
(1997) 08 MAD CK 0149
In the Madras High Court

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

APPELLANT

Vs

A.K. Jamal and Others

RESPONDENT

Date of Decision : 26-08-1997

Acts Referred:

Citation : (1998) 3 MLJ 562

Hon'ble Judges : Jagadeesan, J

Bench : Division Bench

Judgement

Jagadeesan, J.—By consent of both the counsels the appeal itself is taken up for final disposal. The appellant herein acquired an extent of 73 cents in Kolumadai Village for the purpose of providing house sites to the Adi Dravidars. The respondents are the owners of the land. A necessary notification u/s 4(1) of the Land Acquisition Act, was published on 4.4.1990. However the appellant took possession of the land on 17.8.1989. There is nothing on record to show that the possession had been taken with the consent of the respondents.

2. The Land Acquisition Officer passed the award in Award No. 1 of 1991, dated 18.9.1990 wherein he has fixed the compensation for the land at Rs. 20 per cent. The respondents preferred a reference u/s 18 of the Land Acquisition Act. The Sub Court, Cheranmahadevi had enhanced the compensation for the land from Rs. 20 per cent to Rs. 300 per cent. The appellant did not produce any documents. Only the respondents produced four documents. On both the sides oral evidence was let in. After considering the oral evidence as well as the documents produced by the respondents the lower court has fixed the compensation at Rs. 300 per cent by the judgment dated 18.1.1996 in L.A.O.P. No. 18 of 1992. As against the same the present appeal has been preferred.

3. The only question argued before this Court is the lower court has relied upon two documents A-2 and A-3, dated 2.4.1985 and 25.5.1991 Ex.A-2 is prior to 4(1) notification and Ex.A-3 is subsequent to 4(1) notification. The lower court is not correct in taking into consideration Ex.A-3 for fixing the value of the land

since the same is subsequent to 4(1) notification. Further it is contended by the learned Government Pleader that since no one connected with the documents have been examined the same cannot be accepted in view of the recent Supreme Court judgment.

4. The counsel for the respondents however contended that the documents relied upon by the lower court are 5 years prior to the date of 4(1) notification and one year subsequent to the date of 4(1) notification. There is no hard and fast rule that the documents subsequent to 4(1) notification should not be considered at all. If there is no document available of recent origin, very close to the date of 4(1) notification then the lower court can consider the nearest proximate document and ascertain the market value, of the land. Now that the lower court has passed the award by accepting the documents. The objection now raised by the Government Pleader with regard to the non-examination of the parties cannot be entertained as the same is belated one. The appellant did not raise any objection with regard to the marking of the documents, before the lower court. In the recent judgment reported in 7996 L.A.C.C. 196 : AIR 1996 S.C. it has been held as follows:

(3) It is settled law in reference u/s 18, claimant being dissatisfied with the award of the Land Acquisition Officer, when the proceedings are taken u/s 20 of the Act, burden is always on the claimant like plaintiff to adduce reliable and acceptable evidence to prove proper, just and adequate compensation to the acquired land. If such an evidence was adduced, burden shifts on to the State to disprove it. It is further settled law that the sales transaction filed either in the narration of award or documents, without examination of either the vendee or by the vendor is not evidence. It is the duty of the court to carefully assess the evidence on the touchstone of human conduct and prudent purchaser. Admittedly, in this case, though reference to four sales transactions has been made by the reference court, neither the vendee nor the vendor was examined nor was it established that the sale consideration which passed thereunder is true and the price for which the sales came to be executed, were real one between willing vendor and willing vendee. Equally, burden is on the claimant to establish that the lands relating to the sales transactions and the land under acquisition are possessed of same value, nature of the lands are same and capable to fetch same price, and so also other situations as comparable features. Unfortunately, neither the reference court nor the High Court has looked into this legal aspect of the matter and proceeded on the terms of those sale deeds. It is equally settled law that the courts should avoid feats of imaginations to fix fanciful price, and sit in the armchair of willing vendee to see whether a prudent purchaser acting in normal market condition would be willing to offer the price which are mentioned in the sale instances. The court should clearly and carefully evaluate the evidence and determine market value avoiding needless burden on the exchequer and according adequate and just compensation to the acquired land. The very approach adopted by the courts below is beset with illegalities and, therefore, we do not find any legal basis to consider the evidence on record

to determine proper and adequate compensation in respect of the acquired land.

(4) Under these circumstances, we are left with no option but to set aside the decree and award of the reference court as well as of the High Court and remit the matter to the reference court to give an opportunity to the claimant as well as the Land Acquisition Officer to adduce evidence in the case and then to determine the compensation according to law.

In the decision reported in *Inder Singh and Others Vs. Union of India (UOI) and Others*, , while dealing with the rights of the claimants to receive just and reasonable compensation and also fixation of the market value of the lands as on the date of the publication of the notification u/s 4(1) of the Land Acquisition Act the Supreme Court has observed as follows:

It would be possible to have reliable evidence when sale transactions are proved by either the vendor or the vendee, and if either of them was not available, the attesting witness who had personal knowledge of the transaction is to be examined by producing either the original sale deed or certified copies thereof as evidence. u/s 51-A of the Act as amended in 1984 the certified copies have been permitted to be brought on record as evidence of sale transaction recorded therein. The examination of the witnesses is to find that the sale transactions are bona fide and genuine transactions between willing vendor and willing vendee as reasonable prudent men and the price mentioned is not throw away price at arms length or distress sales or brought into existence to inflate the market value under acquisition and the sales are accomodating one. Equally it must be brought on record the comparative nature of the lands covered under the sale deed and the acquired lands whether adjacent or actually distant are possessed of similar advantages and whether transactions themselves are genuine and bona fide transactions. This proposition of law since settled law, in fairness, has not been disputed across the bar. The contention is that at the relevant time it was not being insisted upon. Therefore, none of the witnesses was called upon to prove the sale deed or to prove the sale transactions. Therefore, when evidence of potential value is available, the same could be considered. We find merit in the contention. At one time we thought of remanding the cases but we find that it would be needless prolongation and the complexion on ground by now would have been completely changed. In view of the above settled legal position and the circumstances, the documentary evidence of sale transactions or in the mutation entries on either side are clearly not admissible and therefore, they cannot be looked into, and are accordingly excluded from consideration.

Following the principles laid down by the Supreme Court in the above judgments, I have no other option except to set aside the order of the lower court in L.A.O.P. No. 18 of 1992 and remand the matter to the lower court for fresh disposal in accordance with the observations made by the Apex Court in the above referred judgment. Accordingly the appeal is allowed. The court-fees is directed to be refunded. In view of the disposal of the appeal the C.M.P. No. I 1447 of 1997 is closed. No costs.