

(2008) 07 MAD CK 0140
In the Madras High Court
Case No : A.S. No. 1222 of 2001

The Land Acquisition Officer Special Tahsildar (Adi Dravidar Welfare) APPELLANT

Vs

Munusamy RESPONDENT

Date of Decision : 30-07-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18(1), 4(1), 51A

Citation : (2008) 7 MLJ 298

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : V. Ravi, Special Government Pleader A.S, for the Appellant; D. Shivakumaran, for the Respondent

Judgement

G. Rajasuria, J.—Heard both sides.

2. Animadverting upon the enhanced compensation awarded by the learned Subordinate Judge, Hosur vide judgment dated 10.11.1997 in L.A.O.P. No. 353 of 1996, the Land Acquisition Officer has filed this appeal. For convenience sake, the parties are referred to here under according to their litigative status before the trial Court.

3. A resume of facts, absolutely necessary and germane for the disposal of this appeal would run thus:

The Government effected publication u/s 4(1) of the Land Acquisition Act on 26.07.1990 intending to acquire the lands in Survey No. 375/2 totalling an extent 0.73.0 hectares in Annialam Village, Denkanikottai Taluk, Dharmapuri District for the purpose of providing house sites to Adi Dravidas. After complying with the procedure, the land acquisition officer passed the award dated 16.03.1993 assessing the compensation in a sum of Rs. 16,000/- per acre to Rs. 2,18,333/- per acre. The land owner being aggrieved by it got the matter referred to the Sub Court u/s 18(1) of the Land Acquisition Act.

4. During enquiry, before the trial Court, C.Ws.1 and 2 were examined and Ex.C1 was marked and no one was examined on the side of the respondent and Exs.R1 and R2 were marked. Ultimately the Sub Court enhanced the compensation from Rs. 16,000/- per acre to Rs. 2,18,333/- per acre.

5. Being dissatisfied with such awarding of enhancement, the Government has preferred this appeal on various grounds, the gist and kernel of them would run thus:

The Sub Court simply relied on Ex.C1, which happened to be the self-serving document of the land owner himself and awarded compensation.

Accordingly, he prayed for setting aside the judgment and decree of the trial Court.

6. The point for consideration is as to whether the Sub Court's assessment of compensation from Rs. 16,000/- per acre to Rs. 2,18,333/- per acre is justifiable and proper.

7. A mere perusal of the judgment of the trial Court would amply make the point clear that the Sub Court relied on Ex.C1, the only document marked on the side of the land owner. The ratiocination as found set out in the judgment and decree of the Sub Court is that the land owner himself an year anterior to Section 4(1) Notification voluntarily sold the land and that would be the best criterion to assess the compensation. In support of this, the Sub Court also relied on the decision of the Hon'ble Apex Court reported in Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., . However, the Sub Court wrongly understood the cited precedent. An excerpt from the decision is extracted here under for ready reference:

8. The best evidence of the value of property are the sale transactions in respect of the acquired land to which the claimant himself is a party; the time at which the property comes to be sold; the purpose for which it is sold; nature of the consideration; and the manner in which the transaction came to be brought out. They are all relevant factors. In the absence of such a sale deed relating to the acquired land, the sale transactions relating to the neighbouring lands in the vicinity of the acquired land. In that case, the features required to be present are: it must be within a reasonable time of the date of the notification; it must be a bona fide transaction; it should be a sale of land similar to the land acquired or land adjacent to the land acquired; and it should possess similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired land as on the date of the notification published u/s 4(1) of the Act. This would be established by examining either the vendor or the vendee. If it is proved that they are not available, the scribe of the document may also be examined in that behalf. Section 51A of the Act only dispenses with the production of the original sale deed and directs to receive certified copy for the reason that parties to the sale transaction would be reluctant to part with the original sale deed since

acquisition proceedings would take long time before award of the compensation attains finality and in the meanwhile the owner of the sale deed is precluded from using the same for other purposes vis-à-vis this land. The marking of the certified copy per se is not admissible in evidence unless it is duly proved and the witnesses, viz., the vendor or the vendee, are examined. This principle has been repeated in a catena of subsequent decisions of this Court.

As such, the said precedent warrants the following approach.

9. I am of the considered opinion that the Court ought not to have relied on the document executed by the land owner himself very near to the land acquired. With great care, the same should have been scrutinised. It has to be seen as to whether such sale deed, viz., Ex.C1 is having any proximity or similarity with other sale deeds emerged in that vicinity. Ex.R2, the sales statistics would reveal that the land acquisition officer in an impartial manner gathered all the sales particulars, which emerged in that vicinity and accordingly, Ex.C1 relied on by the land owner is cited as document No. 2. Out of those 24 documents found set out in the sales particulars as in Ex.R2, item No. 9, only resembles that of item No. 2. Except that, all other 22 items are not in any way nearer to the valuation as in Ex.C1 and item No. 9 in Ex.R2 and in such a case, the natural presumption is that for some special reasons, the parties should have brought about those two documents and that cannot be the criteria for assessing the compensation. My mind is redolent with the famous maxim one swallow does not make a summer. Simply because one or two sales emerged because of the special needs of the parties concerned, that cannot be taken as a rule for assessing the compensation. A survey of the remaining sales particulars as found set out in Ex.R2 would indicate that the prices were fluctuating in that area and it was not above Rs. 57,417/-. The first item could rightly be relied on for the reason that it contain a higher value among the said 22 sale deeds. I am fully aware of the fact that the land owners should not be prejudiced and in the meanwhile, there should not be windfall in favour of the land owners. Hence, by way of striking a balance, I would like to rely on Ex.C1 in Ex.R2, which is extracted here under for ready reference.

----- Sl. No. 2 Document No. & Dt. 74/11.01.1990 Survey No. 375 Classification Dry Full Extent 0.95.5 Soil Classification -Taram] Assessment Rate 8-1.5 Per acre 4.94 Extent sold 0.02.0 Name of the vendor Munusamy Name of the Vendy Muniraji Sale amount Rs. 16,375/- Value of structure if any --- Net Sale amount Rs. 16,375 Rate per hectare Rs. 8,18,750/- Remarks Sale between the relatives

----- Accordingly, if viewed, the rate per cent would come to Rs. 232.45. It is also hereby made clear that the said first item in Ex.R1 is relating to agricultural land and the land acquired also is an agricultural land. In such a case, no deduction towards development charges need be given. If at all the value of a small plot is taken as the criterion for assessing the compensation, necessarily at least 1/3 should be deducted

towards development charges and a catena of decisions rendered by the Hon''ble Apex Court is cited here under fruitfully:

- (1) The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others,
- (2) Ravinder Narain and Another Vs. Union of India (UOI),
- (3) Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others,
- (4) Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others,
- (5) Smt. Basavva and others Vs. Special Land Acquisition Officer and others,

Accordingly, if viewed, it is clear that so far this case is concerned, no deduction towards development charges is required as only agricultural value of the sample land alone is considered and awarded for the land acquired.

8. In view of the above, the judgment and decree of the trial Court shall stand modified to the effect that per cent of land acquired, the compensation is assessed in a sum of Rs. 232.45. I make it clear that the land owner is entitled to other statutory entitlements as per law.

9. The appeal is partly allowed. However, there shall be no order as to costs.