(2008) 04 MAD CK 0189

In the Madras High Court

Case No : C.R.P. (NPD) No. 885 of 2006

The Land Acquisition Officer, Special Tahsildar, Adi Dravidar Welfare (LA), Paramakudi	APPELLANT
Vs	
Kader Ussain	RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Citation : (2008) 04 MAD CK 0189

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : D. Gandhiraj, Addl. Government Pleader, for the Appellant; S. Viswalingam, for the Respondent

Judgement

R. Banumathi, J.—This Revision is filed against the decreetal order in LA C.M.A. No.30 of 2000 dated 27.08.2001 on the file of the Sub-Court, Paramakudi enhancing the compensation amount of Rs.177/- per cent to Rs.6000/- per cent. The land measuring 0.81.0 Hectare in S. No.179/1-A1 of Kattuparamakudi village, Paramakudi Taluk, Ramanathapuram classified as Patta dry has been acquired by the Re-vision Petitioner under the provisions contained in the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978 (Act No. XXXI of 1978). The above said land has been acquired for the purpose of constructing houses to the Schedule Caste persons.

2. The Respondent/Claimant raised objection regarding the Award passed by the Land Acquisition Officer and hence the matter was placed before the Reference Court for fixation of Award amount. The Respondent has filed LA C.M.A. No.30 of 2000 before the Sub-Court, Paramakudi. The Respondent relied upon Exs.A1 to A5 Sale Deeds and mainly relied upon Ex.A4 Sale Deed dated 15.05.1995 wherein an extent of 1200 square feet in S. No.359/1A3 was sold for Rs.16,920/-. The Land Acquisition Officer had taken the Data land in S. No.401/1D, Sale Deed dated 18.06.1996.

3. Upon consideration of the documents placed, the learned Subordinate Judge,

Paramakudi taken Ex.A4 Sale Deed as basis and fixed the value for the land at Rs.6000/-per cent. The learned Subordinate Judge has awarded 15% of compensation as solatium. The learned Subordinate Judge awarded interest at the rate of 9% p.a. and penal interest at 15% in case of default.

4. Challenging the impugned order and enhancement of compensation, the learned Additional Government Pleader has submitted that the Lower court has taken Ex. A4 Sale Deed as basis to fix the value and Ex.A4 Sale deed is for small extent of land of 1200 Square Feet and taking that Sale Deed of a small extent for determining the market value of larger extent of property is not permissible. The learned Additional Government Pleader would further submit that the Tribunal has failed to deduct l/3rd for development charges.

5. Appearing for the Respondent/Claimant, the learned counsel Mr. S.Viswalingam submitted that the acquired land situated in Kattuparamakudi Revenue village which comes under Paramakudi Municipality and the land value is increasing day by day and the Tribunal has rightly taken Ex.A4 Sale Deed as the basis for arriving at the market value. The learned counsel would further submit that the extent of land sold is immaterial and market value fixed by the Tribunal cannot be reduced. The learned counsel for the Respondent would further submit that deduction of l/3rd for developmental charges is not warranted in a case where public purpose is for providing housing and therefore, there need not be any deduction and prayed for confirming the enhancement of compensation.

6. There is no dispute as to the extent and ownership of the land acquired. The date of notification of acquisition was on 17.07.1997. The Land Acquisition Officer has fixed Rs. 177/- per cent and Rs. 17,700/- per acre.

7. The acquired land is in S. No. 179/1A1-0.81.0 Hectare (2 acres). The Land Acquisition Officer had taken Ex.B3 which is the Sale Deed in respect of S. No.401/1D as Data land. From the evidence and materials on record, it is seen that the Data land S. No.401/1D is situated at a distance about 1 Km. from the acquired land. Only on the basis of Ex.B3, the value of the acquired land appears to have been fixed at Rs. 17,700/- per acre. When the Data land is situated at a distance of more than 1 Km., the Land Acquisition Officer was not right in taking Ex.B3 as the basis for comparison under S. No.401/1D as Data land.

8. For construction of houses to the Schedule Caste persons, the Claimant''s wife land in S. No. 180 was already acquired in 1992 by the Revision Petitioner and the value has been fixed and paid at the rate of Rs.2,18,000/- in the year 1995. In this case, Sec.4(1) notification has been made on 17.07.1997. Even the value of the land acquired in S. No. 180 has not been considered as Data land. Only after S. No. 180 was acquired, Claimant''s land in S. No. 179/1A1 was acquired. While so, the Revision Petitioner was not right in taking Ex.B3 Sale Deed as the basis for arriving at the market value.

9. From Exs.B4 and B5, Village Plan and statistics, I find that S. No.359 is

situated on the southern side of the acquired land. Ex.A4 Sale Deed dated 17.05.1995 relates to S. No.359 of Kattuparamakudi which is on the southern side. The said Ex.A4 Sale Deed for S. No.359/lA3 is for an extent of 1200 Square Feet for Rs. 16,920/- which comes at Rs.6,14,760/- per acre. On the basis of Ex.A4 and upon consideration of or.) evidence, the learned Subordinate Judge dhramakudi had enhanced the compensation at the rate of Rs.6000/- percent and fixed value of acquired land at Rs.6000/- per cent.

10. Assailing the enhancement of compensation on the basis of Ex.A4, the learned Additional Government Pleader contended that taking instances of Sale Deed regarding smaller extent as comparison to the larger extent of land acquired is not proper. The learned Additional Government Pleader further submitted that larger extent of 0.81.0 Hec. (2 acres) was acquired and the valuation of such larger area on the basis of small extent is not permissible.

11. Of course, as held by the Supreme Court in 2008-1-L.W. 117 (Lucknow Development Authority v. Krishna Gopal Lahoti and others) when large area is subject matter of acquisition, rate at which smaller Plots are sold cannot be said to be a sole criterion for determining the compensation. But when larger tract of land is acquired, determination of market value would also depend upon the parties for which the acquisition is made.

12. In AIR 1987 SC 720 = (1987) 100 L.W. 660 (Mahabir Prasad v. Collector of Cuttack), the Supreme Court has held that Meaning of the market value for the purpose of determination of compensation, is what a willing purchaser would pay to a willing seller for the purpose of property having regard to the advance available to the land, and development activities may be going in the vicinity of potentiality the land.

13. When there is a claim for enhancement, it is settled law that the Claimant is entitled to just and reasonable compensation. The prevailing prices as on the date of Notification will be relevant and the sale transaction regarding neighbourhood would furnish the evidence of comparison.

14. As pointed out earlier, S. No. 180 was acquired in 1992 for the same purpose of construction of houses for Schedule Caste. Ex.A4 would show that adjacent land was sold as Plot and not an acreage or cent basis. In his evidence P.W. 1 has stated that the acquired land is situated in Kattuparamakudi revenue village which comes under Paramakudi Municipality. Pambu Vilunthan road is situated on the southern side of S. Nos. 357, 358 and 359 which are just adjacent to the acquired land. The oral and documentary evidence would show that the acquired land has potential for development and fetch higher price. Potentiality of the land is an important factor for evaluation of the market value. Following the general principles for determination of sale price of acquired land based on Ex.A4 the learned Tribunal has rightly fixed the value at Rs.6000/- per cent and Rs.6,00,000/- per acre.

15. The learned Additional Government Pleader would submit that when large

extent of property was acquired, the learned Tribunal has failed to consider that the acquired land is undeveloped land the Lower Court failed to deduct l/3rd for developmental charges. The learned counsel for the Claimant submitted that since the area is already developed, 30% deduction is not warranted and there cannot be any deduction.

16. It is fairly well settled that though the acquired land may be having potential value, lot of developmental activities are to be undertaken by laying of roads, sewage facilities, water supply etc. so that the land would be made fit for construction of houses. Therefore, after determination of the market value, there has to be deduction towards developmental charges. In K. Vasundara Devi v. Revenue Divisional Officer (LAO) (1997) 5 SCC 426, 40% deduction by the High Court was upheld by the Supreme Court since the sale deeds were of small pieces of land and the market value of large tracts of land had to be arrived at. In Besant Kumar v. Union of India (1996) 11 SCC 542 it was held that atleast one third of the compensation should be deducted towards providing amenities, like road, parks, electricity sewage, water facilities etc.

17. Though the surrounding area is stated to be developed, for construction of houses in the acquired land, lot of developmental activities are to be undertaken like laying of road, sewage, water facilities etc. so that the land could be made fit for construction of houses. But what is the deduction for developmental charges will depend upon the facts of each case. In (2007) 3 MLJ 266 (Land Acquisition Officer, Salem-Karur Broad-Gauge Railway Line Project, Namakkal v. Palaniappan and another) where the land was acquired for laying railway track, the Division Bench of this Court has held 15% deduction towards developmental charges could be just and reasonable.

18. As pointed out earlier, the Claimant''s wife''s land S. No.180 was already acquired for construction of house for the Schedule Caste and the surrounding area is said to be already developed. There is evidence on record to show that in and around the acquired land, there had been developmental activities. In my considered view, for developmental charges and for arriving at the market value, there can be deduction at the rate of 16.5%. Accordingly, the compensation amount of Rs.6000/- per cent is reduced to Rs.5000/- per cent. The solatium of 15% ordered by the Sub-Court, Paramakudi is confirmed.

19. The learned Subordinate Judge, Paramakudi also directed to deposit the amount before 27.08.2001 and awarded interest at the rate of 9% p.a. and further directed payment of 15% interest, if the amount was not deposited within the stipulated date of 27.08.2001. The interest awarded by the learned Subordinate Judge is not in accordance with the provisions of the Act.

20. The lands were acquired for providing house sites to Adi Dravidars under Sec.4(1) of Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act 1978. As per Sec. 12 of the Act, interest is payable at the rate of 6% p.a. from the time of taking possession till the amount was deposited. As per Sec.12of the

Act, the compensation is payable with interest at the rate of 6% p.a. from the date of taking possession till the date of deposit of the compensation amount.

21. In the result,

The compensation amount of Rs.6000/-per cent is reduced to Rs.5000/- per cent and the order of the Sub-Court, Paramakudi in LA CMA. No. 30 of 2000 dated 27.08.2001 is modified and this Revision is partly allowed.

The solatium amount of 15% ordered by the Sub-Court, Paramakudi is confirmed.

The compensation amount is payable with interest at the rate of 6% p.a. (As per Sec. 12 of Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 1978) from the date of taking possession till the date of deposit of the compensation amount.

The Revision Petitioner/Land Acquisition Officer is directed to deposit the entire amount along with solatium and interest payable within a period of eight weeks from the date of this order.

On such deposit the Claimant is immediately permitted to withdraw the compensation amount deposited to the credit of LA CMA. No. 30/2000. Before the Sub-Court, Paramakudi, both parties are directed to file calculation Memo.