
(2010) 03 MAD CK 0138

In the Madras High Court

Case No : A.S. No. 138 of 2002 and C.M.P. No's. 11995 and 16862 of 2002

The Special Tahsildar, (Adi Dravidar Welfare)

APPELLANT

Vs

Devarajan

RESPONDENT

Date of Decision : 24-03-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4, 4(1), 6
Legal Practitioners (Fees) Rules, 1973 — Rule 12, 14, 19, 3(2)

Citation : (2010) 03 MAD CK 0138

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Ravi, Additional Government Pleader AS, for the Appellant; M. Sudhakar, for R. Subramanian, for the Respondent

Judgement

M. Venugopal, J.—The Appellant/Referring Officer has projected this appeal as against the Award dated 28.02.2002 in L.A.O.P. No. 17 of 1994 passed by the learned Additional District Judge, Dharmapuri.

2. The Government have acquired 0.48.0 hectare of land in S. No. 126/2B and 0.01.5 hectares of land in S. No. 126/2C including the well and thatched house (totalling in all 0.50.0 hectare) in Harur Town, Harur Taluk of Dharmapuri District belonging to the respondent/claimant for the purpose of providing burial ground to the Adi Dravidars of Harur Town. After complying with the necessary formalities, the Land Acquisition Officer published the notification u/s 4(1) of the Land Acquisition Act 1894 (herein referred to as Act) in the Government gazette on 15.09.1993. Section 6 declaration was made on 25.01.1994. The Land Acquisition Officer by his Award dated 15.03.1994 in Award 693/94 for acquiring 1.23 acres of land (0.50.0 hectares) in S. No. 126 of Harur Village had fixed the market value of the land at Rs. 13,888/- per acre and on that basis awarded a sum of Rs. 43,435/- as total compensation including the solatium and additional market value in respect of the acquired land.

3. The respondent/claimant was dissatisfied with the value of compensation fixed

by the Land Acquisition Officer as referred to supra and because of his objection the Land Acquisition Officer had referred the matter as per Section 18 of the Land Acquisition Act to the Tribunal viz., The Additional District Judge, Dharmapuri.

4. Before the Tribunal, the respondent/claimant examine himself as C.W.1 and marked Exs.A1 to A4 on the side of the Appellant/Referring Officer, R.W.1 was examined and Exs.B1 to B4 were marked.

5. The Tribunal on an appreciation of oral and documentary evidence available on record had passed an award by fixing the compensation at Rs. 10 per square feet and towards development charges, per square feet it had reduced 20% and accordingly determined the enhanced compensation per square feet at Rs. 8/- in respect of the acquired lands and in respect of the well, it granted a sum of Rs. 5,000/- in this regard towards Development charges, it deducted 40% and accordingly fixed a value of the well at Rs. 30,000/-. Further for the period from 4(1) notification dated 11.10.1993 to 14.10.1993 for 155 days, it awarded a sum of 23,178/- as 12% additional market value and as a solatium of 30%, it awarded a sum of Rs. 1,36,452/-. Thus the Tribunal had awarded a total compensation of Rs. 6,14,470/- and after deducting a sum of Rs. 43,435/- which was already received by the respondent/claimant, it awarded an enhanced compensation of Rs. 5,71,035/-. Moreover, from the date of taking possession 04.04.1994 till 03.04.1995, for a period of one year it awarded 9% interest and thereafter from 04.04.1995 till date of deposit, it had granted an interest of 15% p.a. etc.,

6. The learned Additional Government Pleader appearing for the Appellant/Referring Officer submits that the tribunal's award was contrary to law, weight of evidence and probability of the case and it had wrongly fixed the market value of the land at Rs. 10/- per square feet by exorbitantly increasing the same from Rs. 13,888/- per acre and the Tribunal committed an error in placing reliance upon the sale deed pertaining to a small extent of land sold for a fancy price and the same could not be relied upon for fixing the market value of a larger extent of acquired lands.

7. Further, it is the contention on the side of the Appellant that the Tribunal had failed to compare the location, quality of the acquired lands before increasing the market value and in any event, the enhancement made by the Tribunal in its award was an excessive, arbitrary and unlawful one.

8. Per contra, the learned Counsel for the respondent/claimant submits that in L.A.O.P. No. 158/96, the Reference Court had placed reliance on the sale deeds dated 19.10.1983 and 24.01.1984 which were marked as Exs.A1 and A2 in L.A.O.P. No. 17 of 1994 and fixed Rs. 10/- per square feet as the market value for the acquired land and deducted 40% towards development charges and fixed the compensation at Rs. 6/- per square feet and in the appeal filed by the Land Acquisition Officer in A.S. No. 109 of 2001 before this Court, the Division Bench

of this Court had fixed the compensation per square feet at Rs. 5/- as per its judgment dated 29.06.2009.

9. In this connection, the learned Counsel for the respondent/claimant submits that in L.A.O.P. No. 158 of 1996 (against which A.S. No. 109 of 2001 was preferred before this Court) the date of Section 4(1) notification gazette was 17.07.1985 and that the award was passed by the Land Acquisition Officer on 30.09.1986 and in the said Award, the acquired extent of lands were about 3.68 acres in S. No. 120/2 in Harur village for which the Land Acquisition Officer fixed the value of the land at Rs. 3,000/- per acre and awarded the solatium and the additional market value for the acquired land and the Reference Court fixed the valuation of the land per square feet at Rs. 6/- but the Division Bench of this Court in A.S. No. 109 of 2001 by judgment dated 29.06.2009 had fixed the compensation at Rs. 5/- per square feet.

10. The main contention projected by the learned Counsel for the respondent/claimant is that the date of Section 4(1) notification in L.A.O.P. No. 17 of 1994 (concerned with A.S. No. 138 of 2002) in respect of Survey No. 126 is dated 15.09.1993 whereas the 4(1) notification date in respect of L.A.O.P. No. 158/1996 (concerned with A.S. No. 109/2001) is dated 17.07.1985 in S. No. 120/2 but the village in both the appeals is Harur and the purpose of acquisition in both the appeals is only for providing houses to Adi Dravidars of Harur Village and in L.A.O.P. No. 17/1994 (A.S. No. 138/2002) the date of award is 15.03.1994 whereas in L.A.O.P. No. 158/96 (A.S. No. 109/2001) the date of award is 30.09.1996 and as a matter of fact 10% or 12% or 15% enhancement of value every year will have to be adopted as per guidelines issued by the Hon'ble Supreme Court of India and since there is a difference of 8 years (from 17.07.1985 to 15.09.1993) in respect of the Section 4(1) notification date concerned with the two appeals referred to supra, the amount awarded by the Reference Court in L.A.O.P. No. 17/1994 at Rs. 8/- per square feet is a proper one and the same need not be interfered with by this Court at this stage of appeal.

11. To lend support to the contention that an appreciation of 12% per annum for every year at a flat rate will have to be made in computing the market value of the land, the learned Counsel for the respondent/claimant cites the decision of the Hon'ble Supreme Court *Om Prakash (D) by Lrs. and Others Vs. Union of India (UOI) and Another*, wherein it is held that:

...High Court was justified in computing the market value on basis of Supreme Court's assessment and allowing appreciation @ 12% for every year at a flat rate, since the acquisition in the earlier case was in respect of agricultural land and not commercial land, etc.

12. He also brings it to the notice of this Court to the decision *Lila Ghosh (Smt) (dead) Through L.R. Tapas Chandra Roy v. State of W.B. Civil Appeal 7096/2000* with *State of W.B. v. Lila Ghosh (Smt) (dead) through L.R. Tapas Chandra Roy*

Civil Appeals 7097-98/2000 : (2004) 9 Supreme Court Cases 337 at page 338 wherein the Hon"ble Supreme Court has observed that:

...Earlier acquisition having taken place more than 9 years ago, 10% per annum appreciation given but no appreciation for largeness of the land can be given as large plots always fetch less than small plots and normal rule is that if a plot is large, there must be depreciation for largeness.

13. He seeks in aid to the decision of the Hon"ble Supreme Court *Krishi Utpadan Mandi Samiti Sahaswan District Badaun through its Secretary Vs. Bipin Kumar and Another*, wherein it is held that:

...in respect of appreciation pertaining to the market value of the land, an appreciation at the rate of 15% for ever subsequent year on facts was found to be reasonable.

14. Yet another decision of the Hon"ble Supreme Court *Tejumaal Bhojwani and Ors. v. State of Uttar Pradesh* (2004) 1 M.L.J. 11 (S.C.) is relied on the side of the respondent/claimant to the effect that:

...The land acquisition officer in valuing the land structures thereon and well did not adopt method of capitalisation but adopted separate valuation of land and other structures. The claimants are entitled to separate valuation. (para 7)

The deduction for development charges ought to be adequately provided for, but it varies from place to place, area to area and amount of developments which are required to be carried out and thus there cannot be any fixed amount of deduction towards development charges.

15. The rate of acquired land as on 17.07.1985 in respect of L.A.O.P. No. 158/96 i.e. A.S. No. 109/01 in S. No. 129/2 Harur Village was fixed at Rs. 5/- per square feet as per the Division Bench of this Court in A.S. No. 109/01 dated 29.06.2009.

16. The learned Counsel for the respondent/claimant contends that in respect of the assessment market value of the land and allowing appreciation at 10% as on 15.09.1993, Section 4(1) notification in respect of L.A.O.P. No. 17/94 (A.S. No. 138/02) comes to Rs. 9/- p.a. per square feet ($5 \times 80/100 = \text{Rs. } 4$) ($\text{Rs. } 5 + 4 = 9$), and when calculated at 12% p.a. as on 15.09.1993 then it comes to Rs. 9.80/- per square feet and when determined at 15% p.a. As on 15.09.1993 then it works out Rs. 11/- per square feet.

17. At this stage, it is useful for this Court to refer to the Division Bench judgment of this Court in A.S. No. 109/01 and 543/03 dated 29.06.2009 (pertaining to the L.A.O.P.Nos.15 and 5/2000 on the file of the learned Sub Judge, Dharmapuri and the learned Additional District Judge, Dharmapuri respectively) wherein at paragraph 11, it is observed as follows:

...11. In the present case, there is no dispute regarding the nature of the acquired land. It is an undeveloped one having high potential for house sites. Necessary expenditure has to be incurred for the development of the acquired

lands. It is seen that the claimants are owning land from cents to acre. The Reference Court compared the land with the documents viz., Exs.C1 and C2, in which the extent of the land involved is 1251 sq.ft. It is also seen that the other documents relied on by the appellant before the Reference Court are far away from the acquired lands. The Reference Court is correct in fixing the value of the acquired land by comparing the sale deed relied on by the claimants/respondents. The acquired lands are agricultural lands and they are not a developed one and having high potential for house sites. For making house sites, it is necessary to incur expenditure such as for the formation of road and other civic amenities, expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines etc. Taking into consideration that the said acquired lands are not developed one and rightly potential for house sites, the Reference Court ought to have deducted 50% as against 40% towards development charges. By following the principles enunciated by the Supreme Court and this Court cited supra and also considering the facts in the present case, we are of the view that this is a fit case for deduction of 50% as against 40% towards development charges granted by the Reference Court. Since the Reference Court has already deducted 40% towards development charges from the value of the land, we are of the view that a further deduction of 10% from the value of the land fixed by the Reference Court has to be made. Accordingly, the value of the land enhanced by the Reference Court is hereby reduced by 10% towards development charges. With this modification, the appeals are allowed. There is no order as to costs.

18. It is to be pointed out that the relevant date for fixing the market value of the acquired land is on the date of notification as per Section 4(1) of the Land Acquisition Act, as per decision *Jagath Singh v. Haryana State* (1996) LAC 60 (P & H).

19. In the decision *Tamil Nadu Electricity Board v. R. Kandhaswamy* (2003) 2 LACC 396 (Mad), it is held that:

...crucial date for fixing the market value of the acquired land is on the date of publication of Section 4(1) notification.

20. At this stage, this Court pertinently points out that in the decision *The Special Land Acquisition Officer, Bangalore v. Adi Narayan Shetty* AIR 1956 Sc 429, wherein it is held that:

in awarding the compensation under the Act the Court has to ascertain the market value of the land on the date of notification u/s 4(1) of the Act. It is also observed that there are several methods of valuation such as i) opinion of Expert ii) price paid within a reasonable time in bonafide transactions of purchase of the land acquired or the lands adjacent to the lands acquired and possessing similar advantages iii) a number of years of purchase of the actual or immediately prospective profits of the land acquired. Also the potential value whether the land is close to developed or developing colonies, road etc., will also be taken note of

by a Court of law.

21. It is to be borne in mind that a market value of a land should not be determined based on facts of imagination or flight of fancy. No doubt, a market value of the land cannot be calculated with mathematical precision. It is true that a certain amount of conjecture is inevitable but a Court of law should be careful not to go too far in this direction. The crucial test is that sitting in the arm chair of willing vendor would offer to a willing purchaser, taking all relevant prevailing conditions of the normal market, fertility of land, location suitability of purpose it was purchased, its existing potentialities and likely use to which in same condition would offer to pay the price as on date of notification.

22. Admittedly, the owner or the claimant should not be put to loss by under valuation. But at the same time, public exchequer should not be put to undue burden by excess valuation. It is the primordial duty of a Court of law to maintain the balance between twice interest, in the considered opinion of this Court.

23. It is not out of place for this Court to make a relevant mention to the decision of the Hon"ble Supreme Court Special Land Acquisition Officer U.K. Project v. Mahaboob and Anr. (2009) 4 M.L.J. 137 (S.C.) wherein it is held that:

even though the land is taken purportedly in accordance with law by resorting to acquisition proceedings, the Collector is supposed to offer fair compensation by taking all relevant circumstances relating to market value into account but the land acquisition officers seldom make reasonable offers and they tend to err on the safer side and invariably assess very low compensation.

24. On a careful consideration of respective contentions and also bearing in mind the Judgment of this Court in A.S. No. 109/01 dated 29.06.2009 and also after noticing a yearning gap of 8 years from the date of Section 4(1) notification dated 17.07.1985 in L.A.O.P. No. 158/96 (concerned with A.S. No. 109/01) to 15.09.1993 being the Section 4(1) notification date in A.S. No. 138/02 (relating to L.A.O.P. No. 17/94), this Court on the basis of Equity, Fair play, Good conscience and to do equitable and complete justice to the parties in a justice oriented approach on an overall assessment of the entire gamut of the matter in an integral fashion determines the market value in respect of the acquired land at Rs. 6/- per square feet instead of the value fixed by the Tribunal at Rs. 8/- per square feet. In respect of the well though the compensation amount of Rs. 50,000/- and after deducting 40% towards development charges, it had fixed the compensation for the same at Rs. 30,000/-, this Court is of the view a further deduction of 10% from Rs. 30,000 is to be made and accordingly after deducting a sum of Rs. 3,000/- (Rs. 30,000 X 10/100) the figure comes to Rs. 27,000/- to which sum, the respondent/claimant is entitled to claim as compensation for the value of the well. In other aspects, the award of the Tribunal are not disturbed and consequently allows the appeal in part.

25. Earlier, this Court in C.M.P. No. 11995/02 on 27.08.2002 has passed an order

of interim stay on condition that the petitioner/appellant deposits 50% of the award amount to the credit of L.A.O.P. No. 17/1994 on the file of the Additional Sub Court, Dharmapuri within a period of 8 weeks from today failing which the interim stay automatically vacated. In C.M.P. No. 16862 of 2002 on 21.11.2002, this Court has granted a further time of six weeks to the petitioner/appellant to deposit 50% of the award amount and on such deposit being made, the respondent/land owner has been directed to withdraw the same. Hence the Appellant is directed to deposit the balance amount of compensation payable by it to the credit of L.A.O.P. No. 17 of 1994 on the file of the learned Additional District Court, Dharmapuri within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the respondent/claimant is directed to file necessary payment out application as per Civil Rules of practice before the Tribunal to withdraw the amount to which he is entitled to in accordance with law. The Tribunal is to pass orders on merits with the least possible delay.

26. Before parting, this Court refers to Rule 12 of the Legal Practitioners' Fees Rules, 1973 which runs as follows:

Rule 12. (1) In the High Court in appeals from original or appellate decrees in suits for money, effects or other personal property, or for land or other immovable property of any description, fees are payable on the same scales under Rule 3(2)(b).

Provided that when the appeal is compromised, settled withdrawn or dismissed for default (a) before the appeal gets into the ready board, the fee shall be one-fourth of the fee prescribed under Rule 3(2)(b) and (c) after the appeal stands on the ready board the fee shall be one-half of the fee prescribed under Rule 3(2)(b) subject to this, in all the above cases, the minima prescribed in Rule 14 shall apply:

(Provided further that when the appeal is from an award or from any part of an award of a Court in a land acquisition case, as between the collector and the claimant or claimants the maximum fee shall be Rs. 2,000.00.)

(2) When the amount or value of the claim in the appeal exceeds Rs. 2,000 an additional fee calculated at one-third of the fee allowable under Clause (1) shall be payable to junior Practitioner engaged with a senior Practitioner:

Provided that the junior was on record at least from the last of the dates fixed for the appearance of the respondent.

Provided further that in any case, where a juniors' fee is payable under this rule or under Rule 19, the Court shall have a discretion to fix that fee at half the seniors' fee instead of one-third.

(3) The fees for the junior legal practitioner for settling of documents for translation and or printing in first appeals shall be a minimum of Rs. 25 and a maximum of Rs. 50 subject to the discretion of the taxing officer.

27. As such, this Court determines the fees of the learned Additional Government Pleader (AS) in terms of Rule 12 of Legal Practitioners Fees Rules 1973, based on the facts and circumstances of the present case.

28. In the result, the appeal is allowed in part by modifying the Award dated 28.02.2002 passed by the learned Additional District Judge, Dharmapuri viz., (The Tribunal) in L.A.O.P. No. 17/94 on his file. Considering the facts and circumstances of the case, there shall be no order as to costs. The connected miscellaneous petitions are closed.