
(2011) 10 MAD CK 0184

In the Madras High Court

Case No : Second Appeal No. 225 of 2003 and C.M.P. No. 2113 of 2003

The Special Tahsildar, Adi Dravidar Welfare, Tirupattur, N.A.A.
District

APPELLANT

Vs

J.P. Kannan

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33

Citation : (2011) 5 LW 852

Hon'ble Judges : K. Mohan Ram, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : M. Raja, for the Appellant; A. Sivaji, for the Respondent

Judgement

K. Mohan Ram, J.—Being aggrieved by the judgment and decree, dated 06.04.1998, made in L.A.A. No. 4 of 1997 on the file of the learned Subordinate Judge, Thirupattur, reversing the award made in Award No. 25 of 1996-97 dated 27.03.1997 made by the Special Tahsildar (ADW), Thirupattur, Vellore District, has filed the above appeal.

2. The brief facts, which are necessary for the disposal of the above appeal, are as follows:-

Under a notification, issued u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Act 31 of 1978) (hereinafter referred to as "the Act) which was published in the Gazette, dated 06.03.1997, an extent of 1.18.0 hectares, out of 1.15.5 hectares, comprised in Survey No. 59/17 and an extent of 0.70.0 hectares comprised in Survey No. 59/18, totally an extent of 1.85.5 hectares = 4.55 acres, situated in Sankarakuppam village in North Arcot Ambedkar District (now Vellore District), belonging to the respondent, was acquired for providing house-sites to harijans of that locality. After an enquiry, the appellant passed an award, dated 27.03.1997, fixing Rs. 480/- per cent, as the market value. After the award, the acquired lands were taken possession on 10.04.1997. Being not satisfied with the quantum of compensation awarded, the

respondent preferred an appeal before the Sub Court, Thirupattur, in L.A.A.No. 4 of 1997.

3. Before the Sub-Court, on the side of the land owner / the respondent herein, besides examining himself as P.W.1, three other witnesses were examined and Exs.C-1 and C-2 were marked and on the side of the appellant herein, the Special Tahsildar was examined as R.W.1 and Exs.R-1 to R-3 were marked. On a consideration of the oral and documentary evidence available on record, the Sub Court, fixed the compensation at Rs. 3,600/- per cent and awarded other statutory benefits. Being aggrieved by the enhancement of compensation, the appellant has filed the above appeal.

4. While admitting the above second appeal, the following substantial questions of law have been framed:-

a) Whether the Court below is right in determining the market value for the lands acquired in accordance with law under the Act 31 of 1978?

b) Whether the Court below is right in relying upon the Exhibit A2, in determining the market value of the land, since it is only a small extent of land, and which cannot be considered for fixing the market value of the vast area of the acquired lands as ruled by the HSC New as reported in Saunu Vs. Collector, Land Acquisition,

c) Whether the Court below is right in awarding interest on solatium in contrary to the provisions of the Ruling of the H.S.C. New as reported in 1997 (1) CTC 249?

d) Whether the Court below is right in not accepting the documents relied on by the Acquisition Officer in determining the market value of the lands without proper, valid and acceptable reason thereof?

5. Heard the learned counsel on either side.

6. Learned Government Advocate (CS) appearing for the appellant submitted that the Court below has committed an error in relying upon Ex.C-2, which relates to a very smaller extent of land for fixing the market value of the larger extent of land; it has not been proved under what circumstances and for necessity the small portion of land was sold by the vendor and under what circumstances the same was purchased by the vendee under Ex.C-2; the Court below has not properly appreciated the evidence of R.W.1. He further submitted that while the acquired lands are agricultural lands, the lands conveyed under Ex.C-2, dated 26.05.1993, relates to a house-site and therefore, the land conveyed under Ex.C-2 cannot be compared with the acquired land. He further submitted that the decision of the Court below is contrary to the decision of the Apex Court reported in 1997 (I) CTC 127 Sri Saunu v. Collector, Land Acquisition wherein, in paragraph 2, the Apex Court has laid down as follows:-

2....The question, however, arises: whether it is a case for further enhancement?

The appellant relied upon five sales instances of a small extent of land ranging between 6 biswas and 18 biswas spoken to by the witnesses as discussed by the High Court. These lands are situated in Abadi, namely, village itself. Under those circumstances, those sales deeds do not form any reasonable basis to determine higher compensation for the vast extent of 221 bighas of land...

7. Countering the said submissions, the learned counsel for the respondent made the following submissions:-

The land acquired is situated within Jolarpet Town Panchayat Limits; it has been proved by evidence that the quality of the land sold under Ex.C-2 and the acquired land is same; Thiruppattur Vaniyambadi Main Road runs just 200 ft away from the acquired land; further through the acquired land, several buses are passing to Kuppam and Natarampalli Sugar Factory; Police Station, cinema theater, school are located within the distance of 200 mts and the Railway Station is also situated very nearby; R.W.1 has also admitted the aforesaid facts; further, R.W.1 has admitted that the distance between the acquired land and the data land is 400 mts and while the acquired land is situated in Sankarakuppam Village, the data land is situated in Mettu Sankarakuppam village. He submitted that on the basis of the evidence adduced, the Court below has recorded a finding that in and around the acquired land, several facilities are available and the distance between the acquired land and the data land is more; the Court below has also pointed out that while Ex.C-2 is dated 26.05.1993 and Ex.R-2 is dated 24.01.1996 and as per Ex.C-2, an extent of 1751 = s.ft of land has been sold for Rs. 25,000/-, which works out to Rs. 6,250/-per cent, as per Ex.R-2, dated 24.01.1996 an extent of 25 cents have been sold at Rs. 480/-per cent; taking into consideration all the relevant factors like the situation and advantages of the acquired land, the distance between the land covered by Ex.C-2 and the land covered by Ex.R-2, the Court below has rightly relied upon Ex.C-2, but, according to the learned counsel, the Court below failed to take into consideration the escalation in the prices of the urban and semi-urban lands, while Ex.C-2 is dated 26.05.1993, the date of the 4 (1) notification is dated 06.03.1997 and therefore for the interregnum period of four years 10% escalation in the market value should have been taken into consideration and that also while calculating the market value 10% escalation should be calculated cumulatively. He further submitted that the trial court erred in deducting twice from the value reflected in Ex.C-2. He further submitted that the Court below erred in not granting severance compensation. According to the learned counsel, in Survey No. 59/17 out of the total extent of 1.15.5 hectares, only an extent of 1.18.0 hectares was acquired and the balance extent of 0.02.5 hectares is still with the land owner; such a small extent of land cannot be put to cultivation so it has become waste and therefore compensation should have been paid for the said extent of 0.02.5 hectares on the same rate fixed by the Court below.

8. Learned counsel for the respondent further submitted that though the respondent has not filed any cross-objection, as laid down in the decisions

reported in Sub Collector Vs. R.S. Raveendran, Project, Madurai, an un-reported decision of a Division Bench of this Court, dated 29.04.2002 in A.S. Nos. 840 of 1987 batch cases and Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, this Court can award higher compensation to the land owner / the respondent herein, if this Court ultimately comes to the conclusion that the market value of the land fixed by the Court below is less. He further submitted that as per the decision reported in (2003) 1 M.L.J. 124 (Special Tahsildar (Land Acquisition), Adi Dravidar Welfare, Srivilliputhur v, Chinna Ramaswami) if the acquired land is severed and the un-acquired portion is smaller in extent and the same could not be put to any proper use, then the land owner is entitled for severance compensation.

9. We have considered the aforesaid submissions made by the learned counsel on either side and perused the materials available on record.

10. As far as the contention of the learned Government Advocate (CS) that the Court below has not considered the evidence of R.W.1 and Exs.R-1 to R-3 is concerned, it has to be pointed out that the Court below has fully considered the evidence of R.W.1 and Exs.R-1 to R-3. In the decision reported in 1997 (I) CTC 127 (referred to supra) the Apex Court has held that sales instances of small extent of land do not form any reasonable basis to determine higher compensation for the vast extent of land. Similar view has been taken by the Hon"ble Apex Court in the decision reported in Administrator General of West Bengal Vs. Collector, Varanasi, and Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, if no sales of lands of a larger extent have not taken place just prior to the 4 (1) notification and the only sale deed available relates to a smaller extent of land, then it is permissible for the Court to rely upon such a sale deed and while fixing the market value of the larger extent, proper deduction should be made in the price of the smaller extent of land. But, in this case, Ex.R-2-sale deed, dated 24.01.1996, has been marked by the appellant and which is the data sale deed relied upon by the appellant for fixing the market value, but it has to be seen whether the land covered by Ex.C-2 or Ex.R-2 is nearer to the acquired land and whether the land covered by Ex.C-2 or Ex-R-2 is comparable with the acquired land, the relative locational advantages available to the aforesaid lands, etc., have to be considered before deciding to rely upon the particular document.

11. In this case, even R.W. 1 has admitted in his evidence that the distance between the data land and the acquired land is 400 mts, whereas as per P.W. 1 "s evidence the distance between the acquired land and the land covered by Ex.C-2 is 1000 ft i.e., 300 mts. It has to be pointed out that R.W.1 has not stated that the data land possesses similar locational advantages as that of the acquired land. When the acquired land has got more locational advantages and the land covered by Ex.C-2 is nearer to the acquired land, the Court below is right in taking into consideration Ex.C-2 for fixing the market value of the acquired land.

12. The trial court, while relying upon Ex.C-2, has observed that as per Ex.C-2

the market value per cent will work out to Rs. 6,250/-, but having observed so, the Court below has taken the land value per cent at Rs. 5,400/- and thereafter has deducted 1/3rd, namely, Rs. 1,800/- and arrived at the market value per cent at Rs. 3,600/-. It has further observed that from Rs. 6,250/-, 40% could be deducted and thus has fixed the market value at Rs. 3,600/-per cent. As rightly submitted by the learned counsel for the respondent, the Court below is not justified in deducting twice from Rs. 6,250/-. Since under Ex.C-2-sale deed, only 1751 = sq.ft., of land alone has been sold and admittedly it relates to a smaller extent and towards developmental charges 30% alone could have been deducted. If so deducted, the value will come to Rs. 4,375/- per cent.

13. Learned counsel for the respondent basing reliance on the decision of the Apex Court reported in The General Manager, Oil and Natural Gas Corporation Ltd. Vs. Rameshbhai Jivanbhai Patel and Another, submitted that considering the escalating prices of urban lands 10% per year should be taken as the escalating cost and it should be calculated cumulatively. In the said decision, the Apex Court has laid down as follows:-

14. In this case, the acquisition was in a rural area. There was no evidence of any out of the ordinary developments or increases in prices in the area. We are of the view that providing an escalation of 7.5% per annum over the 1987 price under Ext. 15, would be sufficient and appropriate to arrive at the market value of acquired lands. Whether the increase should be at a cumulative rate or a flat rate?

15. The increase in market value is calculated with reference to the market value during the immediate preceding year. When market value is sought to be ascertained with reference to a transaction which took place some years before the acquisition, the method adopted is to calculate the year to year increase. As the percentage of increase is always with reference to the previous year's market value, the appropriate method is to calculate the increase cumulatively and not applying a flat rate. The difference between the two methods is shown by the following illustration (with reference to a 10% increase over a basic price of Rs 10 per square metre):

Year By flat rate increase method By cumulative increase method

1987(Base year) 10.00 10.00

1988 $10 + 1 = 11.00$ $10.00 + 1.00 = 11.00$

1989 $11 + 1 = 12.00$ $11.00 + 1.10 = 12.10$

1990 $12 + 1 = 13.00$ $12.10 + 1.21 = 13.31$

1991 $13 + 1 = 14.00$ $13.31 + 1.33 = 14.64$

1992 $14 + 1 = 15.00$ $14.64 + 1.46 = 16.10$

16. We may also point out that application of a flat rate will lead to anomalous

results. This may be demonstrated with further reference to the above illustration. In regard to the sale transaction in 1987, where the price was Rs 10 per square metre, if the annual increase to be applied is a flat rate of 10%, the increase will be Rs 1 per annum during each of the five years 1988, 1989, 1990, 1991 and 1992. If the price increase is to be determined with reference to sale transaction of the year 1989 when the price was Rs 12 per square metre, the flat rate increase will be Rs 1.20 per annum, for the years 1990, 1991 and 1992. If the price increase is determined with reference to a sale transaction of the year 1990 when the price was Rs 13 per square metre, then the flat rate increase will be Rs 1.30 per annum for the years 1991 and 1992. It will thus be seen that even if the percentage of increase is constant, the application of a flat rate leads to different amounts being added depending upon the market value in the base year. According to the learned counsel, admittedly the acquired land comes within Jolarpet Town Panchayat and therefore it should be considered as an urban area or at least as a semi urban area, but a perusal of the evidence adduced on the side of the respondent does not reveal that there is faster development and demand for land is high and there is construction activity all around, in such circumstances, the increase in market value cannot be taken at 10% or 15%, but it could be taken only at 7.5%. In the very same decision, the Apex Court has held that the logical, practical and appropriate method is to apply the increase cumulatively and not at a flat rate.

14. If the said principle is applied, in this case, at 7.5% cumulative rate per year, on the rate arrived at by this Court on the basis of Ex.C-2, namely, Rs. 4,375/-, works out as follows:-

Year By cumulative increase method

I Rs. 4,375/- + Rs. 328/- = Rs. 4,703/-

II Rs. 4,703/- + Rs. 353/- = Rs. 5,056/-

III Rs. 5,056/- + Rs. 379/- = Rs. 5,435/-

IV Rs. 5,435/- + Rs. 408/- = Rs. 5,843/-

Thus the market value of the acquired land as on the date of acquisition is fixed at Rs. 5,843/- per cent.

15. As far as the severance compensation is concerned, it has to be pointed out that there should be clear evidence on record to show that because of the acquisition there was severance and the unacquired portion cannot be put to any use. P.W. 1, in his evidence has only stated as follows:-

Except the aforesaid evidence, there is no evidence to show that the unacquired portion measuring 0.02.5 hectares could not be put to any other use. Even according to the respondent, the acquired land could be used as house-sites and only on that basis, he has claimed the enhanced compensation. The land itself has been acquired only for the purpose of providing house-sites for the harijans

of that locality. Therefore, the remaining extent could be used as house-sites or could be sold as house-sites by the respondent. Therefore, in our considered view, the respondent is not entitled to claim any severance compensation.

16. The Court below has fixed the market value of the acquired land at Rs. 3,600/- per cent and only being aggrieved by that, the above appeal has been filed by the appellant / land acquisition officer. It is the contention of the learned counsel for the respondent that though the respondent has not filed any separate appeal or cross-objection, yet the respondent is entitled for just compensation, if this Court arrives at the market value higher than the one fixed by the Court below. In support of the said contention, the learned counsel based reliance on an unreported decision, dated 29.04.2002 rendered in A.S. Nos. 840 to 842 of 1987, etc., batch cases. In that decision, it has been held that even though the respondents have not filed any cross-objections claiming enhanced compensation, they may be permitted to pay necessary court fee within the time prescribed by the Court and on compliance they could be entitled to receive the enhanced compensation. A similar view has also been taken by a Division Bench of this Court in the decision reported in Sub Collector Vs. R.S. Raveendran, , and by another Division Bench of this Court in the decision reported in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, and therefore, the respondent is entitled to claim the enhanced market value for the acquired land.

17. We are of the considered view that this is a fit case, where this court should invoke Order 41 Rule 33 of the Code of Civil Procedure, and permit the respondent / land owner, who has not filed cross-objection to claim the enhanced market value and hence he is entitled to the sum of Rs. 5,843/- per cent, the market value fixed by this Court, on condition of his paying necessary court fee on the enhanced compensation amount. The necessary Court fee shall be paid by the respondent within a period of four weeks from the date of receipt of a copy of this judgment. The respondent is also entitled to claim all the consequential statutory benefits on the aforesaid market value fixed by this Court.

18. For the aforesaid reasons, the substantial questions of law are answered against the appellant and the second appeal stands dismissed. However, there will be no order as to costs. Consequently, the connected CMP is closed.