(2013) 09 MAD CK 0319

In the Madras High Court

Case No : A.S. No. 734 of 2002

The Revenue Divisional Officer — APPELLANT

Vs

Visvesvaran and Others — RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0319

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S. Pasupatheeswaran, Special G.P. AS, for the Appellant; N. Manoharan for RR2 to 7, 9, 13 and 15, Mr. R.T. Doraisamy for RR10 to 12 and Mr. T. Chandrasekaran for R16, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The Land Acquisition Officer, who is the respondent in L.A.O.P. No. 1 of 1997 on the file of the Principal Sub Court, Gobichettipalayam is the appellant. The respondents, aggrieved by the award of lesser compensation made by the appellant in award proceedings in Ref. No. 3693/92 A5 dated 2.9.1996 fixing the compensation at Rs. 7.82 per sqft, sought for reference and at their instance, reference was made in L.A.O.P. No. 1 of 1997. The Reference Court enhanced the compensation to Rs. 30/- per sqft and aggrieved by the same, this appeal is filed.

2. The case of the appellant is as follows:-

The property in S. No. 27/1A1A1A having an extent of 1.82.5 hectare and S. No. 27/3 having an extent of 0.60 hectares and S. No. 27/1A1B having an extent of 0.20 hectares which belonged to the respondents were acquired for the purpose of construction of workshop for Jeeva Transport Corporation. Section 4(1) notification was issued on 6.10.1993 and paper publication was effected on 7.10.1993. Section 5(A) enquiry was conducted on 15.12.1993 and 21.12.1993 and section 6 declaration was made on 24.8.1994 and award was passed on

2.9.1996 and the compensation for the land acquired was fixed at Rs. 7.82 sqft on the basis of the sale deed dated 25.2.1993 in respect of the land in S. No. 23/2 having an extent of 2558 sqft and challenging the same, the land owners sought for reference and claimed higher amount and the amount fixed by the appellant represents the correct value and therefore, there is no need to increase or enhance the market value of the land acquired.

3. The respondents/claimants filed counter stating that the data land sold on 25.2.1993 situate in S. No. 23/2 is far away from the acquired land and the sale took place eight months prior to the acquisition and lower value was mentioned in that document and therefore, the sale consideration mentioned in that document cannot be taken into consideration. He also stated that the appellant ought to have taken Document No. 285 dated 16.2.193 into consideration to fix the market value as the subject matter of the land in that sale deed is situate very near to the acquired land and that land is situate in S. No. 40/1 which is nearer to the acquired land. They also claimed that the market value at the rate of Rs. 58/- has to be fixed for the acquired land and the lands are house-sites and therefore, there is no need to deduct any extent towards development charges and the lands, as such, can be used for the purpose for which it was acquired and the lands were situate at Sathyamangalam-Coimbatore Main Road and therefore, higher compensation at the rate of Rs. 58/- ought to have been fixed.

4. The court below framed the following issues:-

1. Whether the Land Acquisition Officer fixed the correct market value?

2. What is the compensation payable to the claimants?

5. On the side of the claimants, three witnesses were examined and five documents were marked and on the side of the appellant, three witnesses were examined and three documents viz., plan, award and the sale deed dated 25.2.1993, which was taken into consideration for fixing the market value of the land acquired by the appellant, were filed.

6. The court below relied upon Ex. C3 sale deed dated 15.9.1993 in respect of S. No. 24 wherein 3476 sqft of land was sold for a sum of Rs. 1,00,000/- and as per the said sale deed, the market value of the land per sqft comes to Rs. 29/- and fixed Rs. 30/- as the market value for the acquired land and awarded solatium on the enhanced market value and also awarded interest on the compensation amount from 25.10.1993 to 2.9.1996 at the rate of 12% per annum and aggrieved by the same, this appeal is filed.

7. Learned Special Government Pleader submitted that no acceptable reason was stated by the court below for rejecting the data land, Ex. P3 and no reason was stated for accepting Ex. C3 for fixing the compensation of Rs. 30/-. The learned Special Government Pleader submitted that as per the data land, Ex. P3 sale deed in respect of S. No. 23/2, 2558 sqft was sold at Rs. 20,000/- and the sale

was dated 25.2.1993 and section 4(1) notification was issued on 6.10.1993 and therefore, that document must have been taken into consideration for fixing the market value and that was rightly taken into consideration by the appellant. He also submitted that Exs. C1 and C2 was rightly rejected by the court below as those lands are situate far away from the acquired land and in respect of S. No. 24, the sale was on 15.9.1993 and the extent sold was 3476 sqft and the consideration was Rs. 1,00,000/- and the market value under that document comes to Rs. 29/- per sqft. And there was no proof that the said Survey No. 24 is situate nearer to the acquired land and having regard to the plan, S. No. 24 cannot be said to be nearer to the acquired land. He also submitted that the court below ought to have reduced the compensation having regard to the extent of area sold under Ex. C3 and it has been held by the Honourable Supreme Court and our High Court that when small pieces of land were sold, the sale price cannot be taken as such and some deduction has to be made having regard to smallness of the land sold. He, therefore, submitted that considering all these aspects, the court below ought to have accepted the award passed by the appellant and confirmed the same.

8. On the other hand, Mr. N. Manoharan and Mr. R.T. Doraisamy, learned counsel appearing for the respondents submitted the Reference Court rightly relied upon Ex. C3 and fixed the compensation of Rs. 30/- per sqft and Ex. C3 sale deed was dated 15.9.1993, one month prior to the date of section 4(1) notification and that property is also situate nearer to the acquired property and as per the sale consideration mentioned in that document, one sqft was valued at Rs. 29/- and considering the same, the Trial Court fixed Rs. 30/- per sqft and therefore, there is no need to interfere with the market value fixed by the court below. They also submitted that the court below granted interest only on the enhanced compensation and did not grant interest on the solatium on the enhanced compensation and having regard to the judgments reported in Iyasamy and Another Vs. SPL. Tahsildar, Land Acquisition, and Chimanlal Kuberdas Modi (D) by Lrs. Vs. Gujarat Industrial Development Corp. and Others, , interest on solatium can also be granted even at the stage of execution and therefore, though the respondents have not filed any cross appeal or cross objection claiming interest on the solatium, while deciding the appeal, this court has to see whether just compensation was paid to the owners of the property and considering the judgment of the Honourable Supreme Court referred to above, the claimants must be paid interest on the solatium on the enhanced compensation also and therefore, the same may be ordered and the appeal be dismissed.

9. On the basis of the above submissions, the following points for consideration arise in this appeal:-

1. Whether the compensation at the rate of Rs. 30/- per sqft fixed by the court below is correct or not?

2. Whether the Court below was right in not making any deduction towards

development charges from the compensation arrived?

3. Whether the respondents are entitled to claim interest on the solatium on the enhanced amount in the absence of any cross appeal or cross objection having regard to the judgments reported in Iyasamy and Another Vs. SPL. Tahsildar, Land Acquisition, and Chimanlal Kuberdas Modi (D) by Lrs. Vs. Gujarat Industrial Development Corp. and Others,

10. It is seen from Ex. P1 plan that the property in S. No. 24 is nearer to the acquired land in S. No. 27/1A1A1A, S. No. 27/3 and S. No. 27/1A1B rather than the property in S. No. 23/2 which was taken into consideration by the appellant for fixing the compensation at the rate of Rs. 7.82 per sqft. Further, the data sale deed, Ex. P3 dated 25.2.1993 was eight months earlier to the date of acquisition and that land is also situate far away from the acquired land whereas the land in S. No. 24 which is nearer to the acquired land was sold at Rs. 29/- per sqft on 15.9.1993 which is nearer to the date of acquisition. Further, it is seen from Exs. C1 and C2, the lands in S. No. 41 were sold in February and March 1993 at the rate of Rs. 58/- per sqft and as per Ex. P1, those lands are also situate far away from the acquired land. Considering the situation of the lands which were taken into consideration for fixing the market value, the Trial Court rightly taken into consideration Ex. C3 for fixing the market value of the land at Rs. 30/- per sqft. Therefore, I do not find any infirmity in the finding of the Trial Court regarding the fixing of market value at Rs. 30/- per sqft and point No. 1 is answered against the appellant.

11. It is contended by the learned Special Government Pleader that the court below, without deducting any amount towards development charges, erred in fixing Rs. 30/- per sqft as market value of the compensation and therefore, that amount has to be reduced.

12. I am not able to accept the contention of the learned Special Government Pleader. Admittedly, the properties acquired are house-sites and they were acquired for the purpose of establishing workshop and godown for Jeeva Transport Corporation. Therefore, there is no need for deduction towards development charges. Point No. 2 is answered accordingly.

13. The Trial Court, while considering the point for consideration, held that the claimants are entitled to compensation at Rs. 30/- per sqft and also held that they are entitled to solatium on the enhanced compensation at 30%. But, the Trial Court held that the enhancement of compensation attracts 12% interest. The Trial Court did not specifically state that the interest is also payable on the solatium on the enhanced compensation. In the judgments reported in Iyasamy and Another Vs. SPL. Tahsildar, Land Acquisition, , the Honourable Supreme Court followed the judgment reported in Sunder Vs. Union of India, and Gurpreet Singh Vs. Union of India (UOI), . In the absence of any specific denial of interest on solatium by the Reference Court, the same can be awarded even at the time of execution. In the judgment reported in Sunder Vs. Union of India, , it was held

that the compensation awarded would include the amount of compensation worked out in accordance with the provisions contained in Section 23, including all the sub-sections thereof. Therefore, the interest is payable on the solatium also and the Trial Court only held that 12% interest can be paid on the enhancement of compensation and there is no specific denial of interest on the solatium. Therefore, the claimants are entitled to just compensation payable under the Act and therefore, even in the absence of any cross appeal or cross objection filed by the respondents, they are entitled to just compensation which includes interest on solatium on the enhanced compensation. Therefore, the respondents are entitled to interest on the solatium on the enhanced compensation and the judgment and decree of the Trial Court is modified to that extent. Point for consideration No. 3 is answered accordingly.

In the result, appeal is dismissed with the modification in the judgment and decree of the Trial Court with respect to interest on solatium as indicated above. No costs.

