

(1998) 11 MAD CK 0051

In the Madras High Court

Case No : Appeal No's. 882 of 1989, 354 of 1991 and 637 of 1989

The Special Tahsildar (L A) BHEL Unit, Ranipet, N.A District	APPELLANT
Vs	
Govindan and others	RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 2, 51A
Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (1998) 3 CTC 735

Hon'ble Judges : P. Thangavel, J

Bench : Single Bench

Advocate : Mr. V. Ravi, Additional Government Pleader, for the Appellant; Mr. R. Margabandu, Mr. Jeremiah, for the Respondent

Final Decision : Allowed

Judgement

1. These appeals are against the Common Order dated 14.7.1987 passed in L.A.O.P. Nos. 18/83, 19/83 and 211 of 1983 on the file of the learned Subordinate Judge, Vellore, North Arcot District.

2. The Government of Tamil Nadu in their Order No. 1218 Industries Department dated 26.8.1990 have ordered for acquisition of 1400 acres of lands in Seekarajapuram, Lalpet, Vedekal and Narasingapuram Villages of Wallajah Taluk for establishing the Boiler Auxiliaries Project by BHEL.

An extent of 20.34 acres of dry and wet lands in Seekarajapuram village in Wallajah Taluk, North Arcot District was acquired as one block for the above said project. The Government of Tamil Nadu have approved the draft Notification u/s 4(1) of the Land Acquisition Act 1894 therein after referred to as "the Act"), in G.O.Ms.No.111 (Industries Department) dated 31.1.1981 and published the said Notification in Tamil Nadu

Government Gazette dated 7.2.1981 for acquisition of the lands for the said project.

3. The name of the claimants. Survey Nos., the extent of lands acquired from the claimants. Land Acquisition Proceedings Nos. and corresponding

Appeal Nos. are given in detail in the proforma hereunder:-

Sl. No. A.S. No. L.A.O.P. No. Claimants Name S.No. Extent of land Date of taking possession

1. 882/89 18/83 Govindan 285/1 0.22 22.5.81

285/3 0.22

285/4 0.04

285/6 0.20

286/1 0.04

286/3 0.04

2. 354/91 19/83 Thandavaraya Mudali 277/3 0.28 19.8.81

3. 637/89 21 1/83 Kulandivel 27/1 0.14 18.5.81

4. The Special Tahsildar, (Land Acquisition) BHEL, UNIT NO.I, Ranipet, North Arcot District (hereinafter referred to as Referring Office) after

holding an enquiry fixed the market value of the land at Rs. 56.56 per Cent and passed an Award in Award No.4/1982 dated 25.3.1982.

Aggrieved at the market value fixed by the Referring Officer, the claimants requested him to refer the matters u/s 18 of the Act to the competent

Court to fix proper and correct market value of the lands acquired from them taking into consideration the claims of the claimants.

5. The learned Subordinate Judge, Vellore. North Arcot District (hereinafter referred to as the Reference Court) has taken the Reference on file

and after considering the material evidence placed before the court fixed the market value of the land at Rs.100 per Cent apart from granting a

solatium of 30%. The Reference Court has also granted interest on compensation at 9% p.a. for a period of one year from the date of taking

possession of the acquired lands and thereafter at 15% p.a till the date of deposit of excess amount in court. Aggrieved at the Common Order

passed by the Reference Court, the Referring Officer, as appellant, has come forward with the appeals referred to above in the proforma.

6. The point for determination is whether there are grounds to interfere with the

common order passed by the Reference Court?

7. Point: Admittedly, the Government of Tamil Nadu acquired the lands of the claimants in Seekarajapuram Village in Wallajah Taluk, North Arcot

District which are described in the Proforma referred to above by issue of a Notification u/s 4(1) of the Act in Tamil Nadu Government Gazette

dated 7.2.1981 for establishing the Boiler Auxiliaries Project by BHEL. The Referring Officer has fixed the market value of the land acquired from

the claimants at Rs.56.56 per cent which is low in the estimation of the claimants referred to above. It is under the said circumstances, the matters

in dispute were referred u/s 18 of the Act for consideration by the Reference Court.

8. Thiru Govindan, claimant in L.A.O.P. No. 18/83 was examined on behalf of himself and on behalf of other claimants mentioned in the Common

Order as CW1 while Thiru Shanmugam, Special Tahsildar, (Land Acquisition) BHEL was examined as RW1 before the Reference Court. CW1

has produced Ex.A1 dated 26.9.1979, copy of the sale deed executed for Rs.6,300 with regard to 7 cents in S.No.103/IC; 6 cents in

S.No.103/2C and 8 cents in S.No. 104/2C. 104/2C in Seekarajapuram Village.

It would disclose that a cent of land was sold at Rs.300 on 26.9.1979, CW1 would admit that he does not know anything about the contents of

Ex.A1. The claimants have not chosen to examine the vendor or the vendee of Ex.A1 dated 26.9.1979.

9. RW1 has produced Exs.B14 to substantiate the market value fixed by him for the lands acquired from the claimants as correct. Ex.B1 is the

Sales Statistics Register for Seekarajapuram Village for the period from 8.2.1978 to 29.1.1981. The Referring Officer has not chosen to let in any

evidence with regard to the documents which are shown to have been registered for the prices mentioned therein. Therefore, the contents of Ex.B1

also remained unproved for want of witnesses being examined. Ex.B2 dated 29.1.1980 is the copy of the sale deed executed for Rs.1700/- with

regard to 30 cents in S.No. 285/2 in Seekarajapuram Village. It would disclose that a cent of land was sold at Rs.57/- on 29.1.1980. The

Referring Officer has not chosen to examine the vendor or vendee to prove the contents of Ex.B2.

10. The Apex Court in Meharban and others etc. etc. Vs. State of U.P. and others,

was pleased to hold as follows:-

It is settled legal position that the Court, while determining the compensation must sit in the armchair of a willing and prudent vendor and put a

question whether the market value sought to be determined would be capable of fetching that hypothetical price and should determine a just and

adequate compensation for the land acquired. Since none connected with the sale deeds was examined, the sale deeds was examined, the sale

deeds are inadmissible in evidence though certified copies marked u/s 51-A are available. So, all the sale deeds stand excluded. It is the duty of

the Court to take all the relevant factors into account before determination of the compensation.

11. The same principle has been laid down by the Apex Court in State of Jammu Kashmir v. Mohamed Mateen Vani and others, 1998 (5) AD

S.C. 367. In view of the fact that none connected with Exs.A1, B1 and B2 was examined, the documents referred to above should be excluded. If

the above said documentary evidence are excluded, there is no other documentary evidence to show the probable market value of lands sold in

that locality at the time of acquiring the lands of the claimants by issue of Section 4(1) Notification dated 7.2.1981. The other document Exs. B4 to

B14 produced by the Referring Officer may not be of any use to fix the market value of the land at appropriate time.

12. The learned counsel for the claimants contended that even if Exs.A 1 and B2 are excluded, Ex. B1 Sales Statistics Register of Seekarajapuram

Village can be taken into consideration to arrive at the market value, since the above said document was relied on by the Referring Officer to fix

the appropriate value of the lands acquired from the claimants. Such contention of the learned counsel for the claimants cannot be accepted in view

of the fact that no evidence with regard to Ex.B1 was let in by the Referring Officer or in any event even on the side of the claimants.

13. The learned counsel for the claimants contended again, that the lands are having potential value and that may be taken into consideration to

arrive at the market value of the lands acquired from the claimants. Of course, the unrebutted evidence of CW1 would disclose that the lands

acquired from the claimants are near Madras-Chittoor Road and also nearer to S.I.P.C.O.T. which was formed even earlier to the acquisition of

the lands of the claimants by the Government. It is also evident from the evidence of CW1 that in view of the said location and position, the lands acquired from the claimants can be converted into house sites and in that event the said lands will get good price. It is evident from the decision cited by the learned counsel for the claimants in *The Land Acquisition Officer/Sub Collector Vs. Kuppaswami Naidu and Others*, that actual condition of land with existing advantage such as locality, potentiality of the land etc. should be taken into account in fixing the market value of the land. The decision referred to above would further disclose that a Division Bench of this High Court in the case cited above has taken the potential value also into account besides the market value of the land sold in the vicinity to fix the market value of the lands acquired from the owners of the lands. The above said case law itself will show that the market value of the land sold in the vicinity should be the main criteria to arrive at the market value of the lands acquired and while so, the potential value of the lands acquired from the owners should be taken into account to fix the market value. In the matters in appeal before this Court, there is no documentary evidence with regard to the sales of lands in the vicinity of the lands acquired from the claimants, if Exs.A1, B1 and B2 are excluded in view of the decision of the Apex Court referred to above.

14. It is yet another contention of the learned counsel appearing for the claimants that the claimants had already stated in their claim statements that lands in the area where the acquired lands are situate are sold at Rs.250 per Cent, that even 8 years before acquisition, private persons had sold their lands at Rs.400 per Cent for starting S.I.P.C.O.T. Industries and hence the claimants are entitled to Rs.500 per Cent. It is also contended that in the evidence of CW1 the claimants had made a claim at Rs. 2000 per Cent for the lands acquired from them and therefore, the above said facts have to be taken into consideration to arrive at the market value of the lands acquired from the claimants. Of course, such contentions have been taken by the claimants for laying claims for the lands acquired from them by the Government in the claim statements as well as in the evidence of CW1. But such statements and evidence are not supported by any documentary evidence to grant the relief claimed in the claim statement as well as in the evidence. In view of the said position, such contention of the learned counsel for the claimants cannot also be sustained.

15. It is yet another contention of the learned counsel for the claimants that the Referring Officer as appellant had not set forth in the Memorandum

of Appeal any ground questioning the validity of Ex.AI to rely and to fix the market value of the lands relying upon the decision of the Apex Court

and therefore, the appellant cannot act without the leave of this Court questioning the validity of Ex.AI for the purpose of fixing the market value

relying on Ex.AI in this appeal. Of course, the Referring Officer as appellant has not made any mention in the grounds of appeal with regard to

relying of Ex.AI by the Reference Court. But the Appellate Court in deciding the appeal need not confine to the grounds of objection set forth in

the Memorandum of Appeal or on grounds for which leave has been granted by this Court to the Referring Officer as appellant in view of Order

41 Rule 2 C.P.C. Apart from that, the decision of the Apex Court referred to above would clearly go to show that the document like Ex.AI has to

be excluded for want of evidence by vendor or vendee of the said document. In view of the said decision, this Court is not able to agree with the

contention raised by the learned counsel for the claimants in this respect also.

16. It is yet another contention of the learned counsel for the claimants relying on the decision of the Apex Court in Meharban and others etc. etc.

Vs. State of U.P. and others, referred to above wherein the Apex Court has held that instead of remitting the matter to the Reference Court in

view of paucity of evidence, this court can decide the correctness of the market value fixed by the Reference Court relying on the Award passed

by the said Court in respect of similar lands which has become final, taking into consideration of the prolonge agony of the claimants in these

matters. Of course, the Apex Court, which is a court of final appeal, has taken a decision that the market value of the land of the claimants can be

fixed relying on the market value fixed in respect of similar lands which has become final. It is relevant to point out that the lands in question in the

case cited above were acquired by issue of Notification u/s 4(1) of the Act on 14.8.1987 and some other lands forming as a block were also

acquired by issue of Notification u/s 4(1) of the Act on 5.4.1980. The compensation was determined at Rs.70 per square yard by the Reference

Court and the same has become final. The Apex Court has held that there would have been reasonable rise in price in view of the gap between the

two Notification referred to above and therefore, appropriate market value can be fixed by giving some margin for the gap in between the

Notifications issued u/s 4(1) of the Act to the market value fixed for the lands acquired under the earlier Notification and which has become final. It

is under the said circumstances, the Apex Court, as court of final appeal, fixed the market value of the lands acquired by issue of subsequent

notification u/s 4(1) of the Act basing the market value fixed for the lands acquired in one block in the earlier Notification. It is at the time of fixing

such market value, the mental agony undergone by the claimants, was taken into consideration by the Apex Court as court of final appeal. But it is

not the position in this case. There is no final market value fixed by any court for the lands acquired in one block under earlier Notification u/s 4(1)

of the Act or for the lands acquired under the Notification u/s 4(1) of the Act, dated 7.2.1981. Instance of acquisition of other lands in this village

under any other Notification u/s 4(1) of the Act by the Government of Tamil Nadu and fixing of the market value of such land finally in any

proceedings before this court or before the Reference Court was brought to the notice of this court by the learned counsel for claimants. In view of

the said position, the arguments advanced by the learned counsel for the claimants relying on the decision of the Apex Court referred to above

cannot be sustained since the facts and circumstances of that case is entirely different to the facts and circumstances of this case.

17. The decision reported in Union of India (UOI) and Others Vs. Sunil Chandra Saha and Another, by the Apex Court would read as follows:-

Both the claimants and the land Acquisition Officer merely marked the sale deeds without examining either the vendor or the vendee to bring on

record the circumstances in which the sale deeds came to be executed, the distance of the lands to the acquired lands, the nature of the respective

lands and whether they would offer comparable sales to determine just and fair market value to the acquired lands. In the absence of such relevant

and material evidence it would be difficult to determine compensation in respect of the acquired lands. The appeals are allowed accordingly. The

Award and decree of the reference Court as confirmed by High Court stand set aside. The cases are remitted to the reference court for

disposal.....

.....parties are at liberty to adduce such legal evidence as is necessary to determine true and correct market value of the land prevailing as on the date of notification.

18. In view of the decision referred to above this court has no other alternative except to remit the matters back to the Reference Court to dispose of the matters according to law, after opportunity being given to both sides to let in oral and documentary evidence with regard to the market value of the acquired lands as on the date of issue of Section 4(1) Notification. Accordingly the Common Order passed by the Reference Court except in L.A.O.P.No.18/83 has to be set aside and accordingly set aside. The matters except L.A.O.P.No. 18/83 remitted back to the Reference Court to decide true and correct value of the lands acquired from the claimants as on the date of sec. 4(1) Notification. The point is answered accordingly.

19. The learned counsel for the claimants in L.A.O.P.No. 18/83 relating to appeal in A.S.No.882/89 represented that the sole claimant in the above said appeal died before two years. Admittedly the legal representatives of the sole claimant was not impleaded in the above said appeal by the Referring Officer either within the stipulated time or upto this date. In view of the said decision, the appeal in A.S.No,882/89 stands abated.

20. In fine, the appeals in A.S.Nos.354/91 and 637/89 are allowed, the Common Order of the Reference Court except in L.A.O.P.NO. 18/83 is set aside and the matters are remitted back to the Reference Court for fresh disposal in the light of the observations made supra.

Both the parties are permitted to adduce oral and documentary evidence before the Reference Court in connection with fixing up of market value of the lands acquired from them as on the date of issue of Notification u/s 4(1) of the Act. The Reference Court is hereby directed to dispose of the matters within a period of 3 months from the date of receipt of this Judgment.