.4 dt. 27-5-1977 executed by Par-vathi Ammal and others in favour of one Ranganatha Pillai for Rs. 12,500/-. That shows that 7 1/4

cents of land in the vicinity of the lands acquired had been sold for Rs. 12,500/- and the rate per cent works out to Rs. 1,724/-. We also find from

Exhibit C.6 that the claimant has taken the necessary steps for obtaining a plan for laying out the acquired properties as house-sites. It is obvious

that but for the acquisition, the claimant would have laid out the acquired lands into house-sites by making the necessary improvements therefore

and sold them as such. The potential user as house-sites of the acquired lands, though classified as wet lands, has also to be taken into account.

We had earlier pointed out that the only instance of comparable sale is under Exhibit C.4 and that shows that the rate per cent works out to Rs.

1,724/- even so, the Court below has awarded only Rs. 1,500/- percent. The Court below was aware that the acquired lands are situate in a very

important locality and very near the Government Hospital, Courts, Taluk Office, School, etc., and that it abuts the Madras-Tiruttani Main Road.

Considering the locational advantages enjoyed by the acquired lands and also the market value reflected by Exhibit C.4, which, as we had pointed

out earlier, is the only instance of comparable sale, we are of the view that a fair, just and reasonable compensation in respect of the acquired lands

should be fixed at Rs. 1,700/- per cent.

4. Learned counsel for the claimant submitted that the award of solatium at 15% by the Court below is not in order in view of the amendment to S.

23 of the Act by the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) read with S. 30(2) of the Amending Act as interpreted by the

Supreme Court in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., . We find that the award in this case was passed by

the Court below on 7-10-1983, i.e., between 30-4-1982 and 24-9-1984. In such a case, as pointed out by the Supreme Court in the decision referred to earlier, the claimant would be entitled to solatium at 30% and not at 15%. We, therefore, hold that the claimant is entitled to the

awarded solatium at 35%.

5. Learned counsel for the claimant strenuously contended that the Court below was in error in having awarded interest only at 4% p.a. from the

date of dispossessing i.e. 16-6-1980 till the date of deposit. Elaborating this, learned counsel referred to entry 42 of the Concurrent List and Art.

254 of the Constitution of India and pointed out that though under S. 28 of the Act payment of interest on excess compensation at the rate of 6%

p.a. had been provided and that was cut down to 4% p.a. by the Land Acquisition (Tamil Nadu Amendment) Act, 12 of 1953, that amendment

reducing the rate of interest of 4% p.a. would be void, as such a provision would be repugnant to the rate of interest as provided in S. 28 of the

Act by the amendment made by the Parliament by -- Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984), increasing the rate of interest to

9% p.a. Reliance in this connection was placed by learned counsel on the decisions reported in Zaverbhai Amaidas Vs. The State of Bombay, ,

Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, , M. Karunanidhi Vs. Union of India and Another, , T. Barai Vs.

Henry Ah Hoe and Another, and Lalbhai Talsibhai Patel Vs. Additional Special Land Acquisition Officer, . On the other hand, learned

Government Pleader made a faint attempt to maintain that the rate of interest should be restricted to 4% p.a. though he was not able to substantiate

this stand on any principle or authority.

6. Under S. 28 of the Act, as it stood prior to the amendment by S. 18 of the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984),

provision was made for payment of interest on the excess compensation awarded by Court over and above the amount awarded by the Collector

at the rate of 6% p.a. from the date on which possession of the land was taken till the date of payment of such excess into Court. By S. 2 of the

Land Acquisition (Tamil Nadu Amendment) Act, 12 of 1953, for the words ""six per centum"" occurring in S. 28 of the Act, the words ""four pen

centum"" were substituted. This provision governed the rate of interest to be awarded to cases where the court determined the compensation at an

amount higher than that fixed by the Collector, till the substitution of the words ""six per centum"" by the words ""nine per centum"" by S. 18 of the

Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) in S. 28 of the Act. The question now is, whether in spite of the amendment in S. 28

of the Act introduced by S. 18 of the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) increasing the rate of interest from 6% p.a. to

9% p.a., the claimants in this State can be paid interest only at 4% p.a. in accordance with the provisions of the Land Acquisition (Tamil Nadu

Amendment) Act, 12 of 1953. It is in this context that Art. 254(2) of the Constitution of India is important. The proviso to Art. 254(2) has

enlarged and widened the powers of Parliament and it can enact a law adding to, amending or even varying or repealing a law of the State relating

to a matter mentioned in the Concurrent List. That this is so has been clearly laid down by several decisions of the Supreme Court to which we

shall presently make a reference. In Zaverbhai Amaidas Vs. The State of Bombay, , the scope of the proviso to Art. 254(2) of the Constitution of

India came to be considered in the context of the provisions of Bombay Act 36 of 1947 and Central Act 52 of 1950 relating to the same subject-

matter. In that connection, the Supreme Court, after referring to the enlargement of the powers of the Parliament under the proviso to Art. 254(2)

of the Constitution of India, pointed out that under that proviso, Parliament can do what the Central Legislature could not under S. 107(2) of the

Government of India Act, and enact a law adding to, amending, varying or repealing a law of the State, when it relates to a matter mentioned in the

Concurrent List and that under the Constitution, Parliament acting under the proviso to Art. 254(2) could repeal a State law and even when it does

not expressly do so State law will be void under that provision, if it conflicts with a later law with respect to the same matter that may be enacted

by Parliament. There is no dispute that on the same subject-matter, viz., acquisition and requisitioning of property, falling under entry 42 of List III,

the Parliament and the State had legislated on the rate of interest payable and the Parliament had enacted a later law with respect to the same

matter which is in conflict with the provision relating to the payment of interest in the State law. The provision relating to the payment of interest at a

lower rate of 4@ p.a. as contained in S. 2 of the Land Acquisition (Tamil Nadu Amendment) Act, 12 of 1953, operated prior to the introduction of the amendments in the Act by the Land Acquisition (Amendment) Act. 1984 (Act 68 of 1984), because it had been reserved for the

consideration of the President and had received his assent and, therefore, those provisions prevailed in Tamil Nadu State over the provisions in the

Act. However, after the Parliament had enacted Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) with respect to the same matter of

payment of interest varying the provision relating to the payment of interest made by the legislature of the State, it follows that under the terms of

the proviso to Art. 254(2) of the Constitution of India, as interpreted by the Supreme Court in Zaverbhai Amaidas Vs. The State of Bombay, , the

State law will be void as being in conflict with a later law enacted by the Parliament with respect to the same matter. This principle has been

reiterated by the Supreme Court in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, , the Supreme Court had

approved of the principle of the decision of Zaverbhai Amaidas Vs. The State of Bombay,). We may also refer to the decision of the Supreme

Court in M. Karunanidhi Vs. Union of India and Another, , the Supreme Court has again reaffirmed the principle of the decision in Zaverbhai

Amaidas Vs. The State of Bombay, . In T. Barai Vs. Henry Ah Hoe and Another, , the Supreme Court has clearly laid down the position with

reference to the conflict between a Central and a State law with reference to the subjects enumerated in the Concurrent List. The Supreme Court

pointed out that Art. 254(1) of the Constitution enunciates the normal rule that in the event of a conflict between a Union and a State law in the

Concurrent field, the former prevails over the latter and Cl. (2), of Art. 254 of the Constitution engrafts an exception, viz., that if the President

assents to a State law which has been reserved for his consideration, it will prevail notwithstanding its repugnancy to an earlier law of the Union,

both laws dealing with a concurrent subject. In such a case, the Central Act will give way to the State Act only to the extent of inconsistency

between the two. and no more and that the result of obtaining the assent of the President to a State Act which is inconsistent with the provisions of

Union law relating to a concurrent subject would be that the Slate Act will prevail in that State and override the provision of the Central Act in their

applicability to that State only. It has been further laid down that the proviso to Art. 254(2) of the Constitution empowers the Union Parliament to repeal or amend a repugnant State law even though it has become valid by virtue of the President''s assent and the Parliament may repeal or amend

the repugnant State law, either directly, or by itself enacting a law repugnant to the State law with respect to the same matter and even though the

subsequent law made by Parliament does not expressly repeal a State law, even then, the State law will become void as soon as the subsequent

law of Parliament creating repugnancy is made and a State law will be repugnant to the Union law when there is direct conflict between the two

laws and the two cannot stand together, as in this case, where both prescribe the rate of interest and in all such cases, the law made by the

Parliament shall prevail by virtue of Art. 264(1) of the Constitution. In view of this, it is clear that when the Parliament stepped in and enacted the

Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984), that being a later law made by the Parliament with respect to the same matter, the

Land Acquisition (Tamil Nadu Amendment) Act. 12 of 1953, stood impliedly repealed. To similar effect is the decision in Lalbhai Talsibhai Patel

Vs. Additional Special Land Acquisition Officer, wherein the State amendment awarding 4 1/2% interest on the enhanced amount was held to be

repugnant to the law made by the Parliament in that regard and the operative rate of interest would be 9% p.a. and not 4 1/2% p.a. as per the

provisions in the State law. Thus, on a due consideration of the matter relating to the award of interest, in the light of the provision of S. 28 of the

Act, as it stood prior to the enacting of the Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) by the Parliament and under the Land

Acquisition (Tamil Nadu Amendment) Act, 12 of 1953 and subsequent to the enacting of the Land Acquisition (Amendment) Act, 1984 (Act 68

of 1984) by the Parliament, we hold that the provision of S.2 of the Land Acquisition (Tamil Nadu Amendment) Act, 12 of 1953, stood impliedly

repealed, with the result that interest at the rate of 9% p.a. should be awarded and not at 4% p.a. We hold that the claimant would be entitled to

interest at the rate of 9% p.a. from 16-6-1980 till the date of deposit. Consequently, the appeal is dismissed and the Memorandum of cross-

objections is allowed to the -extent indicated above. There will be no order as to costs either in the appeal or in the Memorandum of cross-

objections.

7. Appeal dismissed.