(2009) 04 MAD CK 0398

In the Madras High Court

Case No : A.S. No. 969 of 1997

The Special Tahsildar (LA), (Adi Dravidar Welfare)	APPELLANT
Vs	
Chellamuthu, Smt. Selvam, Smt. Savithri and Sakthivel	RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 28, 4(1), 54, 6

Citation : (2009) 04 MAD CK 0398

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Ravi, Special Govt. Pleader AS, for the Appellant; V. Manisekaran, for R2 to R4, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—This appeal filed u/s 54 of Land Acquisition Act is directed against the judgment and award passed by the learned Additional Subordinate Judge, Salem on 05.01.1994 in LAOP No. 2/1987. The Land Acquisition Officer, namely the Special Tahsildar (LA) (Adi Dravidar Welfare), Salem is the appellant herein. The claimants before the court below in the LAOP are the respondents.

2. An extent of 0.34.5 hectare dry land (equivalent to 85 cents) comprised in Survey No. 84/12 in Keerapappambadi Village, Salem Taluk, Salem District was acquired by the Government following the procedure prescribed in the Land Acquisition Act (Central Act) for providing house sites to the Arunthathiars of Keerapappambadi village. The notification u/s 4(1) of the Land Acquisition Act, 1894 for acquiring the said land was approved by the Government in G.O.Ms. No. 2423/SWD dated 30.10.1984 and the same was published in the Government Gazette on 19.12.1984. As the said notification was not initially published in the vernacular language it was once again published in the vernacular language on on 03.01.1985 and 04.01.1985.

3. After hearing the objections and overruling the same, the Government decided

to proceed with acquisition and the declaration u/s 6 of the Land Acquisition Act, 1894 was approved by the Government in G.O.Ms. No. 1533/SWD dated 18.06.1986. The same was also published in the Gazette on 20.06.1986 and the local dailies on 21.06.1986 and 22.06.1986. It was also published in the locality by beat of tom-tom on 21.06.1986. After award enquiry, the Land Acquisition Officer passed an award on 06.11.1986 in his proceedings Roc.No.1658/84(A) awarding compensation to the acquired land fixing its market value at the rate of Rs. 13,062/- per acre. The total award was arrived at as follows:

Value of the land extending 85 cents (of un-irrigated dry land) at the rate of Rs. 13,062/- per acre : Rs. 11,102.70P Value of Trees : 191.00 ------------- Total Rs. 11,293.70P

Solatium @ 30% 3,888.10P ------------- Total Rs. 14,681.80P Additional market value @ 12%} per annum on the market value} from 24.06.1985 to 17.11.1986,} namely upto the date of award} 1,899.80P ------------- Grand Total Rs. 16,581.60P -------------

4. The said amount was received by the respondents herein/claimants under protest and with a contention that the value of the property should be fixed at a higher rate, namely Rs. 15,000/- per acre and a higher amount should be awarded as compensation for the land. It was also contended by the claimants that the trees were valued at a lower rate and they should also be valued at a higher rate. Based on the said contention, they prayed for a reference u/s 18 of the Land Acquisition Act, 1894 to be made to the court for determining proper compensation. Accordingly, a reference was made by the appellant herein to the court below (Additional Subordinate Judge, Salem) u/s 18 of the Land Acquisition Act, 1894.

5. The said reference was taken on file by the Sub court as LAOP No. 2/1987. After the claim statement of the claimants and objections of the referring officer were filed, the court below conducted a trial, in which two witnesses were examined as CW-1 and 2 and one document was marked as Ex.C1 on the side of the claimants/respondents herein, whereas no witness was examined and no document was marked on the side of the Referring Officer, who figures as the appellant herein. At the conclusion of trial, the court below considered the arguments advanced on either side and upon such a consideration, fixed the market value of the property at the rate of Rs. 400/- per cent, deducted 25%, namely a sum of Rs. 100/- from the same, as a smaller extent of land was compared with a larger extent for fixation of market value and directed payment of compensation taking the market value of the property to be Rs. 300/- per cent. The court below has also enhanced the compensation for the trees at the rate of Rs. 250/- per yielding palmyra tree, Rs. 150/- per non-yielding palmyra tree and Rs. 50/- per palai tree. The court below has also directed calculation of additional market value at the rate of 12% from 24.06.1985 to 17.11.1986 and solatium @ 30% of the market value. Interest @ 9% per annum for a period of one year from the date of award of the Land Acquisition Officer and there after @

15% per annum till payment, was also ordered.

6. Contending that the compensation fixed and awarded by the court below is excessive, the Referring officer/the appellant herein has come forward with the present appeal on various grounds set out in the Memorandum of Appeal.

7. The points that arise for consideration in this appeal are as follows:

1) Whether the market value fixed by the court below is erroneous?

And

2) Whether the compensation awarded by the court below is excessive requiring downward revision?

8. The arguments advanced by Mr. V. Ravi, learned Special Government Pleader (AS) on behalf of the appellant and Mr. V. Manisekaran, learned Counsel appearing on behalf of the respondents 2 to 4 were heard. The materials available on record were also perused.

9. The property in question, namely 85 cents of dry land comprised in Survey No. 84/12 in Keerapappambadi Village, Salem Taluk, Salem District was acquired by the Government for providing house sites to Aruthathiars. There is no dispute that the said land is abutting road. Though the Land Acquisition Officer has chosen to consider a number of sales included in the data sales, he ultimately relied on a sale that took place in Survey Nos. 116/4A, 116/9B and 116/8 of the said village as per document No. 1021/1984 dated 13.12.1984 registered on the file of Sub Registrar, Tharamangalam. Even though the Land Acquisition Officer has chosen to discard a number of sales which have been included in the sales data and selected the above said sale deed as reflecting the correct market value of the acquired property, the Referring Officer has not chosen to produce an authenticated copy of the said Sale Deed which was selected by him as the data sale, based on which the market value of the property was fixed by him. It has now been made clear that the Referring Officer in LAOPs are in the position of defendants and the compensation awarded by the Land Acquisition Officer shall be nothing but an offer made by the Government for the compulsory acquisition of the property. It has also been held in clear terms in so many cases that unless a certified copy of the Sale Deed which is relied on by the Land Acquisition Officer as data sale is produced, the same cannot be taken into consideration by the court dealing with LAOP in fixing the market value of the acquired property.

10. In the instant case, the only document produced before the court below in the LAOPs is the certified copy of a Sale Deed dated 18.06.1982 executed by Mariappa Gounder, son of Andiappa goundar in favour of Alagu @ Seerangan, son of Rajappa Goundar in respect of Survey No. 97/4 registered as document No. 728/1982 in the office of the Sub Registrar, Tharamangalam and marked as Ex.C1. Based on the said document, the respondents herein/claimants had claimed that the acquired property should be valued at the rate of Rs. 45,000/- per acre. In addition to the production of the said certified copy of sale deed

marked as Ex.C1, parole evidence has also been adduced to the effect that the property conveyed therein was, in all particulars, comparable to the acquired land and that the said sale transaction was a genuine one. One of the attesters of the said document has also been examined as CW-1 on the side of the respondents herein/claimants. The witnesses examined on the side of the claimants, have in clear and unambiguous terms stated that the said land is situated nearer to the acquired land than the data land selected by the Land Acquisition Officer. In the light of the above said facts, more particularly when there is no evidence either oral or documentary on the side of the Referring officer and when the genuineness of the transaction made under Ex.C1 has not been successfully challenged, this court finds no defect or infirmity in the procedure adopted by the court below in relying on Ex.C1 as the data sale relevant for fixing the market value of the acquired property.

11. It is true that under Ex.C1 a small piece of land having an extent of three cents had been sold for a sum of Rs. 1,300/-. If the value is worked on the basis of the said rate, the value of one cent land comes to Rs. 435/-. However, there seems to be a contradiction between the evidence of CW-1 and CW-2 as to whether the said property was sold as a house site or an agriculture land. CW-1, in his evidence would state that it was sold as an agriculture land and not as a house site. CW-2, in his evidence would state that the said land was sold under the original of Ex.C1 as house site. However, the fact remains that as on the date of the said sale, the property had not been classified to be a house site and on the other hand it remained under the classification of dry land. Taking into consideration the above said facts, the court below seems to have chosen to reduce 25% of the value for which the said land was sold under Ex.C1 to make it comparable to the acquired land which was of a larger extent, namely 85 cents. Normally, when a larger extent of land is to be divided into house sites, a considerable portion is to be deducted as areas to be left for common use, like roads, streets, etc. So, when a large extent of property having the potential of being developed into house site is to be valued on the basis of the value of another house site, then a deduction of 20 to 40% has to be made. In this case, the court below has chosen to allow a deduction of 25% alone. The same seems to be quite reasonable. Therefore, there is no scope for interference with the award of the court below regarding the fixation of the market value of the acquired land.

12. So far as the value of the trees is concerned, it has not been canvassed by Mr.V.Ravi, learned Special Government Pleader (AS) appearing on behalf of the appellant to be disproportionate or excessive. In fact, the value fixed for yielding paymyra trees, non-yielding palmyra trees and palai palmyra trees by the court below at the rate of Rs. 250/-, 150/- and 50/- per tree respectively, by no stretch of imagination can be stated either excessive or exorbitant. Therefore, the judgment and award of the court below regarding valuation of the land and trees do not deserve any interference by this court in this appeal.

13. The court below has also rightly directed payment of 12% additional market value from the last date of publication of 4(1) notification till the date of award of the Land Acquisition Officer at the rate of 12% per annum and also solatium on the market value at the rate of 30%. The court below has also rightly directed payment of interest for a period of one year from the date of taking possession of the Land (18.11.1986) at the rate of 9% per annum and at the rate of 15% per annum thereafter. The same is in accordance with Section 28 of the Land Acquisition Act, 1894. Therefore this court does not find any scope, whatsoever to interfere with the judgment and award of the court below in respect of the additional market value and the interest and the same deserve to be confirmed.

14. For all the reasons stated above, this court comes to the conclusion that there is no merit in the appeal and the appeal deserves to be dismissed.

15. In the result, the judgment and award of the court below are confirmed and the appeal is dismissed with cost.

