

(2011) 01 MAD CK 0439

In the Madras High Court

Case No : AS. No. 581 of 2008 and M.P. No. 1 of 2008

The Special Tahsildar Adi Dravidar Welfare Land Acquisition
Officer

APPELLANT

Vs

Kuppuswamy Chetty

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 4(1), 4(2), 6, 9(1)

Citation : (2011) 01 MAD CK 0439

Hon'ble Judges : M.M. Sundresh, J;C. Nagappan, J

Bench : Division Bench

Advocate : V. Ravi, Special Government Pleader AS, for the Appellant; V. Anandhamoorthy, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Sundresh, J.—This appeal has been preferred by the Appellant challenging the award passed by the reference Court in L.A.O.P. No. 1 of 2005 whereby the award dated 10.01.2000 passed in Award No. 5/B/1999-2000 by the Land Acquisition Officer has been enhanced from Rs. 25,000/- per hectare to Rs. 11,32,560/-.

2.A notification has been issued u/s 4(1) of the Land Acquisition Act, 1894 (shortly "the Act") and the same was published in the Government Gazette on 22.01.1998. Thereafter, a declaration u/s 6 of the Act was published on 03.02.1999. Notices have been issued to the land owners u/s 9(1) and 10 of the Act to appear for the award enquiry.

3. The award enquiry was conducted on 10.01.2000. The Land Acquisition Officer, in Award No. 5/B/1999-2000, dated 10.01.2000, has fixed the valuation for the lands situated in Survey Nos. 702/1 and 702/2 with an extent of 0.02.5 hectares and 0.62.5 hectares, in Paruvadanaalli Village, Ponnagaram Circle, Dharmapuri District at Rs. 25,000/- per hectare. The Respondent/claimant, not

satisfied with the award granted by the Land Acquisition Officer, sought for a reference. Thereafter, the reference Court based upon Ex.C-2 sale deed dated 06.10.1997 enhanced the compensation from Rs. 25,000/- per hectare to Rs. 11,32,560/-Challenging the said award of the reference Court, the present appeal has been filed.

4. The learned Special Government Pleader appearing for the Appellant submitted that the reference Court has fixed an exorbitant amount by enhancing the compensation. It is further submitted that the reference Court has not considered Ex.R-4 sale deed and wrongly made reliance upon Ex.C-2 sale deed produced by the Appellant. It is also submitted by the learned Special Government Pleader that there is no basis for fixing the enhanced compensation and the potential value of the lands acquired covered under the sale deed produced by the Respondent, being different, the valuation fixed for the said lands ought not to have been followed by the reference Court. Therefore, he prayed that the appeal will have to be allowed.

5. Per contra, Mr. V. Anandhamoorthy, learned Counsel appearing for the Respondent/claimant submitted that the reference Court has correctly taken into consideration the valuation fixed under Ex.C-2 sale deed. The reference Court has given a factual finding that the lands covered under Ex.C-2 is nearer to the lands acquired. The reference Court has fixed the value at Rs. 26/- per square feet, even though the valuation fixed for the lands covered under Ex.C-2 is Rs. 70/- per square feet. The Respondent/claimant has given evidence before the reference Court by examining four witnesses about the potential value of the land as well as the nearness of the lands acquired to the lands covered under Ex.C-2. Therefore, considering the above said facts, the reference Court has correctly fixed the valuation. The learned Counsel also submitted that for the adjoining land covered by some other notification issued under Act 31 of 1978, an amount of Rs. 47.82 per square feet has been fixed. It is further submitted that even though a notification was issued u/s 4(2) and 4(1) of the Act in the year 1998, considering the fact that the lands which are the subject matter of the judgment dated 16.07.2009 rendered by the Division Bench of this Court in S.A. Nos. 496 and 499 of 2005 are nearer to the acquired lands, the amount fixed by the reference Court is just and reasonable and therefore, no interference needs to be called for.

6. Before the reference Court, the Respondent/claimant examined four witnesses and marked Exs.C-1 to C-4. Ex.C-1 is the settlement deed and Exs.C-2 and 3 are the sale deeds pertaining to the year 1997. Ex.C-4 is the judgment dated 15.10.2004 rendered by the reference Court in L.A.O.P. No. 8 of 2004. The Appellant has examined only one witness and marked Ex.R-1 to R-4. Ex.R-3 is the sketch relied upon by the Land Acquisition Officer while fixing the valuation. Ex.R-4 is the sale deed for fixing the valuation by the Land Acquisition Officer.

7. The reference Court has considered the potential value of the lands acquired. A factual finding has been given that the acquired lands have been surrounded

by the Office of the Town Panchayat, Office of the Block Development Officer, Marriage Halls, Markets, Temples, Overhead Tanks, Lodges, Banks, Office of the Transport Corporation, Fire Service Office, Petrol Bank, Private and Government Hospitals, Theatres, Office of the Highways, Police Station, Registration Office, Schools, etc. It was also held that the acquired lands have got future potential being situated nearer to the junctions of four main roads apart from a national highway. The reference Court has taken into consideration the lands covered under Ex.C-2, which is the sale deed dated 06.10.1992 pertaining to Survey No. 657. Even though the valuation has been fixed at Rs. 70/- per square feet in the said sale deed, the reference Court has fixed the value of the acquired lands at Rs. 26/- per square feet.

8. After going through the award, we find that the Land Acquisition Officer has given very paltry amount as compensation. Perhaps, the Land Acquisition Officer wanted to err on the safer side as in the case of compensation to be awarded as gently done by the Land Acquisition Officer in some other cases. The attitude of the Land Acquisition Officer in erring on the safer side has been taken note of by the Honourable Supreme Court in *Special Land Acquisition Officer, U.K. Project v. Mahaboob and Anr.* [(2009) 4 MLJ 137 (SC)]. The ratio laid down by the Honourable Apex Court was also considered by a Division Bench of this Court in *The Land Acquisition Officer and Revenue Divisional Officer Vs. Palaniappan, Chinnasamy and The Controller of Aerodrome, Civil Aerodrome,* .

9. We have also perused Ex.R-4 which is the sketch produced by the Appellant before the reference Court. We found that the lands covered under Ex.C-2 is nearer to the lands acquired. We also found that the lands covered under Ex.R-3 is also more or less of the same distance. It is settled principle of law that the value of the land which is beneficial to the claimant and the purchaser, will have to be taken into account for fixing a just compensation. The Trial Court has rightly taken into consideration the value fixed under Ex.C-2.

10. It is no doubt true that Ex.C-2 pertains to a Housing site. It is also situated nearer to the main road. However, it is to be seen that the reference Court has not taken the valuation of the acquired lands at Rs. 70/- per square feet as fixed under Ex.C-2. Even though a sum of Rs. 70/- per square feet has fixed under Ex.C-2, the reference Court has fixed the valuation of the acquired lands at Rs. 26/- per square feet. Therefore, we find that the valuation fixed by the reference Court is very reasonable. The reference Court even though has not made any deduction towards the development charges and also for relying upon a sale deed which is pertaining to a small extent of land, has deducted Rs. 44/- from the valuation fixed under Ex.C-2. Therefore, we find no reason to interfere with the compensation fixed by the reference Court.

11. Accordingly, the appeal is dismissed as devoid of merits and the award passed by the reference Court is hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.