
(2009) 07 MAD CK 0513
In the Madras High Court
Case No : A.S. No. 160 of 2002

The Land Acquisition Officer and Special Tahsildar (ADW)	APPELLANT
Vs	
Subramaniam	RESPONDENT

Date of Decision : 06-07-2009

Acts Referred:

Tamil Nadu Land Acquisition Act, 1978 — Section 18, 4(1)

Citation : (2009) 07 MAD CK 0513

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Ravi, Spl. Govt. Pleader, for the Appellant; I.C. Vasudevan, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—This appeal arises out of an Award dated 30.4.2002 passed in L.A.O.P. No. 2/96 by the learned Additional District Judge (Land Acquisition Tribunal) Dharmapuri.

2. The Government have acquired a total extent of 0.06.0 Hectares and 1.16.0 Hectares of Punja Lands in S.Nos. 275/2B and 276/1 respectively in Nallampalli Village, Dharmapuri District for the purpose of providing house sites to the Vannar community people, who do not possess any house sites.

3. After following the procedures and formalities, the land acquisition officer has published Notification u/s 4(1) of the Tamil Nadu Land Acquisition Act (Hereinafter referred to as "Act") in the Government Gazette on 6.7.1988 and also published the notice in the vernacular dailies viz., Dinamani and Dinathanthi on 7.7.1988. The gist of the said notice has been published in the acquired village on 10.10.1988. 5(A) Enquiry has been conducted on 5.9.1989. On the basis of the data lands Exs B3 and B4, the Land Acquisition Officer has determined and awarded the Compensation at Rs. 17,000/- per acre for the lands acquired. Not satisfied with the award, the claimant has filed his objection

before the Land Acquisition Officer, who in turn has referred the same as per Section 18 of the Act to the Land Acquisition Tribunal.

4. Before the Land Acquisition Tribunal, respondent/claimant has examined himself as P.W.1 and Ex.A1 was marked on the side of the Claimant and on the side of appellant/referring Officer, The Special Tahsildar(ADW)/Land Acquisition Officer was examined as R.W.1 and Exs B1 to B4 were marked.

5. On an overall appreciation of an oral and documentary evidence adduced on both sides and after providing due opportunities to the respective parties, the Land Acquisition Tribunal, viz., The learned Additional District Judge, Dharmapuri, has passed an award determining the compensation of Rs. 4.95ps per sq.ft for the acquired land in issue and has made a deduction of 25% towards development charges i.e. Rs. 1.23ps per sq.ft and after deducting the said amount of Rs. 1.23ps per sq.ft has resultantly fixed the compensation of Rs. 3.72ps. Per sq.ft and has awarded a total sum of Rs. 4,87,078.20ps along with 30% solatium amount of Rs. 1,46,123.40ps and also granted 12% interest of Rs. 1,14,656.80ps and in all awarded a sum of Rs. 7,47,858.40ps and also directed a deduction of Rs. 78,566/- which has already been received by the respondent/claimant and for the balance of amount of Rs. 6,69,292.40ps has been directed to be paid within three months and interest at 9% from 8.10.1990 to 7.10.1991 and thereafter interest at 15% from 8.10.91 etc.

6. Contentions, Discussions and Findings:

According to the learned Special Government Pleader(AS), the Tribunal has committed an error in increasing the market value exorbitantly from Rs. 17,000/- per acre (i.e., Rs 39 per sq.ft) to Rs. 1,62,043/- per acre (i.e., 3.72 per sq ft.) in violation of the procedure enshrines under the Land Acquisition Act and the acquired lands are only undeveloped one at the time of 4(1) Notification and therefore, the determination of compensation at Rs. 3.72 ps per sq.ft by reducing only 25% development charges from the original rate of Rs. 4.95ps per sq.ft is arbitrary one besides being exorbitant and further the Tribunal has placed reliance of Ex A1 sale deed which is a sale of smaller extent sold for a fancy price and added further the Tribunal has instead of making a deduction of 40% to 65% towards development charges as only deducted 25% and in any event, the market value determined by the Court is arbitrary, unreasonable and an excessive one and therefore prays for allowing the appeal in the interest of justice.

7. Per contra, the learned Counsel for the respondent/claimant submits that the acquired land in issue is abutting Salem-Dharmapuri National Highway and therefore, the same is situated in a vital place and therefore the acquired land has a potential value not only for the present and future and the Tribunal after taking into account of the facts and circumstances of the case, has ultimately fixed the compensation of Rs. 3.72ps per sq.ft and awarded a fair, reasonable, and equitable compensation and the same may not be interfered with by this

Court in appeal.

8. The point arises for determination in this appeal is

Whether the award dated 30.4.2002 passed by the Land Acquisition Tribunal in L.A.O.P.No.2 of 1996 is fair and proper?

9. Heard the learned Special Government Pleader(AS) for appellant and Mr. I.C. Vasudeven, learned Counsel for respondent and this Court has paid its anxious consideration to the arguments advanced on either sides.

10. It is to be noted that the best available evidence to prove that what a willing purchaser will pay for the land under acquisition will be the evidence of genuine sales, effected about the time of the Notification for acquisition either in respect of the land under acquisition or any portion thereof or of the sale of the lands precisely parallel in all circumstances to the land, in question. The sale deeds of the lands situated in and around the acquired land and the comparable advantages and the benefits which they have furnished a rough and ready method of computing the market value.

11. P.W.1/Claimant in his evidence has deposed that on the north of the acquired land, the cement pipe factory of Pachaippan is situated and the village Nallampalli is at distance of 10 Km from Dharmapuri and the acquired land is fit for house site situated at higher portion and that in the acquired land place per cent will fetch Rs. 8,000/- to Rs. 10,000/- and further that the data land and the acquired land is not one and the same and that Ex A1 is the certified copy of the sale deed dated 29.2.1988 in favour of Palaniappan executed by Appannan in respect of S. No. 194/4 wherein a square feet has been sold at Rs. 5/- and that the soil, classification and the sand of the land in S. No. 194 and acquired land is one and the same.

12. R.W.1 in his evidence has deposed that for the acquired land, the value has been fixed at Rs. 17,000/- per acre and the claimant has received the same under protest and further that the sale statistics list is Ex B2 and the Nallampatti topo sketch is Ex B3 and Ex B4 is the plan showing the acquired and the data lands. Admittedly, the data land is by means of document No. 1551 dated 23.11.1987 in respect of Ex B2 in Sl.No.1. It is not out of place to point out that R.W1 in his cross examination has specifically stated that in Ex B2, the sale that is taken place on 24.2.1988 has not been mentioned and the sale dated 24.2.1988 refers to Nallampalli village and that the data land and the acquired land is of same type and more over, he does not know that the acquired land has a road facility on three sides.

13. The learned Counsel for the respondent/claimant informs this Court that he has filed a memo dated 6.7.2009 stating that the data land is far away from more than 750 mts from the acquired land and whereas Ex A1 sale deed dated 28.2.1988 relied on by the Tribunal in arriving at a compensation is very nearer to the acquired land viz., less than 500 mts from the acquired land and in fact Ex

A1 sale deed relied on by the Tribunal is a house plot measuring 1311 sq.ft only and the said document shows that the acquired land is also fit for housing plots and on that basis the Tribunal has fixed the compensation and per contra, the Land Acquisition Officer has deliberately omitted to consider Ex A1 sale deed furnished by the respondent/claimant. However the learned Additional Government Pleader(AS) has raised his objection saying that Ex A1 sale deed relied on by the Tribunal is not a correct one and the land in Ex A1 sale deed ought not to have been taken into account by the Tribunal in arriving at a compensation and determining the same.

14. It is not out of place to point out that R.W.1 during his cross examination (before the Tribunal) has categorically stated that he has not seen the acquired land till date and that he does not know whether the acquired lands are developed one and that further in the acquired village Nallampalli, there is a panchayat union, schools, and further it is not correct to say that Nallampalli village is a developed town. In short, the evidence of R.W.1 is not very much of assistance helpful to the appellant/referring Officer.

15. A perusal of Ex A1 shows that it is in respect of S. No. 194/4 A out of 2 acres and 17 cents in Nallampalli Village, a portion of 1311 sq.ft vacant land has been sold out. Even though the learned Additional Government Pleader(AS) has contended that a deduction of 40% to 60% ought to have been made towards development charges by the Tribunal and not 25% as done by the Tribunal and he relies on the decision of Hon"ble Supreme Court Gafar and Others Vs. Moradabad Development Authority and Another, wherein it is inter alia held that "sale instance produced before Reference Court related to developed lands with various facilities which the land under acquisition lacked and a reduction of 35% to 60% is made for the values shown." He also cites the decision of Hon"ble Supreme Court in Kammarapally Village v. Nookala Rajamallu AIR 2004 S.C. 1031 at page 1032 wherein it is observed that "While fixing the value of the land in question deduction for development etc. was to be made from value indicated in sale deed relied upon."

16. However, the learned Counsel for the respondent/claimant relies on the decision of Hon"ble Supreme Court in 2007 (1) LACC 445 The Deputy Director Land Acquisition v. Malla Atchinaidu and Ors. wherein it is held that "for determining market value of large extent of land High Court relied on sale instance of small piece of land and no fault could be found with the order of High Court who relied on sale instance of smaller area as the Court has taken into account all material facts.

17. In this connection, this Court opines that what is the exact percentage of deduction must be made towards development charges is a question of fact to be decided on the facts and circumstances of each case and the same is not a rigid and inflexible rule and in that view of the matter, this Court comes to the conclusion that 25% deduction made by the Tribunal towards development charges based on development need of the acquired land is a just and a fair

proper one and this Court in agreement with such finding of the Tribunal.

18. Equally, the Tribunal has fixed the compensation at Rs. 4.95ps sq.ft for the acquired land in issue and has deducted a sum of Rs. 1.23ps.per sq.ft towards development charges and resultantly fixed the compensation at Rs. 3.72ps per sq.ft. and the same is a proper and a prudent one in the considered opinion of this Court.

19. In land acquisition cases, the Land Acquisition Tribunal is empowered to indulge in certain amount of conjectures, presumptions and guess work and in arriving at an exact compensation, no straight jacket cast iron formula can be adopted. However, one cannot loose sight of an important fact that the locality of the lands wherein it is situated, its potentiality value, value which will increase in future and other various decisive factors will go a long way in determining the compensation. But there shall not be an undue burden on the public coffer while determining the compensation. In short the Court/Tribunal has to strike a balance between the two and to determine just compensation based on the above principles in mind and taking note of the facts and circumstances of the case, in a cumulative fashion and on an appreciation of oral and documentary evidence on record, this Court ultimately comes to the inevitable conclusion that the compensation of Rs. 4.95ps per sqft fixed by the Tribunal and making a deduction of Rs. 1.23ps per sq.ft towards 25% development charges is a reasonable and equitable one and resultantly the higher compensation of Rs. 4,87,078.20ps along with usual solatium amount and interest awarded by the Tribunal etc. are all valid and fair in the eye of law and the same do not suffer from any material irregularity or patent illegality, since it has taken into account all material factors they are not to be interfered with by this Court and resultantly the appeal has no merits and the same is dismissed in furtherance of substantial cause of justice.

20. In fine, for the foregoing reasons, the appeal is dismissed and the award of the Tribunal is confirmed. Having regard to the facts and circumstances of the case, there shall be no order as to costs.