(2011) 02 MAD CK 0388

In the Madras High Court

Case No : A.S. (MD) No. 14 of 2006 and C.M.P. No. 462 of 2006

The Revenue Divisional Officer APPELLANT

Vs

Senbagam and Others RESPONDENT

Date of Decision : 01-02-2011

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 4(1)

Citation : (2011) 02 MAD CK 0388

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : D. Gandhirajan, for the Appellant; D. Nallathambi, For Respondents 1, 3 to 5, A. Sankarasubramanian and T.S.R. Venkataramana for Respondents 2, 6, 8 to 10, 12 and 14, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The Revenue Divisional Officer, who was the Referring Officer before the lower court, is the Appellant herein. The appeal has been filed u/s 54 of the Land Acquisition Act, 1894, against the award passed by the learned Principal subordinate Judge, Tenkasi in L.A.O.P. No. 75 of 1992 on 30.04.2002.

2. An extent of 3.14.0 hectares of land comprised in S. Nos. 196/1, 196/2,196/3,197/1-A,197/2-A in Tenkasi village, Tenkasi Taluk belonging to the Respondents was acquired by the Government for the purpose of construction of a new bus-stand at Tenkasi. The notification u/s 4(1) of the Land Acquisition Act for the said purpose was issued on 10.10.1990. After award enquiry, the Revenue Divisional Officer, Tenkasi(Land Acquisition Officer) passed an award in his Award No. 3/1992, dated 17.02.1992 fixing the market value of the acquired land at the rate of Rs. 1,35,850/-per hectare(Rs. 550/-per cent). The Land Acquisition Officer fixed a total sum of Rs. 13,300/-for the trees that stood in the acquired land as on the date of 4(1) notification. The Respondents/claimants, who were not satisfied with the quantum of compensation awarded by the Land

Acquisition Officer, received the same under protest and requested the Land Acquisition Officer to make a reference to the court u/s 18 of the Land Acquisition Act, 1894 to fix a reasonable compensation for the compulsory acquisition of the said land.

Accordingly, a reference was made to the learned Principal Subordinate Judge, Tenkasi which was taken on file as L.A.O.P. No. 75 of 1992.

3. After the claimants and the Referring Officer filed their claim statements and the written objections respectively, the learned Principal Subordinate Judge, Tenkasi, conducted trial, in which 12 witnesses were examined as C.W.1 to C.W.12 and 8 documents were marked as Ex.C1 to Ex.C8 on the side of the claimants/Respondents herein. On the side of the Appellant herein/Referring Officer, no witness was examined, but, three documents were marked as Ex.R1 to Ex.R3. The learned Principal Subordinate Judge, Tenkasi, at the conclusion of trial, heard the arguments advanced by both parties, considered the evidence adduced by both the sides in the light of the pleadings and the arguments and upon such consideration, fixed the market value of the acquired land as on the date of 4(1) notification at the rate of Rs. 1,700/-per cent. The value of the trees was fixed as follows:

1 for the trees that stood in S. No. 196/1 =Rs.21,278/ 2 for the trees that stood in S. No. 196/2 =Rs. 1,053/ 3 for the trees that stood in S. No. 196/3 =Rs. 6,767/ 4 for the trees that stood in S. No. 197/1-A=Rs. 8,720/ 5 for the trees that stood in S. No. 197/2-A=Rs. 2,631/ -------- Total 40,449/- -------- The learned Principal Subordinate Judge, Tenkasi allowed the additional market value calculated at 12% p.a. from the date of 4(1) notification till the date of award and solatium at 30% of the market value of the land. The learned Principal Subordinate Judge also directed payment of the enhanced amount of compensation after deducting the amount already paid by the Land Acquisition Officer, with interest for the same at the rate of 9% p.a from the date of taking possession for a period of one year and thereafter, at the rate of 15% p.a. till payment.

4. The said award passed by the learned Principal Subordinate Judge is challenged in the present appeal contending that the amount fixed the market value of the land and the amount fixed as the value of trees as on the date of 4(1) notification are on the higher side and accordingly, the amount awarded as compensation by the court below is excessive and exorbitant requiring downward revision.

5. The point that arises for consideration in this appeal is: "whether the compensation awarded by the court below needs a reduction as prayed for by the Appellant?"

6. The arguments advanced by the learned Counsel appearing on either side were heard. The judgment and decree and other materials on record were also perused.

7. There is no dispute regarding the ownership of the property that was acquired for the purpose of constructing a new bus-stand in Tenkasi. The notification for the acquisition u/s 4(1) of the Land Acquisition Act was made on 10.10.1990. The award of the Land Acquisition Officer was passed on 17.02.1992 and possession of the acquired land was taken by the Government on the date of award itself. The Land Acquisition Officer fixed the market value of the acquired land as on the date of 4(1) notification at Rs. 1,35,850/-per hectare, which is equivalent to Rs. 550/-per cent. The value of the trees was fixed at Rs. 13,300/-. The Land Acquisition Officer has rightly allowed the statutory benefits, viz., solatium at 30% of the market value as per Section 23(2) of the Land Acquisition Act and additional market value calculated on the market value at the rate of 12% p.a. But while calculating the additional market value u/s 23(1-A) of the Land Acquisition Act, the Land Acquisition Officer calculated the additional market value from 01.11.1990 instead of 10.10.1990, the date of 4(1) notification, till the date of award i.e., 17.02.1992.

8. The learned Principal Subordinate Judge, Tenkasi held that the market value of the acquired land as on the date of 4(1) notification, should be fixed more than the amount fixed by the Land Acquisition Officer. The Land Acquisition Officer relied on a document bearing Doc. No. 1474, dated 08.09.1989, whereunder 35 cents of dry land in S. No. 203/1B was said to be sold for a sum of Rs. 17,500/-. Accordingly, the Land Acquisition Officer held that the rate per cent worked out to Rs. 500/-per cent; that 10% increase for one year would be given. Thus the Land Acquisition Officer fixed the market value of the acquired land at the rate of Rs. 550/-per cent, equivalent to Rs. 1,38,850 per hectare.

9. It is not in dispute that the acquired land had been developed into a thope; that the neighbouring lands had been acquired for building residential houses by the Tamil Nadu Housing Board and that the land in question should have been valued taking its potentiality to be developed into house sites. Though the claimants have produced other documents showing the sales that have taken place in respect of the neighbouring lands even at a higher rate, the learned Principal Subordinate Judge, Tenksi relied on a sale deed dated 06.12.1985 under which a neighbouring land in S. No. 213/1 had been sold at the rate of Rs. 3,500/-per cent. Since the said sale had taken place a number of years prior to the date of 4(1) notification, the learned Principal Subordinate Judge, Tenkasi thought it fit to take it as the basis for fixing the market value of the acquired land. While doing so, the learned Principal Subordinate Judge also referred to the other documents, relating to other sales which had taken place in respect of dry lands and then came to the conclusion that the market value of the acquired land would be fixed on the basis of Ex.C7. Under the said sale deed, a small piece of land having an extent of 3 cents was sold as a house site for a sum of Rs. 10,500/-which worked out to Rs. 3,500/-per cent. Having decided to take the said sale as the basis of valuation of the acquired land, the learned Principal Subordinate Judge, Tenkasi chose to allow a deduction for the developmental charges since the sale in respect of a house site having a small extent of 3 cents

was taken as the basis of valuing a larger extent of land namely, the acquired land. That is the reason why the learned Principal Subordinate Judge chose to fix the market value of the land, as on the date of 4(1) notification, below 50% of the value reflected in Ex.C7. Under Ex.C7 the sale had taken place at Rs. 3,500/- per cent. 50% of the same comes to Rs. 1,750/-.However, the learned Principal Subordinate Judge chose to fix the market value of the acquired land, as on the date of 4(1) notification, at Rs. 1,700/-which is less than 50% of the value reflected in Ex.C7. It should also be noticed that the Land Acqusition Officer himself chose to allow 10% increase in the market value for a period of one year from the date of a sale under a sale selected by him as sample sale upto the date of notification u/s 4(1) of the Land Acquisition Act. If such a procedure is adopted in this case, then the market value could be even arrived at Rs. 3500+350=Rs.3,850/-. Even if 50% is allowed as deduction towards developmental charges, then the market value will be Rs. 1925/-per cent which is more than Rs. 1,700/-per cent. Therefore, the grievance expressed by the Appellant/Land Acquisition Officer that the market value of the acquired land fixed by the learned Principal Subordinate Judge as on the date of 4(1) notification, is excessive cannot be countenanced. No interference was warranted regarding the same.

10. So far as the valuation of the trees is concerned, it has been assessed properly based on clear and cogent evidence adduced on the side of the claimants to the effect that the trees that stood in the acquired land were yielding trees and they were more valuable. However, the learned Principal Subordinate Judge, Tenkasi has chosen to fix the value of the trees only at a moderate rate as mentioned hereunder:

1 for the trees that stood in S. No. 196/1 =Rs.21,278/ 2 for the trees that stood in S. No. 196/2 =Rs. 1,053/ 3 for the trees that stood in S. No. 196/3 =Rs. 6,767/ 4 for the trees that stood in S. No. 197/1-A=Rs. 8,720/ 5 for the trees that stood in S. No. 197/2-A=Rs. 2,631/- --------- Total 40,449/- --------

The learned Government Advocate appearing for the Appellant also has not taken serious objection for the fixation of the value of the trees.

11. The learned Principal Subordinate Judge, Tenkasi has also correctly allowed the statutory benefits like increase in the market value from the date of 4(1) notification i.e.,10.10.1990 till the date of award at the rate of 12% p.a. on the market value and also 30% of the market value as solatium in accordance with Sections 23(1-A) and 23-2 respectively. The learned Principal Subordinate Judge has also correctly allowed the interest at 9% p.a. from the date of taking possession, namely 17.02.1992, on the enhanced amount of compensation for a period of one year and at the rate of 15% p.a. for the subsequent period. The same is in accordance with Section 28 of the Land Acquisition Act. This Court does not find any defect or infirmity in the order passed by the learned Principal subordinate Judge, Tenkasi either in the valuation of the land and the trees or in the calculation of the statutory benefits. There is no merit in the appeal and the

same deserves to be dismissed.

12. In the result, the appeal is dismissed and the award passed by the learned Principal Subordinate Judge, Tenkasi in L.A.O.P. No. 75 of 1992, dated 30.04.2002 is confirmed. Consequently, connected Civil Miscellaneous Petition is dismissed. No costs.