(2009) 08 MAD CK 0095

In the Madras High Court

Case No : A.S. No''s. 876 of 1997 and 562 and 563 of 1998

The Revenue Divisional Officer APPELLANT

Vs

Sankaradanu and Others RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2009) 08 MAD CK 0095

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : K.M. Vijayakumar, Addl. Govt. Pleader, for the Appellant; G. Arumugaperumal in A.S. No. 562 of 1998, A. Jenasenan in A.S. No. 876 of 1997 and for R2 in A.S. No. 563 of 1998 and N. Sivakumar, for R5 to R11 in A.S. No. 563 of 1998, for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—In view of the fact that the same Notification has been passed in all the three appeals and also in view of the fact that

the same award has been passed on the very same basis, they have been taken up together for disposal.

2. The lands situated in Nagercoil Village, Kanyakumari District in Survey Nos. E11/11, E11/12 and E11/21 have been acquired for the purpose

of creation of Nagercoil Municipal Bus stand. The Notification u/s 4(1) of the Land Acquisition Act, 1894 was published on 14.03.1984. The

Land Acquisition Officer has passed the award in Award No. 1/87-88. Challenging the same the respondents/claimants sought for reference

before the Sub Court, Nagercoil seeking enhanced compensation. The Reference Court after rejecting the sale deed filed by the claimants in

Ex.C1 dated 01.11.1985 has fixed the valuation based upon capitalisation method by taking into consideration of the yield for a period of 20

years. The Reference Court has fixed a sum of Rs. 5,000/- for coconut trees and another sum of Rs. 2,000/- for coconut saplings and sum of Rs.

10,000/- and Rs. 3,000/- for the wells.

3. The learned Additional Government Pleader submitted that the fixation based upon the capitalisation method is not proper. According to the

learned Additional Government Pleader, the Court below without any basis has fixed a sum of Rs. 5,000/- for coconut trees and Rs. 2,000/- for

the coconut saplings which is contrary to the basis on which the Land Acquisition Officer fixed the valuation. The Learned Additional Government

Pleader further submitted that in any case the valuation cannot be fixed by taking into consideration of the yield for a period of 20 years which is

also contrary to the settled principle of law. Therefore, the learned Additional Government Pleader sought for allowing of the appeal.

4. Per contra, the learned senior Counsel appeared for the respondents submitted that the Court below has correctly fixed the amount, since the

Reference Court has rejected Ex.C1. It is further submitted that the fixation of the value of the coconut trees by the Land Acquisition Officer is not

correct and the concerned officer who gave the valuation has not been examined. It is further submitted that in the absence of any other document

produced by the appellant, the Court below has correctly fixed the amount.

5. I have considered the submission made by learned Additional Government Pleader as well as the learned senior Counsel appeared for the

respondents. In the present case on hand, the Court below has rejected the document dated 01.11.1985 relied upon by the respondents on the

ground that the Notification has been published on 14.03.1984 and the document mentioned in Ex.C1 has been executed on 01.11.1985. The

Court below has also rejected the said document on the ground that the said document being a residential plot with building, the same cannot be

the basis for fixing the valuation for an agricultural land having standing trees.

6. It is a well settled principle of law that in the absence of any sale deed available prior to the Notification the Court can consider post-notification

sale deed. No doubt the onus is on the claimant to prove that there was no increase between the period prior to the Notification and the period

mentioned in the post Notification sale deed. Hence the onus is on the claimant to establish that there was no rise in the price of land after the

issuance of the Notification u/s 4(1). Similarly, merely because the sale deed has relied upon which is for a smaller extent and which is used for

housing purpose the Court cannot reject the same, but only make suitable deductions for relying on the same. Therefore this Court is of the opinion

that the Reference Court has committed an error in rejecting Ex.C1.

7. In the judgment reported in 1997 8 CTC 186 (Karansingh and Ors. v. Union of India), the Hon''ble Supreme Court has held that in the absence

of any evidence of sale of land available on the date of issuance of Notification u/s 4(1) of the Act, the post Notification transaction can be relied

upon under certain conditions. It has been further held that it must be shown by the claimant before the Court that there was no appreciation of

value during the period of Notification u/s 4(1) and the date of transaction of the sale which is sought to be relied upon for the purpose of fixing the

market value of the acquired land. In such a case the burden is on the claimant to show that the price of land remains static and there was no rise in

the price of land during the period of issuance of Notification u/s 4(1) of the Act and the date of transaction of sale. In the present case as

mentioned earlier the Notification was published on 14.03.1984 and Ex.C1 has been executed on 01.11.1985 which is about 11/2 years after the

Notification. Therefore the Court below ought to have given a liberty to the claimant to prove that there was no increase between the publication of

the Notification and the date of sale deed mentioned in Ex.C1.

8. In so far as the reasoning of the Court below for rejecting Ex.C1 on the ground that the same is a residential plot over which a house has been

constructed and therefore it cannot be relied upon for fixing the valuation for the acquired agricultural land also cannot be sustained. The Court

below has to make suitable deductions for relying upon the sale deed mentioned in Ex.C1 by taking into consideration of the smallness of the plot

involved therein and the purpose for which the same has been sold. In the judgment reported in 2009 (1) CTC 467 (The Tahsildar,

Neighbourhood Scheme, Erode v. Ramayiammal and Ors.), the Hon''ble Division Bench has held that in such an event the Court has to make

suitable deductions for fixing the value of an agricultural land.

9. In so far as the fixation of the value by the Court below by taking into

consideration of 20 years of the yield, the same also cannot be sustained.

In the judgment reported in Assistant Commissioner-cum-Land Acquisition Officer, Bellary Vs. Sri S.T. Pompanna Setty, , the Hon''ble Supreme

Court has held that normally multiplier of 10 has to be considered as proper and appropriate. Similarly in the judgment reported in Land

Acquisition Officer, A.P. Vs. Kamadana Ramakrishna Rao and Another, , the Hon''ble Supreme Court has held that the application of multiplier of

20 was contrary to the well settled proportion of law. Therefore on a consideration of the above said judgment, this Court is of the opinion that the

fixation of value by the Reference Court by taking into consideration of 20 years of yield cannot be accepted.

10. In the judgment rendered by the Hon''ble Division Bench in A.S. No. 247 of 1999 dated 16.07.2009 (The Revenue Divisional Officer,

Sivakasi v. N. Janakiammal), the Division Bench of this Court has held that the capitalisation method of valuation of the acquired land is

permissible only in the absence of evidence of comparable sales or in the absence of other evidence for computation of market value. Therefore,

taking into consideration of the above said judgment the very basis on which the Reference Court has relied upon, the capitalisation method cannot

be accepted since the respondents/claimants have produced Ex.C1 in support of their case for fixing the valuation.

11. However, it is to be noted that while fixing the valuation based upon Ex.C1 the court has to taken into consideration the factors such as the

distance between the land covered under Ex.C1 and the acquired land, the nature of the land involved in Ex.C1, purpose for which the lands

covered under Ex.C1 is used, the location of the land under Ex.C1 as well as the extent involved therein. The Reference Court has also take into

consideration the suitable deductions for relying upon the land covered under Ex.C1 which is admittedly for lesser extent and which is a housing

plot as against the agricultural lands acquired in the present case.

12. The respondents/claimants are also permitted to let in evidence in support of their case that there was no increase in the valuation between the

period prior to Notification till the date of the sale deed mentioned in Ex.C1. Even assuming there is some increase between the said period, the

Court will have to make suitable deductions towards the same while taking into consideration of the sale deed involved in Ex.C1. Both the

respondents as well as the appellant are permitted to let in evidence in support of their case either oral or documentary. The parties are also

permitted to let in evidence to prove their respective case. Therefore the judgment and decree of the Reference Court rendered in L.A.O.P. No.

76, 77 and 87 are hereby set aside and the Reference Court is directed to take the above said case to be decided afresh in accordance with law in

the light of the observation made. Hence the above appeals are allowed. No costs.