

(2008) 03 MAD CK 0095
In the Madras High Court
Case No : A.S. No. 314 of 1999

The Special Tahsildar Adi Dravidar Welfare	APPELLANT
Vs	
D. Sakthivel	RESPONDENT

Date of Decision : 11-03-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 18(1), 18(2), 23, 4(1), 54

Citation : (2008) 2 LW 151 : (2008) 3 MLJ 1415

Hon'ble Judges : K. Raviraja Pandian, J; Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Ravi, Spl. G.P, for the Appellant; N. Damodaran, for the Respondent

Judgement

K. Raviraja Pandian, J.—The Special Tahsildar, Adi Dravidar Welfare, Erode filed the above appeal u/s 54 of the Land Acquisition Act, 1894 against the judgment and decree dated 14.2.1999 made in L.A.O.P. No. 32 of 1996 on the file of the Additional Subordinate Judge's Court, Erode.

2. An extent of dry land measuring 1.03.5 hectares equivalent to 2.56 acres in S. No. 149/3B in Sivagiri village, Erode District has been acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") for the public purpose of making provision of house sites to Adi Dravidars of Thalayanallur H/O. Sivagirji village. The Section 4(1) notification was published on 16.9.1992. The Land Acquisition Officer/appellant herein passed an award in Award No. 4 of 1993 on 30.3.1993. In the said award, the value of the land was determined to Rs. 2,84,160/- at the rate of Rs. 1,11,000/- per acre. In addition to that, the 30 percent solatium in a sum of Rs. 85,248/- and 12 percent additional amount from 21.10.1992 to 13.3.1993 in a sum of Rs. 15,042/-, in total a sum of Rs. 3,84,449/- was awarded. The land owner/respondent feeling aggrieved that the compensation awarded was very low, by his letter dated 16.4.12993 sought for reference for enhancement of compensation under Sections 18(1) and (2) of the Land Acquisition Act. Pursuant to the same, a

reference has been made on 7.2.1994. The reference has been taken on file as L.A.O.P. No. 32 of 1996. The Reference Court by its order dated 4.2.1999 has enhanced the compensation at the rate of Rs. 25/- per square foot and consequently granted 30 percent solatium and 12 percent of additional amount. The enhancement so made by the Reference Court is put in issue in this appeal.

3. Mr. V. Ravi, learned Government Pleader appearing for the appellant contended that none of the sale deeds taken into consideration by the Reference Court could be taken as a valid document for the purpose of determination of the compensation with reference to the subject land. He further contended that the Reference Court erred miserably in taking average of the considerations stated in the sale deeds, which is not authorised by law. He further contended that the fixing of compensation on square foot basis is not correct, because the subject lands are situated in a village, which would not have any potential value. He further contended that the Reference Court failed to take note of the vital issue that all the documents which were taken into consideration for determination of the compensation were very small in extent and necessary deduction having regard to the larger extent acquired has not been made.

4. On the contrary, learned counsel appearing for the claimant/respondent submitted that in the absence of any other sale deed for determination of the compensation the reference Court has taken into consideration nearly thirteen documents in and around the adjoining survey numbers of the acquired land and determined the compensation by taking average of the sale value, which cannot be regarded a illegal. He further contended that the data document relied on by the land Acquisition Officer to pass the award has not been marked before the Reference Court, however even in that document, the value has been stated on the basis of square foot only. As the land is a dry land and the respondent has already laid out the land into plots by developing the same and several constructions have come into existence in and around the acquired land and thus the reference Court is perfectly correct in determining the compensation square foot basis. All infrastructure facilities are readily available. The acquired land is developed land. In those circumstances of the case, the reference Court has rightly arrived at the compensation, which requires no re-consideration.

5. We heard the argument of the learned counsel on either side and perused the material on record.

6. The acquired land is an extent of 1.03.5 hectares equivalently to 2.56 acres in R.S. No. 149/3B in Sivagiri village. The Land Acquisition Officer has stated to have collected 116 sale deeds, but rejected all other documents except Serial No. 88 on the ground that all other documents were not of same tharam and were away by one mile from the acquired land. The serial No. 88, which has been taken as a data deed is in respect of 0.38 acres (38 cents) in Survey No. 452/3, which has been sold for a sum of Rs. 42,300/-. On that basis, the compensation has been arrived at the rate of Rs. 1,11,000/- per acre, which is equivalent to Rs. 2 per square foot. The Land Acquisition Officer in his evidence before the

Reference Court has admitted that the respondent has already laid out the land as house sites and as such the land in question is a developed land. He further admitted in his evidence that the data land has been selected by the District Revenue Officer only and he was not aware of the characteristics of the land which has been taken as a data land. He further deposed that he has taken a data land in Survey No. 219/16 which has been sold at the rate of Rs. 78,000/- per acre. However, there is no reference about the data land, which the Land Acquisition Officer has chosen in Survey No. 219 in the award. On the contrary, the data deed in Survey No. 88 of the sale statistics over an extent of 0.38 acres has been taken into consideration for determination of the compensation. Even that document has not been marked by the Land Acquisition Officer before the Reference Court. Hence, in our view, the data sale deed cannot be relied on for determination of compensation.

7. On the contrary, the claimant/respondent has marked as many as 13 documents, which are as follows:

1. Ex. C.3 sale deed dated 29.8.1988 for an extent of 1500 sq. ft in survey No. 149/3 of Sivagiri village for a sum of Rs. 6,000/- works out to Rs. 4.33 per sq. ft.

2. Ex. C.4 sale deed dated 22.2.1990 for an extent of 2600 sq. ft in Survey No. 149/3 of Sivagiri village for a sum of Rs. 13,000/- works out to Rs. 4.88 per sq. ft.

3. Ex. C.5 sale deed dated 2.9.1992 for an extent of 2430 sq. ft in Survey No. 149/3 of Sivigiri village for a sum of Rs. 16,000/- works out to Rs. 6.58 per sq. ft.

4. Ex. C.6 sale deed dated 7.2.1990 for an extent of 2146 sq. ft in Survey No. 744/1 of Sivagiri village for a sum of Rs. 60,000/- works out to Rs. 29.03ps per sq. ft.

5. Ex. C.7 sale deed dated 21.5.1990 for an extent of 651 sq. ft in Survey No. 652/1 (S. No. 322/C and 323/A) of Sivagiri village for a sum of Rs. 19,600/- works out to Rs. 30.10ps per sq. ft.

6. Ex. C.8 sale deed dated 7.11.1990 for an extent of 1106 sq. ft in Survey No. 351/B of Sivagiri village for a sum of Rs. 30,000/- works out to Rs. 27.12 ps. Per sq. ft.

7. Ex. C.9 settlement deed dated 2.4.1991 executed by one K. Subramanyam in favour of his son for an extent of 270 sq. ft in Survey No. 351/B valued at Rs. 8100/-;

8. Ex. C.10 sale deed dated 7.7.1991 for an extent of 518 sq. ft in Survey No. 351/B of Sivagiri village for a sum of Rs. 15,000/- works out to Rs. 30/ per sq. ft.

9. Ex. C.11 sale deed dated 22.1.1992 for a extent of 2380 sq. ft. In Survey No. 322/C and 323/A of Sivagiri village for a sum of Rs. 71,400/- works out to Rs. 30/- per sq. ft;

10. Ex. C.12 sale deed dated 4.3.1992 for an extent of 744 sq. ft in Survey No. 351/B of Sivagiri village for a sum of Rs. 25,296/- works out to Rs. 33.60pos. Per sq. ft.

11. Ex. C.13 sale deed dated 18.3.1992 for an extent of 1472 sq. ft in Survey No. 351/B of Sivagiri village for a sum of Rs. 50,000/- works out to Rs. 33.96 per sq. ft.;

12. Ex. C.14 sale deed dated 12.6.1992 for an extent of 870- sq. ft in Survey Nos. 353 and 351 of Sivagiri village for a sum of Rs. 30,000/- works out to Rs. 33.96 per sq. ft.

13. Ex. C.15 sale deed dated 11.9.1992 for an extent of 1745 sq. ft in Survey No. 320 of Sivagiri village for a sum of Rs. 50,000/- works out to Rs.34/- per sq. ft.

8. Out of the above 13 deeds, Exs. C.3 and C.4 are in the very same survey number of the acquired land and were executed by the claimant himself. The claimant in his evidence has stated that he has already laid out plots over an extent in 2 1/2 acres and sold the same at the rate of Rs. 45 to Rs.50/- per sq. ft. So far as these two documents Rs. C3 and C4 were concerned, the sale consideration referred to is with reference to the guideline value for the purpose of registration, but the actual value is Rs.45 to Rs. 50 per sq. ft. This statement has not been rebutted in his cross examination. In addition to that, the claimant has also examined one Thirupathi, the purchaser of lands covered under Ex. C.4 as claimant witness No. 4. He has stated that though the sale consideration of his document Ex. C.3 has been stated as Rs. 60,000/-, the real consideration paid by him was Rs.1,35,000/-. He also stated that lesser sale consideration has been stated for the purpose of stamp duty and having regard to the guideline value. In Ex. C.5 also, it is stated that the land has been laid out as housing plots after forming roads.

9. From the evidence of C.W.1 and C.W.4 and the recitals contained in the documents, it is evident that the subject land was already laid out as housing plots and sold as housing plots ready for construction of houses. The claimant has proved by adducing evidence that the land under acquisition is fully developed one. vide Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another, and Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, . The corroborative evidence of C.W.4 supports the case of the claimant. From Ex. C.6 onwards, all the documents are over and above the value arrived at by the reference Court and are more than Rs. 29/- per sq. ft. Those documents are pertaining to the survey numbers which are adjacent and are having equal potential value of the land under acquisition. In the above stated circumstances of the case and the value of the land as seen from Exs. C.6 to C.13 was gradually appreciation from Rs. 29/- to Rs. 34 per sq. ft, the Reference Court having regard to the number of documents filed, has taken the average value at Rs. 25/- per sq. ft. We do not

find any illegality or irregularity in arriving at the market value with reference to Section 23 of the Land Acquisition Act. The function of the Court in awarding compensation under the Act is to ascertain the market value of the land on the date of notification u/s 4(1) and the method of valuation may be the price paid within a reasonable period in a bona fide transaction of purchase of the land acquired or the land adjacent to the land acquired possessing similar advantages. In this case, the sale deeds in respect of the survey number adjacent to the land acquired and possessing similar advantage has been taken into consideration for arriving at an average out of the total number of sale deeds produced before it. See *The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, and Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another*, .

10. We can also see that there is evidence in abundance to prove that the land acquired is a developed one. The claimant in his evidence as C.W.1 has established that the land is situated in Town Panchayat and it has road facilities in all three sides and is adjacent to Erode- Karur main road. On the northern side of the subject land, there is office of the marketing committee. The power house is located in the eastern side. There is a veterinary dispensary within a few feet from the acquired land. All these facilities are available right from the year 1960. Apart from that, there are number of residential colonies in and around the acquired land. In the southern side of the acquired land, the Government Girls High School is situated. Adjacent to that there is Town Panchayt Elementary School. A Kalyanamandapam, post office and Pongaliamman temple are also within the vicinity of the acquired land. The shandy is also nearby. Oil mill and rice mills are there. Several textile factories are situated around the land. The offices of the Village Administrative Officer, Revenue Divisional Officer, Water and drainage Board, Woman Development Training Centre are situated adjacent to the acquired land. Four private high schools, milk federation and Electricity Board Colony are also situated adjacent to the acquired land. The Land Acquisition Officer in his evidence as R.W.1 has accepted of the existence of all the above said facilities and about the potential of the acquired land. Hence, the contention of the learned counsel for the respondent that the land acquired is a developed land has to be accepted.

11. However, having regard to the fact that the average of the various documents taken into consideration are in respect of small extent of varying from 800 to 2430 sq. ft. and the extent of acquired land is 2.56 acres, which is large in extent, compared to the extent of land covered in documents which are let in evidence, we are of the view that 20 percent cut in the total compensation towards largeness of the extent acquired would subserve the interest of justice. Useful reference can be had to the judgment of the Supreme Court in the case of *Kasturi and Others Vs. State of Haryana, and The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others*, .

12. Therefore, the appeal is partly allowed by reducing the compensation of the

land arrived by the reference Court by 20% towards largeness of the area of the acquired land. The award of the lower Court is modified to the above extent. However, there is no order as to costs.