(2010) 08 MAD CK 0046

In the Madras High Court

Case No : A.S. No. 658 of 2002

The Special Tahsildar (LA), Adi-Dravidar Welfare APPELLANT

Vs

Adi Lakshmiammal RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 2, 24, 4(1), 5A
Legal Practitioners (Fees) Rules, 1973 — Rule 12, 14, 19, 3(2)

Citation : (2010) 08 MAD CK 0046

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Ravi, Special Government Pleader A.S, for the Appellant; T.S. Kannaiyan, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Appellant/Referring Officer has preferred this Appeal as against the Award dated 13.03.2001 in L.A.O.P. No. 12

of 1999 passed by the Learned Subordinate Judge, Cheyyar, Tiruvannamalai District.

2. The Government has acquired 2.06.0 Hectares of land in Survey No. 34/3 (New Sub Division No. 34/3B) measuring 0.01.5 including the

extent of 1.85.5 Hectare of land and well in Survey Nos. 47/7, 44/10A, 44/11, 44/13, 44/15, 49/9, 44/10B, 44/12, 44/14, 44/18, 44/19

Munjurpattu Village belonging to the Respondent/Claimant for the purpose of providing free house sites patta to the people belonging to Adi

Dravidar Community.

3. After fulfilling the necessary formalities, the Land Acquisition Officer published the Notification u/s 4(1) of the Land Acquisition Act, 1894

(herein referred to Act) in the Government Gazette on 16.11.1994. Section 5A Notice was issued for enquiry on 19.12.1994. In the Village,

notice was published on 19.11.1994. No objection was received from any one. The 5A Enquiry was conducted on 4.1.1995. No objection was

received for acquiring the land. Section 6 Declaration was approved and published in the Tamil Nadu Gazette No. 230 Part II Section 2 Annexure

Page 17.2.1995, on 18.2.1995. Paper publication was effected in Tamil Dailies Makkal Kural, Kumari Murasu on 22.2.1995 respectively. In the

village advertisement was made on 22.2.1995.

4. The Land Acquisition Officer, by his Award dated 16.3.1995 in Award No. 6/94-95 for acquiring the total extent of 2.06.0 Hectares of land in

Survey No. 44/B etc. (including the Respondent/Claimant''s lands in Munjurpattu Village), had fixed the market value of the land per Hectare as

Rs. 25,000/- and on that basis, awarded a sum Rs. 1,14,510/- as total compensation including the solatium and additional market value in respect

of the acquired lands. As regards the extent of 1.85.5 Hectares of land belonging to the Respondent/Claimant in Survey Nos. 47/7, 44/10A,

44/11, 44/13, 44/15, 49/9, 44/10B, 44/12, 44/14, 44/18, 44/19, a compensation of Rs. 1,07,642/- was awarded.

5. The Respondent/Claimant was dissatisfied with the value of compensation determined by the Land Acquisition Officer and because of her

objection, the Land Acquisition Officer had referred the matter as per Section 18 of the Land Acquisition Act to the Tribunal viz., the Subordinate

Judge, Cheyyar, Tiruvannamalai District.

6. Before the Tribunal, on behalf of the Respondent/Claimant, C.W.1 and C.W.2 (P.W.1 and P.W.2) have been examined and Ex.A.1 was

marked. On the side of the Appellant/Referring Officer, R.W.1 has been examined and Exs.B.1 to B.4 (R.1 to R.4) have been marked.

7. The Tribunal/Subordinate Judge, Cheyyar, on an appreciation of oral and documentary evidence available on record and upon perusing the

same, has passed an Award in L.A.O.P. No. 12 of 1999 on 13.03.2001 determining the market value per cent at Rs. 750/- and accordingly, for

the acquired land of the Respondent/Claimant in Survey Nos. 47/7, 44/9, 44/10A, 44/10B, 44/11, 44/12, 44/13, 44/14, 44/15, 44/18, 44/19

measuring an extent of 0.42.5, 0.17.0, 0.09.0, 0.09.5, 0.18.0, 0.18.0 (well one), 0.19.0, 0.17.0, 0.18.5, 0.08.0, 0.09.0, aggregating in all, 1.85.5

Hectares [Acres 4.63 3/4 cents] awarded a total compensation of Rs. 3,47,812.50 and granted 30% solatium of Rs. 1,04,343/- and for the

period from 16.11.1994 till 16.03.1995 [4 months period] a sum of Rs. 13,913.50 was awarded [being the amount as additional market value

calculated at the rate of 12% per annum] and a sum of Rs. 45,500/- was awarded for the value of the well and after deducting a sum of Rs.

1,07,642/-, a balance amount of Rs. 4,03,927/- as an enhanced compensation together with an interest at 15% (per annum) from the date of filing

of LAOP petition viz., 25.03.1996 till date of payment of entire amount.

8. Dissatisfied with the Award passed by the Claims Tribunal viz., Subordinate Judge, Cheyyar in L.A.O.P. No. 12 of 1999 dated 13.03.2001,

the Appellant/Referring Officer has filed the present Appeal.

9. The point that arises for determination in this Appeal is:

Whether the Award dated 13.3.2001 in L.A.O.P. No. 12 of 1999 passed by the Learned Subordinate Judge, Cheyyar is legally sustainable in the

eye of law?

CONTENTIONS, DISCUSSIONS AND FINDINGS ON POINT:

10. According to the Learned Special Government Pleader for the Appellant/ Referring Officer, the Tribunal viz., Subordinate Judge, Cheyyar has

committed an error in increasing the market value exorbitantly from Rs. 100/- per cent to Rs. 750/- per cent in violation of the procedure laid

down under the Land Acquisition Act and further, the Tribunal has wrongly placed reliance on the sale deeds pertaining to small extent of lands

sold for a fancy price and indeed, the same cannot be relied upon for fixing the market value of a vast extent of acquired lands as per decision of

the Honourable Supreme Court in Saunu Vs. Collector, Land Acquisition, .

11. It is the further contention on the side of the Appellant/Referring Officer that the Tribunal should have taken into consideration the Sale Deed-

Ex.A.1 marked on the side of the Respondent/Claimant which shows that pucca developed house plots have been sold under the said sale deed.

12. Also, it is the contention on the side of the Appellant/Referring Officer that the market value determined by the Land Acquisition Officer as

explained under Exs.B.1 and B.2 [marked as R.1 and R.2] has not been taken into account by the Tribunal while determining the compensation.

13. The Learned Special Government Pleader for the Appellant/Referring Officer urges before this Court that the Learned Subordinate Judge,

while passing the impugned Award, has not provided for the development charges as per decision of the Honourable Supreme Court in The Land

Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others,

because of the simple fact that the purpose of acquisition is for providing house sites to Adi Dravidars. Also, it is the contention on the side of the

Appellant/Referring Officer that the Learned Subordinate Judge, Cheyyar has failed to compare the Location, Tharam etc. on the acquired lands

before increasing the market value.

14. Finally, a plea is projected on the side of the Appellant/Referring Officer that before the Tribunal, the Sale Deed-Ex.A.1 has not been proved

by examining either the vendor or the vendee as per decision of the Honourable Supreme Court in Union of India (UOI) and Others Vs. Sunil

Chandra Saha and Another, at page 311 and this has not been taken note of by the Tribunal.

15. The core contention of the Learned Special Government Pleader for the Appellant/Referring Officer is that these factual and legal aspects of

the matter have not been adverted to by the Tribunal viz., Subordinate Judge, Cheyyar, while determining the award which has resulted in

miscarriage of justice and therefore, prays for allowing the Appeal in the interest of justice.

16. Conversely, the Learned Counsel for the Respondent/Claimant submits that the Tribunal has taken into account all the relevant material factual

aspects of the matter in entirety and has come to a right conclusion in fixing the compensation for the acquired lands at the rate of Rs. 750/- per

cent etc. and the same may not be disturbed by this Court at the stage of First Appeal.

17. The Learned Counsel for the Respondent/Claimant cites the decision of this Court in The Special Tahsildar, Adi Dravidar Welfare Salem v.

Kandasamy and Anr. 2009 (1) CTC 609 at page 611 wherein it is among other things observed that ''... As the potential plot value of the land

acquired could not be assessed in case at hand, the agricultural land value itself is being adopted and in such a case deduction towards

development charges does not arise.''

18. It is not out of place for this Court to point out the evidence of C.W.1 (Respondent/Claimant) and the evidence of C.W.2 and R.W.1 (Adi

Dravida Welfare Special Tahsildar) which assume importance in the present case.

19. The Respondent/Claimant as C.W.1 (mentioned as P.W.1 by the Tribunal), in her evidence, has deposed that the acquired lands measuring an

extent of 4 acres and 65 cents in Munjurpattu Village have been acquired by the Appellant/Referring Officer and her land is situated in between the

Munjurpattu Village and the colony and that the acquired lands are nearby a colony and in the acquired lands, paddy crop for one time and

groundnut crop for two times have been raised and she received an income of Rs. 1 lakh per are from the acquired lands.

20. Further, it is the evidence of C.W.1 (termed as P.W.1 by the Tribunal) that in the acquired land there is a well with the depth of 18 yards (1

yard = 0.75 Metre) and a breadth of 12 yards and in the acquired land, there have been Neem tree, Nunapuram and Punga trees and the well has

been constructed with bricks and the lands have been irrigated through the water taken from the well and for Well alone a compensation of Rs.

1,00,000/- has to be awarded, for the trees in the acquired land, she requires a sum of Rs. 10,000/- and for the acquired lands per cent, she has

prayed for a compensation of Rs. 1,000/- per cent.

21. The Respondent/Claimant, before the Tribunal, has marked Ex.A.1-Sale Deed dated 09.11.1993 executed by one Jayarama Pandaram in

favour of S. Rajendiran in respect of Ayan Punja Survey No. 32/11 out of 0.03.0 ares 0.07 cents in Tiruvannamalai Sambuvaryar District,

Arakkoam Re District, Premmadesam Sub Registrar''s Office, Cheyyar Circle [3052 square feet]. The evidence of C.W.1 (P.W.1) is to the effect

that Jayaraman has sold the punja land in Ex.A.1-Sale Deed dated 09.11.1993 and therefore, she prays for compensation of Rs. 1,000/- per cent

to be fixed in respect of her acquired lands.

22. C.W.2 (P.W.2), in his evidence, has stated that Ex.A.1 is the certified copy of the Sale Deed pertaining to the land sold by him and the

distance between the acquired land and his land is 200 feet and that the acquired land is situated on the Southern side of the Village and that the land sold by him is situated on the Northern side of the Village and the Village is situated at centre of the two lands. It is the evidence of C.W.2

(P.W.2), in his cross examination, that in the Munjurpattu Village there are 250 houses and there are two streets and there are two colony streets

and that he is not related to the Respondent/Claimant.

23. It is the evidence of R.W.1 (Adi Dravida Welfare Special Tahsildar) that Section 4(1) Publication in the Tamil Nadu Gazette has been

published on 16.11.1991 and that the then Special Tahsildar has conducted the Section 5A Enquiry on 04.1.1995 in the presence of the Claimant

in the acquired lands village and in the sale status copy in Serial No. 4 in Survey No. 13/699 Hectare land has been sold for Rs. 10,000/- and that

has been taken as a data sale deed.

24. It is the evidence of R.W.1 in his cross examination that in Survey No. 44/12 there is a well, which has been valued at Rs. 45,000/- and for

determining the value of the well, no documents have been produced and it is not correct to state that for the acquired lands, no proper

compensation has been determined. The evidence of R.W.1 is to the effect that at the time of acquiring the lands in issue in their memorandum they

have mentioned that the land has been made fit and ready for rising a groundnut crop and further has stated that the acquired lands are in centre of

the Munjurpattu Village and already exiting residential portion of Adi Dravidars.

25. It is to be specifically mentioned that the relevant date for determining the market value of the acquired land is on the date of notification as per

Section 4 of the Land Acquisition Act, vide decision in Jagath Singh v. Haryana State (1996) LAC 60 (P&H). A market value of a land ought not

to be fixed based on facts of imagination. However, a market value of the land cannot be calculated with mathematical exactitude. The main test is

that sitting in the arm chair of a willing vendor would offer to a willing purchaser, taking all relevant existing conditions of the normal market, fertility

of land, location suitability of purpose, it was purchased, its existing potentialities and likely use to which in same condition would offer to pay the

price as on date of notification. Nonetheless, there must be some material placed before the court on the basis of which alone compensation must

be fixed as per decision in State of Madras v. M.G. Varadarajulu AIR 1966 Mad 164. Undoubtedly, there is an element of guess-work inherent in majority of cases concerning the determination of the market value of the acquired land, but in the very nature of things, these things cannot be

helped. Every human beings interest has to be valued properly all potentialities of the land will have been taken into account as part of the value to

the land owner.

26. This Court aptly points out the decision of the Honourable Supreme Court in Special Land Acquisition Officer v. U.K. Project V. Mahaboob

and Anr. (2009) 4 MLJ 137 (SC) wherein it is held hereunder:

Even though the land is taken purportedly in accordance with law by resorting to acquisition proceedings, the Collector is supposed to offer fair

compensation by taking all relevant circumstances relating to market value into account but the land acquisition officers seldom make reasonable

offers and they tend to err on the safer side and invariably assess very low compensation.

27. Moreover, this Court pertinently refers to the decision of Honourable Supreme Court in Sangunthala (dead) through LRs. v. Special Tahsildar

(Land Acquisition) and Ors. (2010) 3 SCC 661 at page 668 wherein at paragraph 24 it is among other things observed that ''...the presence of a

number of buildings on the lands acquired and the said lands being occupied by the buildings are to be treated as house sites. The basic purpose

that has been traced out in the evidence and as admitted by the RWs is that the lands were acquired for the purpose of putting up residential

quarters. As a portion of the land is being considered as house site, the adjoining lands have the potential of being put in better use as house sites in

the near future.''

28. It is worth to recall the observation of the Honourable Supreme Court in the decision The Special Land Acquisition Officer, Bangalore v. Adi

Narayan Shetty AIR 1956 SC 429 wherein it is laid down as follows:

In awarding the compensation under the Act the Court has to ascertain the market value of the land on the date of notification u/s 4(1) of the Act.

It is also observed that there are several methods of valuation such as i) opinion of Expert ii) price paid within a reasonable time in bonafide

transactions of purchase of the land acquired or the lands adjacent to the lands acquired and possessing similar advantages iii) a number of years of

purchase of the actual or immediately prospective profits of the land acquired.

Also the potential value whether the land is close to developed or

developing colonies, road etc., will also be taken note of by a Court of law.

29. Added further, in Tamil Nadu Electricity Board v. R. Kandaswamy (2003) 2 LACC 396 (Mad), it is held that ''...crucial date for fixing the

market value of the acquired land is on the date of publication of Section 4(1) Notification.''

30. In any event, the Claimant/Owner of the land should not be put to loss by under value. Equally, the Public exchequer should not be put to

undue burden by excess valuation. It is an essential duty of a Court of Law to strike a balance between the two interest.

31. The market value is to be fixed not merely by reference to the use to which the land is put at the date of publication of the notification but also

by its potentialities, viz., by reference to the uses to which it is reasonably capable of being put in the future as per decision in Smt. Saraswati Devi

and others Vs. U.P. Government and another, . Value of potentialities is to be found out, as best as possible, from the materials before the court,

without indulging in fact of imagination, Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Visakhapatnam ILR 1939 Mad 532. It is

well established principle that land is to be valued not merely by reference to the use to which it is being put but also by reference to the uses to

which it is reasonably capable of being put in future subject of course, to the limitation provided in Section 24 of the Act as per decision in V.S.

Subramania Chettiar and Another Vs. State of Madras, .

32. While determining the compensation for the land, sales that has taken place in the locality proximate in time and place are quite essential to be

taken note of. Admittedly, the value to be found out, is the value to the seller of the property in its actual condition at the time of expropriation with

all its available advantages and with all its possibilities, including any advance due to carrying out of the scheme for which the property is

compulsorily acquired.

33. As a matter of fact, the value of the potentiality has to be taken note of even where the only possible purchaser is the authority purchasing

under powers enabling compulsory acquisition as per decision in Collector, Jabalpur and Another Vs. Nawab Ahmad Yar Jahagir Khan, at page

34.

34. The sale deeds reflecting the highest value will have to be preferred to the rest as examplars unless there are strong circumstances justifying a

different course as per decision in The State of Madras Vs. P. Seetharamammal and Another, .

35. As far as the present case is concerned, it is to be pointed out that though the Respondent/Claimant has stated that a sum of Rs. 45,500/-

granted as compensation by the Appellant/Referring Officer to the well in Survey No. 44/12 is on the lower side, yet, the Respondent/Claimant has

not examined any independent witness like, Surveyor/appropriate Engineer/an Expert to value the well and in the absence of the same, this Court is

not interfering with the Award of Rs. 45,500/- granted by the Appellant to the Respondent/Claimant as compensation.

36. In regard to the compensation claim of the Respondent/Claimant pertaining to the Trees like, Neem tree etc. as spoken to by her, in her

evidence, as C.W.1 (P.W.1), this Court points out that the evidence of Respondent/Claimant is not clinching and also a coherent one and

therefore, this Court is not granting any sum to the Respondent/Claimant in this regard.

37. The Land Acquisition Officer has granted a sum of Rs. 100/- per cent as compensation in respect of the acquired land, but in the objection

filed by the Respondent/Claimant before the Officer concerned, she has claimed a compensation of Rs. 500/- per cent.

38. It is the categorical evidence of R.W.1 (Adi Dravidar Welfare Special Tahsildar), in his cross examination, to the effect that the acquired land

is situated at the centre of Munjurpattu Village and the already existing Adi Dravidar Residential Place. Most importantly, R.W.1, in his cross

examination, has tacitly admitted that in Ex.B.1 (R.1)-Eye Valuation Sketch, the acquired land is shown near the land in Survey No. 32/11 is

situated next to the acquired land. R.W.1, in his evidence, to a specific suggestion that as per Ex.A.1-Sale Deed dated 09.11.1993 then for the

acquired land, the value ought to have been fixed at Rs. 1,500/- per cent he has replied that small piece of land will not be taken into account by

them.

39. It is relevant for this Court to point out that C.W.2 (P.W.2), the Vendor (Jayaraman), who has executed Ex.A.1 Sale Deed dated 09.11.1993

to and in favour of one S.Rajendiran, has been examined as a witness P.W.2 and he has clearly spoken about the land sold by him as per Ex.A.1

Sale Deed and inasmuch as the Respondent/Claimant has examined the Vendor of Ex.A.1 Sale Deed, the contra contention on the side of the

Appellant/Referring Officer in this regard is outrightly rejected.

40. In view of the fact that R.W.1 in his evidence (in cross examination) has specifically admitted that the land in Survey No. 32/11 is situated next

to the acquired land as mentioned in their Ex.B.1 (R.1) and since in Ex.A.1 Serial No. 32/11 an extent of 3052 square feet has been sold out for

Rs. 7,250/- and also because of the admission of R.W.1 that at the time of acquiring the land, the acquired land has been ploughed nicely and fit

for groundnut cultivation etc., this Court is of the considered view that the Award of compensation by the Tribunal for the acquired lands at the at

the rate of Rs. 750/- is a proper and valid one and the same does not require any interference in the hands of this Court.

41. Generally, when a large extent of land is acquired for a housing scheme/ purpose etc., a minimum 1/3 of the land value ought to be deducted

towards development charges and it will be a reasonable deduction. However, in the present case on hand, the acquired lands of the

Respondent/Claimant are punja lands and they are all only agricultural lands and therefore, even though Ex.A.1-Sale Deed dated 09.11.1993 has

been projected on the side of the Respondent/Claimant to show that an extent of 3052 square feet has been sold out for Rs. 7,250/- in Survey

No. 32/11, this Court does not find any error committed by the Tribunal/ Subordinate Judge, Cheyyar in fixing the value for the acquired land at the

rate of Rs. 750/- per cent and since the acquired lands are also agricultural lands, the deduction towards development charges does not arise and

accordingly, this Court comes to an inevitable conclusion that the Award passed by the Tribunal/Subordinate Judge in L.A.O.P. No. 12 of 1999

dated 13.03.2001 does not suffer from any material irregularity or patent illegality and resultantly, the Appeal fails.

42. Before parting, this Court quotes Rule 12 of the Legal Practitioners'' Fees Rules, 1973 which enjoins as follows:

Rule 12. (1) In the High Court in appeals from original or appellate decrees in suits for money, effects or other personal property, or for land or other immovable property of any description, fees are payable on the same scales under Rule 3(2)(b).

Provided that when the appeal is compromised, settled withdrawn or dismissed for default (a) before the appeal gets into the ready board, the fee

shall be one-fourth of the fee prescribed under Rule 3(2)(b) and (c) after the appeal stands on the ready board the fee shall be one-half of the fee

prescribed under Rule 3(2)(b) subject to this, in all the above cases, the minima prescribed in Rule 14 shall apply:

(Provided further that when the appeal is from an award or from any part of an award of a Court in a land acquisition case, as between the

collector and the claimant or claimants the maximum fee shall be Rs. 2,000.00.)

(2) When the amount or value of the claim in the appeal exceeds Rs. 2,000 an additional fee calculated at one-third of the fee allowable under

Clause (1) shall be payable to junior Practitioner engaged with a senior Practitioner:

Provided that the junior was on record at least from the last of the dates fixed for the appearance of the respondent.

Provided further that in any case, where a juniors'' fee is payable under this rule or under Rule 19, the Court shall have a discretion to fix that fee at

half the seniors'' fee instead of one-third.

(3) The fees for the junior legal practitioner for settling of documents for translation and or printing in first appeals shall be a minimum of Rs. 25 and

a maximum of Rs. 50 subject to the discretion of the taxing officer.

43. Hence, this Court determines the Fees of the Learned Special Government Pleader (AS) in terms of Rule 12 of Legal Practitioners'' Fees

Rules, 1973, based on the facts and circumstances of the instant case.

44. In the result, the Appeal is dismissed, leaving the parties to bear their own costs. Consequently, the Award passed by the Learned Subordinate

Judge, Cheyyar in L.A.O.P. No. 12 of 1999, dated 13.03.2001 is affirmed by this Court for the reasons assigned in this Appeal.