

(1957) 09 MAD CK 0027
In the Madras High Court

The Special Tahsildar, Harijan Welfare, Land Acquisition
Collector

APPELLANT

Vs

S. Vaidyanatha Ayyar

RESPONDENT

Date of Decision : 06-09-1957

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1), 4

Citation : AIR 1958 Mad 214 : (1958) 71 LW 4 : (1958) 71 LW 14 : (1958) 1
MLJ 327

Hon'ble Judges : P.V. Rajamannar, C.J

Bench : Single Bench

Judgement

P.V. Rajamannar, C.J.—This appeal and the memorandum of cross-objections arise out of an acquisition of an area of 2-52 acres out of a

block of 7 acres odd in the village of Vinayakatheru in Tanjore District belonging to the respondent before us, for the purpose of providing house-

sites for Harijans. The notification u/s 4 relating to the acquisition was published on 31st July, 1951. The Land Acquisition Officer awarded

compensation at the rate of Rs. 750 per acre mainly on the basis of a sale deed, Exhibit B-1, dated 23rd June, 1948, under which land was

conveyed at Rs. 600 per acre. The claimant, who was dissatisfied with the compensation awarded to him asked for a reference to Court, which

was made: The learned Subordinate Judge of Kumbakonam who dealt with the reference enhanced the compensation to Rs. 2,000 per acre. The

claimant also prayed for the award of a sum of Rs. 1,500, being the cost of putting up a fence to mark off the rest of his land from the acquired

portion, to prevent the cattle of the Harijans who were to be housed in the acquired portion from straying into his land and spoiling and damaging

his crops. He also made a claim for damages on account of severance. But that was not pressed either in the Court below or before us. The

learned Judge awarded a sum of Rs. 500 for the cost of the fence. The Government represented by a Special Tahsildar, Harijan Welfare,

Kumbakonam, have filed the above appeal. They object to the enhancement of the rate of compensation for the land and also to the award of Rs.

500 towards the cost of the fence. The claimant has preferred a memorandum of cross-objections claiming more than what had been granted by

the learned Subordinate Judge.

2. The acquired land is assessed dry land. There is evidence that on an extent of 50 cents out of this area there was sugarcane cultivation. On the

rest of the land there was punja cultivation partly on pannai and partly by tenants of the claimant under leases. The claimant adduced before the

learned Subordinate Judge evidence of the income derived from the acquired land. He filed his accounts which related not only to the acquired

land but also to the entire block of 7 acres odd. According to him, for fasli 1360 he derived a net income of Rs. 1,030-9-9 for the entire cultivated

land and he claimed that the compensation must be based on the proportionate income in respect of the acquired area at 33-1/3 years' purchase

or in any event, at 20 years' purchase. The learned Subordinate Judge considered that the accounts produced by the claimant were not

dependable for two reasons : (1) that they were not produced before the Land Acquisition Officer and (2) the accounts did not include the cost of

manuring and expenses of seed sugarcane.

3. The learned Judge, therefore, proceeded to consider the sale deeds relied on by both the Government and the claimant, of lands in the vicinity.

In his opinion two sale deeds were useful in arriving at a proper estimate of the value of the acquired land, namely, Exhibits A-11 and B-6. Having

regard to the situation of the acquired land compared with the lands covered by Exhibits A-11 and B-6, the learned Judge came to the conclusion

that an award of Rs. 2,000 per acre would meet the ends of justice. As regards the costs of putting up a fence, the learned Judge thought that the

apprehension of the claimant that the Harijans may allow the cattle to stray on the rest of his land was not imaginary or unreal and awarded Rs.

500 as the probable cost of the fence.

4. The learned Government Pleader objected both to the increase in the rate of compensation for the land and also to the award of any amount for

putting up a " fence. As regards the value of the land he relied on Exhibit B-1 which was the basis of the Land Acquisition Officer's award. We do

not think that Exhibit B-1 furnishes a proper criterion. It was uncultivated waste on a slope and stood on a mound 15 to 20 feet high and was

apparently distinctly inferior to the acquired land. The Special Tahsildar who was the Land Acquisition Collector admitted in evidence that there

was no crop on the property covered by Exhibit B-1 and it was lying fallow. On the other hand we have indubitable evidence that the acquired

land had been cultivated partly with sugarcane and partly with punja crops. We therefore reject Exhibit B-1 from consideration. Mr. Rajah Ayyar

on the other hand relied upon several sale deeds which undoubtedly give a very high rate going up to about Rs. 15,000 per acre. Many of these

sale deeds related to pucca house-sites near the main road to Madras and in an inhabited locality. Exhibits A-6 to A-8 must be left out of account

on this ground. Likewise Exhibits A-9 and A-5 (vide also the evidence of P.W. 2, 3 and 5). Exhibits A-10 relates to a sale of four cents which

appears to have been purchased for a special purpose, namely, to put up business premises to enable the owner to carry on the business of sale of

pots and other mud articles. P.W. 6 who is the purchaser admits that there are houses in the neighbourhood and that the property is near the main

road and that she has put up a tiled house after her purchase to carry on her business. So Exhibit A-10 is also not of much use. That leaves us with

Exhibit A-11 one of the sale-deeds relied on by the learned Judge. We may mention that he also relied on Exhibit B-6; but that was an exchange

and we do not think it safe to take that deed as a proper guide to the value of the lands acquired.

5. The land under Exhibit A-n was purchased by P.W. 4 for Rs. 900. The extent is 36 cents. But from the evidence of P.W. 4 it appears that there

were 400 plantain trees and a thatched shed on the property. According to the witness, each plantain tree would be worth one rupee and the

thatched shed may be worth Rs. 150. So deducting Rs. 500, we get Rs. 350 as representing the value of the land. That works out at Rs. 1,000

per acre. The learned Government Pleader contended that this land was a residential house site and was in the middle of a built-up locality and so

it should not be the basis of award of compensation in respect of the acquired area. There is no evidence that the land sold under Exhibit A-11

was pucca house site. The fact that it contained 400 plantain trees shows that it was not treated as a house site. The Tahsildar who gave evidence

as R.W. 1 did not have anything to say about this sale. We think that the learned Judge was right in relying upon this sale-deed. But we think that

his estimate of Rs. 2,000 per acre is not justified. Allowing for the admitted increase in the price of land since 1948, we think that a rate of Rs.

1,500 per acre would be a fair and reasonable rate.

6. There is, however, evidence that fifty cents of the acquired land were being cultivated with sugarcane. Mr. Rajah Ayyar has given us information

that an area of about 1 acre 14 cents altogether was being cultivated with sugarcane in the block of 7 acres odd. From the accounts it is not

impossible to arrive at a rough estimate of the net profits which could be made by the claimant from a cultivation of fifty cents with sugarcane. We

see no reason to entirely reject the accounts filed by the claimant. He is a respectable person, a retired District Board Engineer, and he has got a

Kariasthan manager, P.W. 7. The reasons given by the learned Subordinate Judge for rejecting the accounts do not appeal to us. The fact that the

accounts were not produced before the Land Acquisition Officer does not mean that they are not reliable. It is not always that the entire evidence

is adduced before the Land Acquisition Officer by the claimants. The other reason that the cost of manuring and the expenses of seed sugarcane

were not entered is not correct so far as fasli 1360 is concerned. The expenses are shown in the accounts. No doubt in a subsequent fasli 1361

there is no entry for expenses of seed sugarcane; but that is explained as due to the fact that the seed sugarcane came from the claimant's land, and

there was no purchase from outside. Hence no entry is to be found in the accounts. We accept the accounts as reliable. No doubt the accounts did

not show the net profits from the particular area of fifty cents out of the land acquired. But we think that roughly a sum of Rs. 250 at least would be

the profit per acre. Capitalising at twenty years purchase we arrive at a figure of Rs. 5,000 per acre. The claimant is entitled to compensation at

this rate for the fifty cents and at the rate of Rs. 1,500 for the remaining extent. Of course the claimant will be entitled to the statutory allowance of

15 per cent, and interest on the excess amount from the date of possession.

7. So far as the amounts awarded for cost of fence is concerned the learned Government Pleader does not object to the quantum but objects to

the principle. He contended that there is no provision of law under which the claimant could be awarded this sum. In our opinion the sum could be

properly awarded under the fourth clause of Section 23(1) of the Land Acquisition Act, namely, the damage if any, sustained by the person

interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property,

moveable, or immovable, in any other manner, or his earning. In this case there is the evidence that by reason of the acquisition of a part of the

claimant's property for the building of houses for the Harijans, nearly thirty in number, there is every likelihood of cattle and other animals kept by

the Harijans straying on to the adjacent land of the claimant covered with crops and causing damage to them. The claimant himself has given

evidence of this and the necessity for a fence. The Land Acquisition Officer admitted that each Harijan may have a bull, a buffalo, a cow and a calf

and 7 or 8 sheep, though some have may none, and it was proposed to accommodate thirty Harijan families in the acquired land. So over two

hundred animals, to say the least, would be capable of causing damage to the crops on the adjacent lands belonging to the claimant which have not

been acquired. The Tahsildar expected the Harijans to take care of the cattle and prevent them from grazing on the land. We do not share with the

Tahsildar his optimism. It is more likely that the Harijans will not be able to key the cattle to their own land. We therefore hold that the award of

Rs. 500 for the cost of the fence was proper and justified.

8. In the result the appeal by the Government is dismissed and the memorandum of cross-objection allowed to the extent indicated; but having

regard to our above findings there will be no order as to costs either in the appeal or in the memorandum of cross-objections.