

(2010) 08 MAD CK 0005

In the Madras High Court

Case No : Appeal Suit No. 84 of 2006, Cross Objection No. 21 of 2006 and C.M.P. No. 3056 of 2006

The Special Tahsildar (Adi Dravidar Welfare)

APPELLANT

Vs

Balasundaram
Balasundaram Vs The Special Tahsildar
(Adi Dravidar Welfare)

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0005

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ravi, Spl. G.P. AS in A.S. No. 84/2006, for the Appellant; V. Ravi, Spl. G.P. (AS) in A.S. No. 84/2006 and and M. Devendran in Cross Obj. No. 21 of 2006, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—A.S. No. 84 of 2006 is filed by the Special Tahsildar, Adi Dravidar Welfare, Vellore challenging the judgment and decree

in LAOP No. 1 of 2001 on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore dated 28.7.2004 in fixing the market

rate of compensation at Rs. 4,356/- per cent. The respondent/claimant, by objecting to the very same judgment and decree has filed Cross

Objection No. 21 of 2006 demanding enhancement of compensation at Rs. 60/- per Sq.ft.

2. Heard the arguments of Mr. V. Ravi, learned Special Government Pleader (AS) and Mr. M. Devendran, learned Counsel for the

respondent/claimant as well as cross objector.

3. The lands of the claimant/land owner situated in Vellore North Town in Survey

No. 1775/1B to an extent of 1.58.75 Cents were acquired for the purpose of providing house sites to the houseless Adi Dravidar families living in Vellore Taluk and Town in North Vellore. Section 4(1) Notification proposing to acquire the land was issued on 5.11.1982 and subsequently published in the Government Gazette on 24.11.1982. After following due procedure, the lands were taken over. The acquiring authority fixed the compensation at the rate of Rs. 330/- per Cent. The aggrieved land owner raised objection for the lower rate of compensation. Therefore, the matter was referred for determination of market value by the Reference Court. The reference was assigned to the Additional District and Sessions Court (Fast Track Court), Vellore and registered as LAOP No. 1 of 2001.

4. Before the Reference Court, on behalf of the respondent/land owner, three witnesses were examined including himself as C.W.1 and M/s.

Kumar and Raja were examined as C.W.2 and C.W.3. On his side 8 documents were filed and marked as Ex.C.1 to C.8. On the side of the acquiring authority, one Ethiraj was examined as R.W.1 and 5 documents were filed and marked as Exs.B.1 to B.5.

5. The Reference Court on the basis of these materials framed two issues. The first issue was as to what was the value of the land acquired per Cent on the date of Section 4(1) Notification? The second issue was whether the claimant was entitled to receive the enhanced compensation and if so to fix the quantum of compensation.

6. The Reference Court found that the data lands, relied on by the acquiring authority in S. No. 2967 and 2941 do not reflect the correct market value. In fact the acquiring authority in respect of those lands has fixed the market rate in some cases at Rs. 0.23 per Sq.ft and in some other cases at Rs. 0.07 per Sq.ft. Therefore, such an exorbitant exercise was declined by the Reference Court.

7. On the other hand, reliance was placed upon Ex.C.5. It is an order passed by the Reference Court, namely Sub Court, Vellore in LAOP No. 60/90 in respect of the very same area and Ex.C.6 is the decree copy. Likewise Ex.C.4 is a judgment in LAOP No. 49 of 1986 on the file of the Sub Court, Vellore. Ex.C.3 is the decree arising out of the said judgment. The court below found that the judgments rendered by the Reference

Court in respect of acquisition of the lands in the very same area indicate the true market value of the land and found in those cases the court below

had ordered compensation at the rate of Rs. 10/- per Sq.ft. It also did not take into account the exemplars in Ex.C.1 and C.2 which are two sale

deeds. In Ex.C.2, the valuation worked out to Rs. 15.68 per sq.ft. But, however, the court below concluded that the earlier exercise done by the

Reference Court with reference to the fixation of market value can be a true indicator of the market value. Even after determining the market value

at Rs. 10/- it reduced 40% from it towards development charges.

8. The court below did not make an exercise over the Exs.C.4 and C.6 relating to an acquisition of land made pursuant to Section 4(1)

Notification on 6.7.1977. Whereas, in the present case the Notification was on 5.11.1982 and five years had gone by and no regard to

appreciation in the cost of the land was done. Though this issue was raised by the claimants, no finding was rendered on the said issue. It is rather

unfortunate that even on the grant of development charges at the rate of 40%, the court below did not look into the award proceedings. In fact, the

acquiring authority made a specific finding that in Vellore North Town, no lands in the category of Punja or Nunja or unassessed waste land or

poromboke land were available. Therefore, having left with no other option, patta lands of the claimant was acquired. In the present case, the

purpose of acquisition is for providing house sites. If the lands were already available as house sites, the question of any deduction towards

development charges will not arise. Further Exs.C.1 and C.2, which were relied upon as exemplar itself are shown as house sites and lay out

approval was obtained and plots have been sold in the neighbouring land.

9. However, the acquiring authority has come forward with this appeal by contending that the court below had erred in not looking into the material

documents. It goes beyond one's comprehension as to how a ground can be raised stating that since Exs.C.1 and C.3 were exemplars of sale of

small plots and it should not have been taken into account. In the present case, no such exercise was undertaken by the Reference Court.

10. The other contention raised was that reliance placed upon Exs.C.4 and C.6 may not be proper as the Court below never found out whether

any appeal was filed and whether the LAOPs have reached their finality. It is not

clear as to how such a ground can be raised when it is for the acquiring authority to inform the court that Ex.C.4 and C.6 are subject matter of appeal and that the appellate court had either modified or reduced the compensation. The ground No. 11 raised in the appeal mechanically states that the court below did not give any deduction towards the development charges. Whereas, in the present case, 40% deduction was allowed by the Reference Court. It shows that appeals are filed without substance mechanically. Such appeals are filed even if facts and circumstances do not warrant filing of such appeals. In any event, this Court has no hesitation to reject the attack made by the acquiring authority on the reference court judgment.

11. The only other issue that has to be resolved is whether the land owner/claimant is entitled for enhancement of compensation as claimed in his

Cross Objection No. 27 of 2006. In the Cross Objection, the first contention raised was that the question of awarding deduction towards

development charges may not arise as the plots were already well developed and surrounded by house sites. That is located in a vantage point,

namely the road leading to Chennai and Bangalore and closer to the bus stand.

12. The second contention was that having relied upon Ex.C.4 and C.6, which are the judgments passed in the earlier LAOPs, for which Section

4(1) Notification was made in the year 1977, the land value had gone up and due credit was not given. The court below was wrong in pegging the

value at the rate of Rs. 10/- even after five years from the date of the earlier notification. However, the claim made by the land owner is not

consistent in his demand for compensation. Fancy claims were made as can be seen from the pleadings.

13. Before the acquiring authority the claimant demanded Rs. 75/- per Sq.ft. In the claim made before the Reference Court, he demanded Rs.

100/- per Sq.ft. Before this Court, in the Cross Objection, he confined his claim to Rs. 60/- per Sq.ft. Mr. M. Devendran, learned Counsel for the

claimant stated that due to exorbitant court fee, his client had confined his claim for a lower compensation.

14. In any event, the court below for the reasons set out therein rejected the reliance placed upon Exs.C.1 and C.2. Therefore, this Court do not

propose to accept the finding rendered by the Reference Court in this regard.

Having arrived at the market rate at Rs. 10/- per Sq.ft, after placing reliance upon Ex.C.4 and C.6, the court below erred in not granting credit to appreciation of land cost. In normal circumstances, the sale deeds in respect of sale of small plots in the area which have bearing on the present market value can be taken into account. In the present case, the LAOP judgments granted by the Sub Court, Vellore were in respect of an earlier notification, which was 5 years old. Therefore the land owner in normal circumstances is entitled to get higher compensation by giving due credit to the appreciation of cost of the land. As can be seen from Ex.C.2, the valuation works out to Rs. 15.68 per Sq.ft. If that was taken as true indicator and if 10% appreciation was given for each year to the exemplar relied on, then there will be 50% increase in the land cost. Therefore the true value can be Rs. 15/- per Sq.ft. By not doing so, the Reference Court had miserably failed in its duty.

15. The second question related to deduction towards development charges. The Supreme Court in Lucknow Development Authority Vs. Krishna

Gopal Lahoti and Others, has held that deduction made towards development charges cannot be done in a straight jacket formula and it would depend upon the facts of each case.

16. In the present case as set out earlier, the acquiring authority himself had recorded that no other agricultural land or cultivable state or

unassessed dry waste or poromboke lands are available in that area and therefore went in for patta lands of the claimant. Also in his evidence,

R.W.1 had admitted that neighbouring lands were admittedly sold as plots from approved layouts. In the present case the acquisition of the

property is for providing house sites to houseless Adi Dravidars in that area. The Reference Court did not give any reason as to why it granted

40% deduction, when there was no claim made out by the acquiring authority. In the statement found in the acquisition proceedings, it showed that

in the acquired land, stone foundations were laid and a thatched hut was found over it. Therefore, if the lands are to be used as house sites and if

the lands are ready for being used as house sites, the question of ordering any deduction towards development charges will not arise.

17. Under the circumstances, this Court has no hesitation in fixing the land value at the rate of Rs. 15/- per Sq.ft and no deduction towards

development charges on the said rate is permitted.

18. For the reasons set out above, while A.S. No. 84 of 2006 stands dismissed, Cross Objection No. 21 of 2006 is partly allowed. The

claimant/land owner is entitled for compensation at the market rate of Rs. 15/- per sq.ft without any deduction towards development charges. The

compensation will be worked out on the said rate together with all other statutory dues including solatium, interest and other statutory dues. No

costs. The connected Miscellaneous Petition stands closed.