

(2015) 03 MAD CK 0548

In the Madras High Court

Case No : C.R.P. (NPD)(MD) No. 1993 of 2008 and Cross Objection (MD) No. 8 of 2015

The Special Tahsildar (ADW)

APPELLANT

Vs

Andiyappa Chettiar and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 12, 18(1), 23(1), 4(1), 7(2)
Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 7, 7(2)

Citation : (2015) 3 LW 310

Hon'ble Judges : Pushpa Sathyanarayana, J

Bench : Single Bench

Advocate : S. Anand Chandrasekar, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

Pushpa Sathyanarayana, J—Being aggrieved by enhancement of compensation by the learned Additional District Judge (Fast Track Court), Pudukkottai, vide order dated 09.09.2005 passed in L.A.O.P. No. 36 of 1997, enhancing compensation of Rs. 150/- per cent to Rs. 2,725/- per cent in respect of lands acquired, Government has filed this revision petition. Being dissatisfied with the deduction of amount at 50% on the compensation towards development charges, the respondents/claimants have filed Cross Objection. The factual matrix of the case is as follows:-

It transpires that pursuant to the Notification dated 01.3.1997 issued under Section 4(1) of the Land Acquisition Act [for short, "Act"], the punja lands of the respondents/claimants situated in S. No. 512/1 in Perungalur village, Pudukkottai Taluk, to an extent of 2.16 acres (0.87.5 ares) were acquired for the purpose of providing house sites for the Adi Dravida people residing in the same village. After complying with the formalities, the Land Acquisition Officer has taken the sale deed dated 24.05.1996 relating to S. No. 450/1 and calculated the

compensation for land acquired in respect of the respondents/claimants at Rs. 150/- per cent and quantified the amount as Rs. 37,260/- in total and accordingly, passed Award No. 1/96-97 dated 27.03.1997. The land owners have been dissatisfied with the compensation determined by the Land Acquisition Officer and have received the compensation under protest and requested for enhancement of compensation and, therefore, as per Section 18(1) of the Land Acquisition Act, a reference has been made to the Sub-Court and subsequently, it was transferred to the Court of Additional District Judge (Fast Track Court), Pudukkottai.

2. The learned Additional District Judge, Pudukkottai, by judgment dated 09.09.2005, after carefully analysing the oral and documentary evidences adduced on respective sides, has enhanced the value of per cent to Rs. 5450/- and after deducting 50% of the amount towards development charges, fixed the compensation payable at Rs. 2725/- per cent in addition to 30% solatium. The learned Judge also awarded interest at 9% p.a. for a period of one year and thereafter, granted an interest at the rate of 15% per annum.

3. Being aggrieved and dissatisfied with the enhancement of compensation, the Government preferred the instant Revision Petition on the main ground that the enhancement awarded by the Court below is exorbitantly higher and disproportionate to the actual land value available in the vicinity. The Government has also pinpointed that the solatium of 30% and the interest at 12% as ordered by the Tribunal are excessive.

4. Per contra, the claimants have challenged the order of the learned Additional District Judge by way of filing Cross Objection on the ground that the deduction of 50% towards development charges is on the higher side as the lands acquired were already developed as house sites.

5. Heard the learned counsel appearing for the cross objectors/claimants/respondents and perused the records.

6. The point for determination in this Civil Revision Petition as well as the Cross Objection filed by the claimants is as to what should be the value to be fixed for the land acquired and the other statutory charges?

7. The learned counsel appearing for respondents/cross objectors/claimants submitted that the Court below has failed to rely upon the documents, viz., Exs. P.3 to P.5 exemplar sale deeds, produced by the claimants. He further submitted that the acquired land is in the midst of developed area. According to the learned counsel, the acquired land is adjoining the Tanjore -Pudukkottai Main road and is surrounded by Hospitals, Market, School, temple and other residential elements. Hence, learned counsel submitted that the Reference Court has committed an error in deducting 50% of the enhancement amount fixed, towards development charges and sought for interference of this Court.

8. It is to be borne in mind that 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, while situation and its access are relevant, 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. Further, in determining the compensation the value of small plots of lands cannot be applied to the lands covering a very large tract and that large area of land cannot possibly fetch price at the same rate at which small plots are sold.

9. Insofar as the fixation of market value of the land acquired in the instant case is concerned, it is seen that the Land Acquisition officer has considered one data sale land falling in S. No. 450/1 and based on the same, fixed the market value of acquired land at Rs. 150/- per cent. But a mere perusal of the records would show that the data land is infertile and is situate away from the acquired land and, therefore, the said document could not be considered for fixation of the market value of the land acquired by the Government.

10. In this backdrop, it is just and necessary to analyse the documents Exs. P.3 to P.5 marked by the claimants, which the learned counsel would greatly rely upon. A perusal of Ex. P.3 sale deed dated 19.6.1996 would show that an extent of 4060 sq.ft. of land in S. No. 409/1 was sold for Rs. 50,700/-. As per Ex. P.4 sale deed dated 18.5.1995, it is seen that an extent of one cent in S. No. 409/1 was valued at Rs. 5450/- while Ex. P.5 sale dated 14.3.1995 pertains to sale of 360 sq.ft. of land in S. No. 393/1 for Rs. 5000/-. It is pertinent to note that the said rates were arrived at even before the issuance of Notification under Section 4(1) of the Act.

11. Now it has been well established that while the State acquires the land of individuals using its eminent domain, the owner of the land must be compensated with a reasonable compensation and such a compensation should not be a pittance. It is also an established principle that the Land Acquisition Officer is not supposed to search for a document showing the least amount as value and that when there are a number of documents reflecting different market values, the document reflecting the higher value should be preferred as the basis of valuation, unless it is proved that the price quoted in such document was not the correct market value and it had been escalated due to some other reasons including a special interest shown by the purchaser to purchase such property at any cost. Indeed, a Court of Law cannot lose sight of the fact that so far as prices of the land are concerned, there have been an overall upward trend. The continuous rising inflation and rising land value are to be taken note of judicially in the considered opinion of this Court. Therefore, a land owner is entitled to the best price available as per evidence on record for his acquired land. Hence, this

court comes to the conclusion that the court below, on appreciating the evidence and the materials available, has rightly found that Exs. P.3 to P.5 are sale deeds which can be considered and arrived at the sale value of Rs. 5450/- per cent and no interference in this regard is required.

12. As regards the deduction towards development charges is concerned, the Hon''ble Apex Court as well as this Court, in a catena of decisions, have held that deduction towards development charges is not automatic but depends upon the nature of the development and the stage of development. Where the development has already taken place, there is no need to deduct any amount towards the same. While determining compensation under Section 23(1) of the Act, as on the date of notification under Section 4(1), the Court has to consider the situation of the land development, if already made, and other relevant facts as on that date. If the acquired land is a stripe of land abetting the main road, then the question of development charge would not arise at all for the reason that the person who may have the house building there would have ingress and egress by using the available road which is adjacent to the land.

13. At this juncture, it would not be out of place for this Court to make a mention of the observation made by the Hon''ble Supreme Court in Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others, AIR 2008 SC 399 : (2008) 2 CLT 214 : (2007) 12 JT 489 : (2007) 12 SCALE 685 : (2008) 1 SCC 554 : (2007) 11 SCR 921 that the deduction towards development charges cannot be made in a straight jacket formula and should depend on the facts of each case.

14. Also, it would be worthwhile to refer to the judgment of the Hon''ble Apex Court in Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, (2007) 8 JT 285 : (2007) 4 SCALE 52 : (2007) 9 SCC 447 : (2007) 3 SCR 563 wherein it has been held that while determining the amount towards development charges, the purpose for which the land acquired is relevant to decide as to whether any deduction for development charges at all can be made.

15. No doubt, in the instant case, from the materials available on record, it is seen that the lands are acquired for housing. It is not disputed that there are residential houses in the locality and the lands acquired can be used as house sites and do not require any further deduction towards development charges. Development necessarily means providing indispensable amenities like formation of roads, adjoining pavements, electricity connection and water connection, telephone connection, etc. It is not the case of the revision petitioner/ Government that in the lands acquired, there are hillocks that need to be leveled or low lying land that need to be filled up. Therefore, when such indispensable amenities are already available, the deduction need not be done. It is also pertinent to note that the lands acquired are situate adjoining the Tanjore - Pudukkottai Main Road, and surrounded by Hospitals, Market, School, temple and other residential elements. As such, from the above facts, it is reasonable and proper to conclude that the lands acquired are potential house sites and the

surrounding area is a residential area and that acquired land is on the midst of developed area is to be kept in view. Further more, the land owners/respondents themselves have lost heavily on account of compulsory acquisition of potential house sites as the lands are already developed. On an overall consideration and appreciation of the records, this Court feels that the Court below was not right in deducting 50% towards development charges.

16. The principle of deduction was elaborately considered by the Hon''ble Supreme Court in Subh Ram and Others Vs. Haryana State and Another, (2009) 14 JT 115 : (2009) 13 SCALE 528 : (2010) 1 SCC 444 : (2009) 16 SCR 287 . Referring to various other decisions, the Hon''ble Supreme Court has held as under:-

"12.2. In Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, AIR 1988 SC 1652 : (1988) 3 JT 106 : (1988) 2 SCALE 43 : (1988) 3 SCC 751 : (1988) 1 SCR 531 Supp : (1988) 2 UJ 318 , 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."

17. It is also pertinent to note that the deduction of 20% to 50% referred to in the case cited supra 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. Therefore, this Court is of the opinion that the approach adopted by the Reference Court in making deduction of 50% towards the cost of development/development charges from the market value determined, was clearly wrong. On a conspectus of the entire matter, this Court opines that deducting 25% towards development charges from and out of the compensation of Rs. 5450/- per cent, would be reasonable and fair one. Accordingly, after deducting 25% from Rs. 5450/- towards development charges, the compensation is fixed at Rs. 4088/- per cent [Rs. 5450 X 25%].

18. As regards the grant of solatium in respect of lands acquired, it would be relevant to refer to Section 7(2) of the T.N. Acquisition of Land for Harijan Welfare Schemes Act, 1978, which deals with the determination of amount. For better appreciation, Section 7 is extracted hereunder:-

"Determination of amount.--

.....

.....
(2) In addition to the market value of the land as provided above, the prescribed authority shall, in every case, award a sum of fifteen per centum on such market value as solatium in consideration of the compulsory nature of the acquisition."

In view of Section 7(2) of the Act, I am of the view that the Court below was not right in granting 30% solatium and the same is modified as 15%.

19. Coming to the award of interest, it is necessary to refer to Section 12 of the Act which states about the payment of interest. Section 12 reads as under:-

"Payment of interest.--When the amount is not paid or deposited on or before taking possession of the land, the prescribed authority shall pay the amount with interest thereon at me rate of six per cent per annum from the time of so taking possession until it shall have been so paid or deposited and such interest shall be paid or deposited by the prescribed authority in the same manner as provided for the amount."

As such, it is settled that 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 taking possession. Therefore, the interest awarded by the Court below is also modified as 6% p.a. from the date of taking possession.

In nutshell, the compensation fixed at Rs. 5450/- per cent by the Court below is confirmed. The solatium is reduced to 15% in view of Section 7(2) of the Act instead of 30% and the rate of interest is fixed at 6% as provided in Section 12 of the Act. As regards the deduction towards development charges, the view taken by the Court below is set aside and the Cross Objection is allowed reducing the 50% as ordered by the Court below to 25%. As such, the compensation payable would be Rs. 4088/- per cent.

In view of the foregoing discussion, the Civil Revision Petition is allowed in part to the extent indicated above and the Cross Objection preferred by the claimants is allowed with the above modification. However, in the circumstances of the case, there shall be no order as to costs.