

(2009) 07 MAD CK 0247
In the Madras High Court
Case No : A.S. No. 440 of 2002

The Special Tahsildar, Adi Dravidar Welfare

APPELLANT

Vs

N. Sakunthala

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1), 5(A), 6

Citation : (2009) 4 CTC 327

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Ravi, Spl. Govt. Pleader, for the Appellant; D. Rajagopal, for the Respondent

Judgement

M. Venugopal, J.—This appeal arises out of an Award dated 28.9.2001 passed in L.A.O.P. No. 25/99 by the learned Subordinate Judge (Land Acquisition Tribunal) Gudiyatham, Vellore District.

2. The Government has acquired a total extent of 0.76.5 Hectares (1 Acre 89 cents) in S. No. 199/1B1 in Sethuvandai Village, Gudiyatham Taluk, Vellore District for the purpose of providing house sites to the landless people belonging to the Arunthathiyars Community. The said land as per village accounts has been standing in the name of Sakuntala w/o Purushotohama Naidu and Sreevathi Swamy Boorvananda Maharaji bearing batta No. 420 and they do have equal share. The aforesaid two individuals have appointed K. Balaji as their Power of Attorney as per General Power of Attorney document No. 36/94 and 37/94 respectively.

3. After complying with the formalities, the Land Acquisition Officer has published a Notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") in the Government Gazette No. (3D) Adi Dravidar Welfare Department, dated 29.1.1993 and 3.3.1998 and the same has been published in the vernacular daily viz., "Vetrimalai" on 28.2.1993. An enquiry in the Sethuvandai village u/s 5(A) of the Act has been conducted on 13.5.1993. In the acquired

land village notices have been affixed in a public place and Tom Tom was also made. The owners of the land have not participated in Section 5(A) enquiry. But their power agent K.Balaji has appeared and has given statement before the Land Acquisition Officer. The draft declaration Notice as per Section 6 of the Land Acquisition Act has been published in Tamil Nadu Gazette on 20.10.1993 and also the same has been published in the daily "Viduthalai "and "Kumarimurasu" dated 28.10.1993. The said Land Acquisition Officer has fixed the compensation for the acquired land at Rs. 72,946.44ps and also awarded 30% solatium of Rs. 21,883.93ps and besides awarding a sum of Rs. 12,111.09 being 12% interest and totalling in all a sum of Rs. 1,06,941/- has been awarded which has since been received by the power agent Balaji under protest.

4. The Land Acquisition Officer in his award has stated that 14 sales have taken place in the acquired land Village one year prior to the publication of Section 4(1) Notice and has taken into account the sale deed dated 14.10.1992(document No. 4177) for Rs. 44,000/- in respect of S. No. 120/2C Punja measuring an extent of 0.89 acre and S. No. 120/2D1 Punja 0.25 aggregating in all 1 acre 14 cents.

5. The respondent/claimant ,not satisfied with the award passed by the Land Acquisition Officer has filed his objection before the said Officer who in turn has referred the same as per Section 18 of the Act to the Land Acquisition Tribunal/ Principal Subordinate Judge, Gudiyatham.

6. Before the Land Acquisition Tribunal, respondent/claimant has examined himself as C.W.1 and Exs.C1 to C4 were marked on the side of the claimant and on the side of appellant/referring Officer, the Head Clerk, Office of Adi Dravidar Welfare Department, Gudiyatham was examined as R.W.1 and Exs R1 to R4 were marked.

7. On an overall appreciation of an oral and documentary evidence adduced on both sides and after providing due opportunities to the respective parties and after hearing the arguments of either sides, the Land Acquisition Tribunal, viz., The learned Principal Subordinate Judge Gudiyatham, has fixed the compensation for the acquired land a sum of Rs. 2000/-can be fixed per cent and accordingly determined the same and also granted 30% solatium and also the interest at 12% p.a from the date of taking possession from 1.9.1994 etc and later it has granted 15% interest till the money is paid.

8. Aggrieved against the award passed by the Land Acquisition Tribunal/Principal Subordinate Judge, Gudiyatham, the appellant/referring Officer has preferred this Appeal before this Court.

9. The point arises for determination in this appeal is

Whether the award dated 28.9.2001 passed by the Land Acquisition Tribunal/ Principal Subordinate Judge, Gudiyatham is just and proper in the eye of law.

10. Heard the learned Special Government Pleader(AS) for appellant and

Mr.D.Rajagopal, learned Counsel for respondent and this Court has paid its anxious consideration to the arguments advanced on either sides.

11. Contentions ,Discussion and Finding:

The learned Special Government Pleader(AS) urges before this Court that the Tribunal has committed an error in enhancing the market value exorbitantly from Rs. 38,596/- per acre(fixed by the Land Acquisition Officer) to Rs. 2,000/- per cent in disregard to the procedure laid down under the Land Acquisition Act and further Exs A3 and A4 sale deeds have not been proved by the respondent/claimant side and more over the similar extent found in Exs A3 and A4 ought not to have been taken note of by the Tribunal and the Tribunal has not considered Ex B2 data land which is also a part of the land which has been separated from a larger extent and therefore the value for the acquired land 1 acre 89 cents land at Rs. 72,946.44ps and also awarded 30% solatium of Rs. 21,883.93ps and interest at Rs. 12,111.09ps totalling in all Rs. 1,06,941.46ps is quite a reasonable and fair one and these aspects have not been taken note of by the Tribunal in a proper perspective and therefore prays for allowing the appeal to secure the ends of justice.

12. In response, the learned Counsel appearing for the respondent/claimant submits that the Tribunal has taken into account of the facts and circumstances of the present case in a cumulative manner and has awarded compensation of Rs. 2,000/- per cent with other usual heads of compensation as per the Land Acquisition Act and at this stage, the same need not be interfered by this Court since the award passed by the Tribunal is a just, fair and equitable one.

13. C.W.1(power agent) during his examination before the Tribunal has deposed that near the acquired land houses, schools, P.W.D. Office and Medical Department Office(AIDS) and the acquired land is situated in a highly valuable place and near the acquired lands, there are houses and around the acquired lands, within a radius of 1 kilo metre, there are houses and Saraswathi Vidyalaya School in Gudiyatham is a big one where approximately 4000 students are studying and further that seven years before the date of acquisition around the acquired land, the lands have been divided as plots and houses have been built and near the acquired land, land of Nazir Munnissa in S. No. 190, by means of sale deed dated 17.8.1989 has been sold at the rate of Rs. 9.85ps per sq.ft and cost of vacant site 456 sq.ft is Rs. 4,500/- and near the acquired land in S. No. 190, one Mrs.Lalitha has purchased 600sq.ft vacant land at the rate of Rs. 10/- per sq.ft for Rs. 6000/- and Exs C3 and C4 are the said sale deeds and the value of the acquired land at the time of acquisition per sq.ft has been at Rs. 17.50ps and the cost of one cent at the time of acquisition has been about Rs. 7,630/- and therefore prays for determining the compensation at the rate of Rs. 17.50 per sq.ft for the acquired land 1 acre and 89 cents and for fix the same at Rs. 7,630/- per cent.

14. Ex C1 is the power of attorney dated 28.2.1994 issued in favour of the

witness C.W.1 Balaji by one Sakunthala. Ex C2 is also a power of attorney document dated 28.2.1994 given by Purananda Maharaj in favour of C.W.1 Balaji. Ex C3 is the certified copy of sale deed dated 17.8.1989 and Ex C4 is also the certified copy of sale deed dated 15.2.1990.

15. R.W.1, the Head Clerk of Adidravidar Welfare Department at Gudiyatham, in his evidence has deposed that the acquired land in issue has been acquired for providing house sites to N.S.K. Nagar, Arunthathiyars people at Nellorepettai and that the respondent/claimant has received a sum of Rs. 1,06,941/- under protest and that the sale statistics document is Ex R1 and the sample land is Ex R2 and the original Chitta Adangal for the acquired land is ExR3 and the plan in original Ex R4.

16. The evidence of R.W.1 is to the effect that the acquired land is situated very near to the road and that the same is situated in Gudiyatham -Katpadi Main Road and Ex R1 document land in Item No. 14, bearing Punjai Survey No. 82/2 is situated at the distance of one furlong from the acquired land and near the acquired land, there is Saraswathi Vidyalaya Matriculation School which is the big school among many schools at Gudiyatham and a marriage hall is also situated at a distance of one furlong towards Katpadi from the acquired lands and the housing board is also at a distance of one furlong from the acquired land and at a distance of one furlong from the acquired land G.K.M. College is situated and near acquired land, there is a polytechnic and that he is not aware of Exs R3 and R4 sale deeds and that they have acquired only the land.

17. A perusal of Exs C3 and C4, do clearly indicate that that lands near the acquired land has been sold out at a price of Rs. 4000/- after same has been converted into plots and thereafter only the price has been increased.

18. In majority of cases relating to the land acquisition matters, the Land Acquisition Tribunal is empowered to indulge in certain amount of conjectures and guess work and in arriving at an exact compensation, no straight jacket cast iron formula can be adopted. However, one cannot lose sight of the important fact that the locality of the lands wherein it is situated, its potentiality value, value which will increase in future and other various decisive factors will go a long way in determining the compensation. The actual amount of compensation to be awarded to the respondent/claimant must be awarded by a Tribunal. Equally, while so, awarding fair and just compensation, the Tribunal must take note of the important fact that there should not be an undue burden on the public exchequer. After all, when the compensation is fixed by the Tribunal or Court of law and when the same is enhanced, then the increased compensation will have to be paid by the acquisition body to the claimant.

19. On a careful consideration of an oral and documentary evidence adduced on either sides and taking note of the fact that the acquired land is situated in a very important place and also bearing in mind that near the acquired land, there is a big school Saraswathi Vidyalaya with a strength of around 4000 students and

other Government Offices are situated, this Court is of the considered view that the amount of compensation per cent fixed by the Tribunal at Rs. 2,000/- cannot be said to be either exorbitant or excessive. As a matter of fact, the Tribunal has not deducted any amount towards development charges. At this stage, the learned Special Government Pleader(AS) submits that towards development charges, 1/3 can be deducted from the compensation of Rs. 2000/- per cent awarded by the Tribunal. It is to be noted that the deduction of 1/3 from and out of the compensation amount awarded towards development charges is not inflexible rule. What is the extent of percentage to be deducted towards development charges will depend upon the each facts and circumstances of the case which float on the surface.

20. As far as the present case is concerned, this Court opines that 25% can be deducted towards development charges and if the said amount of Rs. 500/- is deducted, then the compensation for the acquired land can be fixed at Rs. 1,500/- per cent and accordingly this Court fixes the compensation for the acquired land at Rs. 1,500/- per cent and in regard to the amounts awarded in respect of other items like solatium and interest by the Tribunal, this Court is not interfering with the same since they are just , fair,reasonable and an equitable one and therefore in that view of the matter, this Court allows the appeal in part to prevent an aberration of justice.

21. In fine, the appeal is partly allowed and for the acquired land, the compensation of Rs. 1,500/- per cent is fixed and in other respects, the award of the Tribunal is affirmed. Considering the facts and circumstances of the case, there shall be no order as to costs. The respondent/claimant is at liberty to receive the amount to which he is entitled to from the Tribunal by filing necessary application as per Civil Rules of Practice in the manner known to law.