

(1978) 02 MAD CK 0042
In the Madras High Court

The Special Tahsildar (H.W.L.A.)

APPELLANT

Vs

Sri Pethavanallur Mayuranathasami Temple

RESPONDENT

Date of Decision : 22-02-1978

Acts Referred:

Land Acquisition Act, 1894 — Section 18(1), 23, 25(1), 25(2), 4(1)

Citation : (1979) 1 MLJ 17

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—This appeal by the State is against the judgment of the Principal Subordinate Judge, Ramanathapuram at Madurai. The reason why this appeal was in the shelf of the High Court for nearly one decade cannot be explained. It is however, resurrected and brought before us, but with scanty record and with no sufficient typed papers for a Division Bench; yet with the assistance of counsel, we could gather the facts for the disposal of this appeal.

2. An extent of 2.18 acres of agricultural land in S. No. 289/1-B in Rajapalayam village was acquired along with some more extent of land for the public purpose of providing house sites for Katta Naickers. The notification u/s 4(1) of the Land Acquisition Act was made on 11th November, 1964. An year later, a portion of the above notified land was withdrawn from acquisition by the Government issuing a notification u/s 48(1) of the Land Acquisition Act. This withdrawal became necessary as the acquiring authorities were of the view that a portion of the land which was originally notified for acquisition was unsuitable for house-sites because there was an odai running in the middle of the land. Such a notification for withdrawal of the excess land not required for the public purpose was made on 17th November, 1965. In so far as the lie of the land which is acquired and which is the subject-matter of acquisition is concerned it is common ground that it is surrounded by the roads formed by the Rajapalayam Municipality. The Land Acquisition Officer enquired into the value of the land and whilst doing so found that the land sought to be acquired is government dry land

and was registered as such In the records of the Rajapalayam village. The description as given by the Land Acquisition Officer thus establishes that the land was dry land and was classified as agricultural land. He evaluated the land with the assistance of the sales-statistics gathered by him. In the sales-statistics referred to by him, he took into consideration the sales of small extents of land in the vicinity of the acquired land. In particular he relied upon such sales which took place in S. No. 161/3. In sales particulars given by the Land Acquisition Officer, we find three such particulars on record. The first sale in S. No. 161/3 of the year 1963 gave a price of Rs. 10,888 per acre. The second sale in the same survey number but of the month of July, 1963, gave a price of Rs. 8,000 per acre. The third sale which was in the month of August, 1963, gave a price of Rs. 6,667 per acre. The Land Acquisition Officer adopted the last price fetched for a portion of the land sold in S. No. 161/3 and he was of the view that that would be the rate at which the fair price of the acquired land should be evaluated. He found that the said data lands are only about one furlong from the land to be acquired and in respect of tharam, soil and fertility; both S. No. 161/3 and S. N. 289/1-B are comparable land. When he took up the enquiry, the owner who is Sri Pethavanalloor Mayuranathaswami Devasthanam, Rajapalayam, did not prefer a claim about the quantum of compensation in spite of notice having been served on the Devasthanam to make such a claim. Finally, at the time of the award enquiry, the Executive Officer of the Devasthanam, not only failed to make a claim but did not give the rate of compensation at least, which he thought would be the scale for assessing the just compensation for the acquired land. In this state of affairs, the award was passed by the Land Acquisition Officer on 21st September, 1966, but without any claim as such for compensation having been made by the Devasthanam before the said officer. But the Devasthanam, however, sought for a reference under Section 18(1) of the Land Acquisition Act for enhancement of the compensation awarded. On such an application, the subject-matter was referred to the civil Court and the learned Subordinate Judge was of the view that the acquired land has to be valued as on 17th November, 1965, and not as on 11th November, 1964, since, according to him, a revised notification u/s 4(1) has been published or re-issued on 17th November, 1965. We have already referred to the fact that the Government decided to take out of consideration and compulsory acquisition one portion of the originally notified land for the public purpose aforesaid and such a notification u/s 48(1) was made on 17th November, 1965. The learned Subordinate Judge was of the view that that ought to be the date on which the property has to be valued. He relied upon Exhibit B-2 which the Land Acquisition Officer himself took into consideration fixing the value of the acquired land. Whilst the Land Acquisition Officer fixed the value at Rs. 6,667 per acre, the Court below raised the compensation to Rs. 15,000 per acre on two grounds. Firstly, it thought that the date of notification on which the property had to be evaluated should be 17th November, 1965, and secondly, the same being two years after the date on which the (sic) took place under Exhibit B-2 and also giving such due weightage to the lapse of time between the date of sale under Exhibit B-2 and the date on which, according to

the lower Court, the property has to be evaluated, it granted a compensation at the rate of Rs. 15,000 per acre. It is as against this the; State has preferred the present appeal.

3. Srimathi Vimala, learned Counsel for the Government raised three contentions before us. Firstly, she would say that in the absence of any statement by the claimant either in the shape of a quantified claim or at least in the nature of a claim setting forth the rate at which the owner, sought for compensation and; no application in writing having been made u/s 25(2) of the Land Acquisition Act to show that there was sufficient reason for not making such a claim before the Land Acquisition Officer the grant of compensation in excess of that awarded by the Land Acquisition Officer is without jurisdiction. Secondly, the contention was that in the absence of anything under the provisions of the Land. Acquisition Act, which prompted the civil Court to call upon the claimant before it to make such a claim for increased compensation and show justifiable reasons for not having made such a claim before the Land Acquisition Officer, the Court below suo motu ought not to have increased the compensation. Thirdly, it is said that as the above two contentions are matters inextricably connected with the jurisdiction of a civil Court it could be raised in this Court, even though such a plea either expressly or by necessary implication was not taken before the learned Subordinate Judge of Ramanathapuram. Lastly, the contention more or less bordering partly on facts and partly on law is that the lower Court was wrong in having evaluated the property as on 17th November, 1965, on the assumption that a notification issued u/s 48(1) of the Land Acquisition Act tantamounts to a fresh notification u/s 4(1) of the Act.

4. On the other hand, Mr. Peter Francis would say that as the lower Court granted an excess compensation it should be reasonably presumed that there was such a request for an increased grant and the formality of a written application for showing such need for an increased compensation before the Land Acquisition Officer ought to be condoned, or in any event, ought to be presumed on the facts and circumstances of the case. Government counsel would, however, say that there is no duty cast on civil Courts to help a litigant who by his indolence did not conform to law.

5. It is no doubt true that u/s 25(1) of the Land Acquisition Act, the civil Court has no jurisdiction to grant an amount in excess of the amount granted by the Land Acquisition Officer when a claimant has refused to make a claim or has omitted to give sufficient reasons (to be allowed by the Judge) to make such a claim. On a fair appraisal of the record which, as we prefaced earlier, is not full and complete, because of the lapse of time, we are unable to say that the claimant has refused to make a claim in this case. Even the Land Acquisition Officer would record that at the time of the award enquiry, the Executive Officer stated that he would give the details about the compensation after the meeting of the Trust Board. However, no such claim was made before the Land Acquisition Officer before the passing of the award.

6. The question is whether in the circumstances there has been an omission with sufficient cause to make such a claim. It is pertinent to observe that in the lower Court no objection was taken by the Government regarding the enquiry into the grant of excess compensation, in the sense, in excess of the compensation granted by the Land Acquisition Officer. This passive attitude by the State in the lower Court at a time when it ought to have objected to an enquiry into the grant of compensation in excess of the amount granted by the Land Acquisition Officer is a pointer to the fact that the Court might have been apprised orally of a request for such enhanced compensation and that the Court might have been satisfied that there was sufficient cause or reason for condoning the omission. We are not called upon in this case to answer the contention raised by Smt. Vimala that in all such cases where an increased compensation is asked for, a written application should be made by the claimant and that would be the only process which would qualify a civil Court to entertain an application for the grant of increased compensation. Whilst there is some force in this contention, we are not inclined to go into it for the reason that neither at the stage when the State Government ought to have acted and pleaded, nor at the time when it came to this Court in 1969 with a memorandum of grounds of appeal the specific objection was taken by the Government that the civil Court had no jurisdiction to grant a compensation higher than that given by the Land Acquisition Officer, except that there was no written application for condonation of the indolence on the part of the claimant.

7. In fact, Padmanabhan, J., had occasion to consider a similar circumstance while dealing with *K. Ramaswami Reddiar v. Special Taksildar Harijan Welfare, Tindivanam A.S. No. 31* of dated 9th January, 1978 and he accepts generally the equitable principles touched upon by Vaidialingam J., in *State of Kerala v. Ranga Iyengar Veera Raghavan Iyengar (died) Krishna Iyengar, Heir* (1966) Ker L.R. 98 who said that in the absence of any issue having been framed on this aspect before the civil Court and as that aspect cannot be squarely treated as a pure question of law because so long as jurisdiction is vested in the Court before whom the reference for enhanced compensation is made, to consider the question as to whether even if there had been an omission or refusal to make a claim before the Land Acquisition Officer, whether that refusal or omission was without sufficient cause and a party is given, so to say, an opportunity to satisfy the Court that such omission or refusal was for sufficient reason. We are inclined to agree with this and hold that the very fact that the Government did not object to an enquiry into the grant of an increased compensation before the civil Court is sufficient indicia that the civil Court was by necessary implication satisfied that the omission to make a claim was with sufficient reasons. We have expressed already that for the purpose of this case, it is not necessary to speak any more on this legal contention raised by Smt. Vimala.

We may also add, however, that as this objection has not been taken in the memorandum of grounds of appeal, we are not inclined to lay greater accent on this objection at this stage but feel satisfied by expressing our view that the

Government never intended to oppose the grant of excess compensation if really such a grant was justified on the facts and circumstances of the case.

8. The next point urged, of course, has seal force and has to be sustained. Section 48(1) of the Land Acquisition Act is an independent provision which acts on its own without reference to Section 23 of the Land Acquisition Act or any other provision thereunder. u/s 48(1) the Parliament makes it clear that completion of acquisition as notified is not compulsory and it is left to the discretion of the Government to withdraw from the acquisition of any land of which possession has not been taken. The expression of "any land" obviously means any portion of the land. If therefore the Government has the liberty to withdraw from the acquisition any portion of the land which was the subject-matter of the notification made originally u/s 4(1) then it is not open to the claimant to say that the notification issued u/s 48(1) tantamounts to or is equivalent to a fresh notification issued u/s 4(1) of the Land Acquisition Act with reference to the left out portion. It is common ground that the totality of the land which was to be compulsorily acquired for the public purpose of providing house-sites for Katta Naickers in Rajapalayam was undertaken by the Government and according to the process so put into action, two Section Nos. 288/2 measuring about 14 cents and 289/1-B measuring about 3.01 acres, were to be acquired. Later it was discovered that there was an odai running in the middle of S. No. 283/2 and in consequence a portion of S. No. 289/1-B also could not be fruitfully utilised for the public purpose and therefore a notification u/s 48(1) was issued withdrawing from the acquisition S. No. 288/2 and portion of S. No. 289/1-B as both those portions of land were unsuitable for use as house-sites because of the presence of an odai running in the middle of those portions. It was in the above circumstances that the extent of land originally notified was reduced by the subsequent issuance of the notification u/s 48(1). As the power exercisable by the State u/s 48(1) is independent and not referable to the original power under which it could act, it issued a notification u/s 48(1) and it cannot be said that an order u/s 48(1) withdrawing a portion of land originally notified as being unfit for a public purpose u/s 4(1) should be understood and interpreted as a fresh notification u/s 4(1) and the property re-evaluated as on the date of the alleged fresh notification. This assumption on the part of the learned Subordinate Judge that the order made on 17th November, 1965 withdrawing a portion of the land from acquisition would amount to reissuance of a notification u/s 4(1) is incorrect and has to be set aside. We accept the argument of Smt. Vimala that the withdrawal of a part of the land under orders of the Government u/s 48(1) would not impinge upon the date on which the lands originally notified u/s 4(1) of the Act have to be valued u/s 23 of the Act.

9. If therefore the land has to be valued as on 11th November, 1964, only, then, what would be the reasonable compensation payable, is the question. We are unable to agree with the Court below that a sum of Rs. 15,000 per acre ought to be granted as compensation for the land in question. The lower Court rightly rejected Exhibits A-2 to A-7 which were filed by the claimant for the first time

before the civil Court. Exhibits A-2 to A-5 relate to sales of land abutting the trunk road and are to the west of the railway line besides being far away from the acquired land. Exhibits A-7 and A-8 lands are in the midst of a built-up area and therefore those sales were not rightly taken by the Court below for the purpose of comparing. We are therefore again left with Exhibit B-2. We have already referred to the fact that the Land Acquisition Officer noted the sales in S. No. 161/3 in the year 1963. One of such sales related to the hypothesis provided for under Exhibit B-2. There were three such sales in the year 1963. The price paid thereunder ranged between Rs. 6,667 per acre, as in Exhibit B-2 to Rs. 8,000 and Rs. 10,888. The average price fetched by these sales amounts to Rs. 8,500. The grant of Rs. 15,000 per acre cannot certainly be justified. Having regard to the lapse of time as between August, 1963, when the sale under Exhibit B-2 took place and November, 1964 which is the month of the notification which ought to be taken for the purpose of evaluation and in the light of the finding of the Court below that the prices of land in the locality have been showing a definite upward trend, we fix the value of the acquired land at Rs. 8,500 per acre. We have also borne in mind that the land acquired is of an extent of 2.16 acres while the-compared lands are much smaller in extent at the time when they were sold. Taking all such factors into consideration, the price for the compulsorily acquired land is reduced to Rs. 8,500 per acre and compensation shall be granted on that basis together with the usual solatium and the interest at 4 per cent, on the enhanced compensation from the date of taking possession till date of payment. The appeal is therefore allowed in part. No costs. As regards the rest of the claim, the appeal is dismissed. No costs.