
(2010) 02 MAD CK 0069

In the Madras High Court

Case No : A.S. No. 3 of 2008 and Cross Objection No. 75 of 2008

The Special Tahsildar Adi Dravidar Welfare Scheme

APPELLANT

Vs

M. Gopinathan

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Adi Dravidar Welfare Schemes Act, 1978 — Section 23(1), 3, 4(1), 4(2), 51

Civil Procedure Code, 1908 (CPC) — Section 21

Land Acquisition Act, 1894 — Section 18, 26, 4(1), 7, 7(1)

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 — Rule 4, 5, 6

Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 51

Citation : (2010) 2 MLJ 1039

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Ravi, Govt. Pleader, for the Appellant; G. Karthikeyan, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by enhancement of compensation, enhancing compensation of Rs. 1000/- per cent to Rs. 45,000/- per

cent in respect of lands acquired, Government has filed this appeal. Being dissatisfied with the quantum of enhancement, respondent/claimant has

filed Cross Objection seeking further enhancement.

2. The lands in S. No. 26-0.20 acre, S. No. 27/2-0.52 acre, S. No. 28-0.26 totalling 0.98 acres of wet lands in Periyakuppam Village,

Thiruvallur Taluk were acquired for extension of school building, Adi Dravidar Welfare Elementary School. After serving 4(2) notice on 10.5.1999

and issuing 4(1) notification dt. 1.10.1999), and after complying with all formalities of Tamil Nadu Acquisition of land for Adi Dravidar Welfare

Schemes Act 31 of 1978, the said lands were acquired. Award was passed on 21.03.2000. The Land Acquisition Officer has taken the sale deed

of Document No. 4405 dated 20.08.1999, in which 0.14 acre of wet land in S. No. 44/1B2 was sold for Rs. 14,000/- as data land and

calculated the compensation for land acquired at Rs. 1000/- per cent and awarded compensation of Rs. 1,12,700/- as under:

Land Value for 0.98 acre

@ Rs.1000/- per cent : Rs. 98,000.00

Trees and Structures : Nil

15% Solatium : Rs. 14,700.00

Rs. 1,12,700.00

3. According to Appellant the acquired land and data land are similar in all aspects with taram and assessment. Though the acquisition was made

under Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act 31 of 1978, like in the Central Act Land Acquisition Officer made a

reference u/s 18 of the Land Acquisition Act, which was taken on file in L.A. O.P. 100 of 2000. Taking Ex.C1 sale deed dated 09.12.1999, and

Ex.C2 sale deed dt. 30.8.1999 the Court fixed the market value of one cent at Rs. 216/- per sq. ft which is equivalent to Rs. 94,176/- cent.

Deducting 40% for development charges, Court has enhanced the compensation to Rs. 45,000/- per cent and also ordered 15% solatium on

compensation and an additional amount of 6% per annum.

4. The learned Government Pleader Mr. Ravi submitted that the acquisition being under Act 31 of 1978, claimants ought to have filed appeal and

under mistaken impression, Land Acquisition Officer has made reference u/s 18 of the Land Acquisition Act and therefore, the enhancement of

compensation by the Additional District Court FTC No. V is without jurisdiction and therefore the judgment is to be set aside and the claimant is

to be directed to file necessary appeal.

5. The learned Counsel for respondent/claimant submitted that the acquired land is in the midst of developed area and that F.C.I Godown and bus

depot are very near to acquired land and the compensation fixed at Rs. 1000/- per cent is very low. The learned Counsel for respondent/claimant

would further submit that the compensation fixed by the Tribunal is very much low and seeks for enhancement.

6. The lands were acquired for extension of Adi Dravidar Welfare School under

Act 31 of 1978. It was submitted that if the claimants were dissatisfied with the amount determined by the Land Acquisition Officer u/s 6 of the Act, claimants/land owners ought to have filed appeal to the Court within such period prescribed and the reference u/s 18 of the Land Acquisition Act was not correct. In our considered view, the objection raised by the Appellant Government is only a technical objection.

7. The learned Counsel for appellant contended that when proceedings are initiated under Act 31/1978, reference sent u/s 18 is not in conformity with the provisions of law. u/s 3(c) of Act 31/1978, Court means City Civil Court in the City of Chennai or elsewhere, the Subordinate Judge's Court having jurisdiction, and if there is no such Subordinate Judge's Court, the District Court having Jurisdiction. It was therefore contended that in Thiruvallur, Subordinate Judge will have jurisdiction to entertain the appeal and while so, reference made u/s 18 of the Land Acquisition Act to District Court is not maintainable.

8. The learned Special Government Pleader Mr. Ravi further contended that proceeding under Act 31/1978 is different from Land Acquisition Act and is against award passed u/s 7 of the Act. An appeal is to be preferred u/s 9 of the Act 31/1978. Rule 6 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 prescribes six weeks from the date of receipt of copy of order as the time-limit to prefer an appeal to the Court. Under the provisions of the Land Acquisition Act, the award is no more than an offer. If the land-owner or other person interested in the land does not accept the offer, Section 18 gives him the right of having the compensation amount decided by the Court. In the reference Court compensation has to be established. Sub-section (1) of Section 7 as aforesaid, states that the amount payable in respect of the land that is acquired under the said Act shall be its market value on the date of publication of the notice u/s 4(1). Sub-section (2) of Section 7 states that in addition to the market value of the land, the prescribed authority shall, in every case, award a sum of 15 per cent on such market value as solatium in consideration of the compulsory nature of the acquisition. The purport of Section 7 read as a whole, is that the market value of the land is payable as compensation and Sub-section(3) states that the market value shall be determined after holding an enquiry in the prescribed manner. Rule 4 of

the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 prescribes the procedure to be followed in determining the market

value of the land. In State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , Supreme Court has clearly made a distinction between the

reference u/s 18 and award/order passed u/s 7(2) of the Act. The learned Counsel for appellant contended that u/s 18 of the Central Act the

award is only an offer, whereas award passed u/s 7 determines the actual market value after due enquiry and also the solatium. It was further

contended that scope of reference u/s 18 of Central Act and Appeal u/s 9 of Act 31/1978 are entirely different and reference made u/s 18 of

Central Act is erroneous.

9. As per Section 18 of Central Act, reference to the Civil Court by the District Collector arises on the application by the persons interested made

to the Collector regarding the measurement of the land acquired, compensation and apportionment of compensation. On such reference Court is

enjoined to determine compensation in the manner prescribed in Part III of the Act. On such determination, it shall pass a decree and the award

u/s 26 and in the form and manner specified therein.

10. The main plank of argument of the appellant is that essential requisites for reference u/s 18 was not made and therefore, reference made u/s 18

is void and any decision based on such reference is also void.

11. We are unable to accede to the above contention of the learned Special Government Pleader. Had the objection been raised at the early point

of time, the Referral Court would have disposed of the reference giving liberty to the claimants to file necessary appeal u/s 9 of Act 31/1978. The

appellant acquiesced in by getting along with the matter in the District Court to which reference u/s 18 was made. Now the appellant wants to

challenge their own reference. Having participated in the proceedings without any demur whatsoever, appellant cannot be permitted to turn around

and contend that the proceeding was illegal. They not only participated in the proceedings but also adduced evidence in regard to the quantum of

compensation and preferred appeal against the judgment and award of the Reference Judge. In fact when the appeal was filed, in the

Memorandum of Agreement initially filed no objection was raised as to propriety of the proceedings.

12. Section 21 C.P.C deals with objection to jurisdiction. Even if objection about territorial and pecuniary jurisdiction or objection regarding

jurisdiction is taken at the earliest opportunity, it must be shown that there was consequential failure of justice.

13. For applicability of Section 21, Supreme Court in Pathumma and Others Vs. Kuntalan Kutty Dead by Lrs. and Others, laid down three

essentials:- (1) The objection was taken in the Court of first instance. (2) It was taken at the earliest possible opportunity and in cases where issues

are settled at or before such settlement. (3) There has been a consequent failure of justice. It was further laid down that ""all these three conditions

must co-exist"".

14. Objection to jurisdiction ought to have been taken in the original Court at the earliest opportunity and before settlement of issues. The

Appellate or Revisional Court will not entertain the objection unless there has been consequent failure of justice. It is to be pointed out that the

officials of Government themselves made reference u/s 18 of Land Acquisition Act. At no point of time objection as to maintainability of

jurisdiction/reference was raised in the Reference Court. When objection regarding jurisdiction of the Reference Court was not raised at the

earliest opportunity, it is not open to the appellant to raise objection in the Appellate Stage.

15. In our considered view, there was no failure of justice excepting that respondent/claimant has not paid the requisite Court fee. Having made a

wrong reference u/s 18 of Land Acquisition Act and having subjected to the jurisdiction of the Court, it is not open to the appellant to raise

objection as to jurisdiction of Additional District Court, FTC No. V.

16. In our considered view, the objection raised could only be technical objection. The procedure, as is well known, is a hand maid of justice. In a

situation of this nature, where the award was passed in 2000, we are not inclined to sustain the objection as to jurisdiction directing the appellant to

file the appeal u/s 9 of the Act.

17. In reference u/s 18 of Central Act, no Court fee is payable. Whereas in an appeal filed u/s 9 of Act 31/1978 ad-valorem, Court fee is payable

for the enhanced compensation. At the most it could only be procedural technical defect in not paying the Court fee on the enhanced

compensation.

18. In 2008 (1) CTC 316 [Ramaih and Ors. v. Special Thasildar, Adi-dravidar Welfare, Cheranmahadevi, Ambasamudram Taluk, Tirunelveli

District and Ors.] learned Single Judge has taken the view that appeals filed by land owner u/s 9 of the Act 31/1978, Section 51 of Court-Fees

Act should not be made applicable. The learned Single Judge has taken the view that Amount determined u/s 7 of the Act does not become an

award and it becomes an award only when authority tenders amount u/s 11 and therefore Section 51 of Court-Fees Act not applicable and only

Article 3, Schedule II of Court-Fees Act applies.

19. In 2008 (2) CTC 595 [Gunasekar and Ors. v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli] referring to Ananthi Ammal's case,

learned Single Judge has taken the view that in an appeal filed u/s 9 of the Act Court Fee is payable in terms of Section 51 of Tamil Nadu Court-

Fees Act. The learned Single Judge has held as under:

25. In Paragraph 14, the Supreme Court makes a clear distinction between a reference u/s 18 of the Land Acquisition Act 1874 and the

award/order u/s 7 against which an Appeal is prescribed u/s 9 of the Act 31 of 1978. It further held that evidence produced by the person

interested before the authority becomes part of the record of the Court in Appeal u/s 9 of the Act 31 of 1978, whereas under the Land Acquisition

Act, the compensation has to be established in the Reference Court. The Supreme Court clearly holds that the amount determined under the Act

31 of 1978 is compensation and the determination u/s 7(2) is an award after full-fledged enquiry. The Rules provide for the procedure for such

determination. Rule 4 provides the method for determination of market value of the land. Rule 5 provides the procedure for determination of the

amount. The land owner has got a right to let in evidence and establish his claim and if aggrieved by the determination, Appeal against the award

granting compensation for the land acquired. A clear distinction has been drawn between the provisions of the Central Act, Land Acquisition Act

and Act 31 of 1978, the State Act. The Supreme Court clearly comes to the conclusion that what is filed u/s 9 is an Appeal against the award.

Therefore, the amount determined and payable by the competent authority is a compensation and the order passed is an award/order subject to

Appeal at the instance of the aggrieved land owner. In view of the above stated legal position as held by the Apex Court, there can be no

hesitation to come to the conclusion that an aggrieved land owner or person interested while filing an Appeal u/s 9 of the Act 31 of 1978, seeking

enhancement of the compensation amount being the difference between the amount determined and the amount claimed in Appeal, is therefore

liable to pay Court Fee u/s 51 of the Court Fee Act.

learned Single Judge has made a clear distinction between the award passed under the Central Act and determination of the amount u/s 7 of Act

31/1978. Once there is determination of the amount by an order or award u/s 7(2) of Act 31 of 1978, while filing appeal claiming enhanced

amount, Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act gets attracted. We uphold the view taken by learned Single Judge in

2008 (2) CTC 595 [Gunasekar and Ors. v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli]. We hold that for Appeals preferred u/s 9 of the

Act 31/1978, Court Fee is payable in terms of Section 51 of Tamil Nadu Court-Fees Act.

20. With due respect, the view taken by Justice S.Nagamuthu, in 2008 (1) CTC 316 is not a correct view. The amount determined u/s 7(2) being

an amount determined after full fledged enquiry in the appeal preferred u/s 9 of the Act 31 of 1978, Court fee is payable. The award passed under

Act 31 of 1978 is to be equated to a decree and Court Fee is payable.

21. The Land Acquisition Officer has taken S. No. 44/1B2 of 0.14 acre of wet land which was sold for Rs. 14,000/-, Document No. 4405 dated

20.8.1999 as data land. According to Appellant Government, both the acquisition land and data land are similar in all aspects with taram and

assessment and therefore, Land Acquisition Officer was justified in fixing the market value at Rs. 1000/- per cent. Contention of appellant is that

Exs. C1 (dt. 09.12.99) and C2 (dt. 30.8.99) sale deed was subsequent to serving of Section 4(2) notice (dt. 10.5.1999) and therefore, Court was

not justified in taking Exs.C1 and C2 as basis. Further contention of appellant is that the enhanced compensation of Rs. 45,000/- is exorbitant.

22. Determination of market value of acquired land depends upon the location of lands and potentiality for development has to be taken into

consideration. For ascertaining market value of the land, situation and its access

are relevant for determination of market value. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. The question whether the land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put. Determination of market value must reflect not only value at the time of declaration but also its potential value to be taken into account.

23. As per report filed by the Advocate Commissioner, near the acquired lands 3 school buildings were seen and surrounding the acquired land

there are about 1000 houses. On the east at 300 mts. is Thirupathi-Thiruvallur Road (J.N. Road) on the opposite side are the Telephone Office,

Post Office and bus stop. At about 20 feet on the west are Magistrate Courts, and at a distance of 30 feet is the Godown of Food Corporation of

India. On the North at about 200 mts is the State Corporation Bus Depot. When the acquired land is in the midst of developed area, the Land

Acquisition Officer was not right in fixing the market value per cent.

24. The claimant has relied upon Exs.C1 and C2, Ex.C1 is the sale deed dated 9.12.99 for Rs. 2,16,894/- and the extent is 1004 square feet or

2.30 cents. Ex.C2 is the registered sale deed dated 30.8.1999 for Rs. 97,200/- and the extent is 450 square feet or 1.03 cents and the value is

Rs. 216 per square feet, which is equivalent to Rs. 94,176/- per cent. Though Exs.C1 and C2 are subsequent to serving of Section 4(2) notice,

the fact that the surrounding area were sold as house sites and that acquired land is on the midst of developed area is to be kept in view.

25. As pointed out earlier, the acquired land is on the Eastern side of J.N. Road, Thiruvallur and the acquired land falls under Thiruvallur

Municipality limits. Within a distance of about 30 feet, there is F.C.I Godown and also Magistrate Courts. On the North at about 200 meters there

is a State Transport Corporation Bus Depot. Acquired land is in the midst of developed area.

26. The contention of appellant is that the acquired land was agricultural lands and while so, Court erred in taking Exs.C1 and C2 as basis in which

plots were sold as house sites. It was further contended that Exs.C1 and C2 in which house sites were sold cannot be taken for compensation with

that of agricultural lands which were acquired. It was further contended that even if so taken, necessary deduction are to be made and 40%

deduction given by the Court is very much low and the deduction ought to have been more.

27. The concept of deducting development charges was considered in 2009 (8) MLJ 979 [Subh Ram v. Haryana State] and Hon"ble Supreme

Court has held as under;

12.1. Administrator General of West Bengal Vs. Collector, Varanasi, contains a precise statement as to the concept of deducting development

cost. This Court stated:

It is trite proposition that prices fetched for small plots "cannot form safe basis for valuation of large tracts of land as the two are not comparable

properties... The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to

be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing

large extents. However, if it is shown that the large extent to be valued...is ripe for use for building purposes; that building plots that could be laid

out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be

adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the

notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil

amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for

the period of deferment of the realisation of the price; the profits on the venture etc., are to be made. In Brig. Sahib Singh Kalha and Others Vs.

Amritsar Improvement Trust and Others, , this Court indicated that deductions for land required for roads and other developmental expenses can,

together, come up to as much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the

reasons that the former reflects the "retail" price of land and the later the wholesale" price.

This Court referred to and relied upon several earlier decisions including three

Judge Bench decisions in *Mirza Nausherwan Khan and Another Vs.*

The Collector (Land Acquisition), Hyderabad, and Padma Uppal and Others Vs. State of Punjab and Others, .

28. The learned Counsel for respondent/claimant contended that deduction could be made only for making provision for roads, common areas etc.

In this case when the land is acquired for school, there was no necessity for forming roads, leaving common area etc., and therefore, Court was not right in deducting 40%.

29. The principle of deduction was elaborately considered by the Supreme Court in 2009 (8) MLJ 979 [*Subh Ram and Ors. v. Haryana State and Anr.*]. Referring to various other decisions, the Supreme Court has held as under:

12.2. In *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, , this Court held:

...a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting

for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a

deduction by way of an allowance at an appropriate rate ranging approximately, between 20% to 50% to account for land required to be set apart

for carving out lands and plotting out small plots. The discounting will, to some extent - also depend on whether it is a rural area or urban area,

whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer

or shorter and the attendant hazards.

It should be noted that deduction of 20% to 50% referred to therein is only in regard to the land to be earmarked for roads, community areas etc.

and does not refer to the further deduction towards the expenses of development.

12.3. In *K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another*, , this Court held:

It is then contended that 54% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to

agree with the learned Counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is

required to be left out. This Court has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted.

Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken

place as on that date. When we are determining compensation u/s 23(1), as on the date of notification u/s 4(1), we have to consider the situation of

the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development

had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City Improvement Trust for roads

and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity etc., the deduction of 53% and

further deduction towards development charges @ 33- 1/3%, as ordered by the High Court was not illegal.

30. Ex.C2 sale deed dated 30.8.1999 in which 450 sq. ft was sold for Rs. 97,200/- which means Rs. 216/- per sq. ft. One cent is Rs. 94,176/-,

rounded off to Rs. 94,200/-. Court has deducted 40% for development charges. The purpose of deduction is for formation of roads, leaving

common space, play ground etc., Though it is meant for school, sufficient space is to be left for Road, play ground and common space. While

confirming the view taken by the Court giving deduction of 40%, it is to be noted that the Court erred both arithmetically and in rounding of to a

huge amount. When the Court has taken the value of Rs. 94,000/- per cent, 40% deduction comes to Rs. 37,600/-. While so, the Court has

committed an arithmetical error in saying that 40% comes to about Rs. 46,000/- and rounding off to Rs. 45,000/-, given deduction of Rs. 45,000/-

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31. We confirm the view of the Trial Court enhancing the compensation to Rs. 94,176/- per cent and the same is rounded off to Rs. 94,200/-.

40% deduction comes to Rs. 37,680. After deducting 40%, the compensation is fixed at Rs. 56,520/- per cent. Compensation payable for 98

cent is calculated at Rs. 55,38,960 and as per Section 7(2) of the Act, 15% solatium is payable on the said amount. As per Section 12 of the Act,

the amount is payable with flat rate of interest at the rate of 6% p.a from the date of award (21.3.2000). The Court has ordered compensation of

Rs. 44,10,000/- for which Court fee is payable in L.A. O.P. 100 of 2000 u/s 51 of Tamil Nadu Court Fees and Suits Valuation Act. In so far as

enhanced compensation of Rs. 11,28,960/-, respondent/claimant shall pay the appropriate Court fee u/s 51 of the Act in the High Court to the credit of A.S. No. 3 of 2008.

32. In the result, the compensation amount payable to the respondent/claimant is enhanced to Rs. 55,38,960 and Cross Objection is partly

allowed. It is stated that appellant has deposited Rs. 44,10,000/- along with 15% solatium and the accrued interest. The appellant is directed to

deposit the balance of enhanced compensation along with 15% solatium and 6% interest from the date of award to the credit of L.A. O.P. 100 of

2000 within a period of twelve weeks from the date of receipt of a copy of this order.

33. On such deposit, the claimant is permitted to withdraw the entire amount less Rs. 7,50,000/-. After withdrawal of the amount

respondent/claimant is directed to pay the requisite Court Fee payable in L.A. O.P. 100 of 2000 u/s 51 Tamil Nadu Court Fees and Suits

Valuation Act and also in the High Court in this Appeal Suit within a period of two weeks from the date of withdrawal of the amount . On payment

of necessary Court Fee, both in the Additional District Court, Thiruvallur as well as in the High Court, and on production of necessary certificate

for payment of Court Fee respondent/claimant is permitted to withdraw the balance of Rs. 7,50,000/-.

34. In view of our conclusion in the Cross Objection, A.S. No. 3 of 2008 preferred by Government is dismissed.