(2003) 02 MAD CK 0159

In the Madras High Court

Case No : Appeal Suit No''s. 135 to 138 of 2000 and CMP No. 15418/02 in 5966 of 2000

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

Vs

Parimala, Saraswathi Ammal, G. Velmurugan and K. Gangadharan — RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2003) 2 LW 68 : (2003) 1 MLJ 553

Hon'ble Judges : A.S. Venkatachalamoorthy, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : E. Rani Selvan, for the Appellant; R. Subramanian, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—To provide house sites for the Adi-Dravidas, the lands including those that are the subject matters of the above appeals, which are located in Sanankuppam Village and within the limits of Ambur Municipality, were acquired by the State of Tamil Nadu. Notification u/s 4(1) of the Land Acquisition Act was duly published on 02.04.1993. The details with regard to the Survey Number and the extent in respect of the lands acquired under each of the above Appeals are as under :-

A.S. No. 135 of 2000 is filed against LAOP No. 8 of 1997. The extent acquired is 1.02 acres in T.S. No. 5/8 and 0.04 acres in T.S No. 5/10A, totaling an extent of 1.06 acres.

A.S. No. 136 of 2000 is filed against LAOP No. 10 of 1997. The extent acquired is 39 cents comprised in T.S. No. 6/5.

A.S. No. 137 of 2000 is filed against LAOP No. 9 of 1997. The extent acquired is 0.80 acres comprised in T.S. No. 6/3 and 0.40 acres in T.S. No. 6/4, totaling 1.20

acres.

A.S. No. 138 of 2000 is filed against LAOP No. 11 of 1997. The extent acquired is 0.89 acres comprised in T.S. No. 11/4.

2. The Land Acquisition Officer conducted the Award enquiry in which all the claimants participated. The Land Acquisition Officer, by award dated 25.5.1994, came to the conclusion that the market value of land can be fixed at Rs. 1.60 per sq. ft.

3. Being dissatisfied with the fixation of market value by the Land Acquisition Officer, the respondents-land owners/claimants requested the matter to be referred to the civil court by exercising their option u/s 18 of the Land Acquisition Act. The References thus received by the Reference Court viz., Subordinate Court, Tirupathur, have been numbered as Land Acquisition Original Petitions, the details of which are already given. Before the Reference Court, the land owners as well as the State let in oral and documentary evidence. The Reference Court, after considering the materials available on record, came to the conclusion that the market value for the lands acquired has to be fixed at Rs. 16/- per sq. ft. as against Rs. 1.60 fixed by the Land Acquisition Officer. Questioning the correctness of such fixation by the Reference Court, the above appeals have been filed by the State, represented by the Special Tahsildar (Land Acquisition), Adi Dravidar Welfare.

4. The fact that the acquired lands those situate in Sanankuppam Village lies within the municipal limits of Ambur is admitted by the Special Tahsildar, Tirupathur, in his cross examination. The said witness, examined on behalf of the Revenue, has also admitted that around the acquired lands, there are residential houses. There is yet another admission that nearby the acquired lands, schools, banks and a post office are located. Close to the acquired lands, there is a road, leading to Ambur Town, which is known as Ambur-Sanankuppam Road. In fact, this witness has also stated that since the acquired lands are fit to be plotted out as house sites, they were acquired. To a question put in the chief examination, this witness has stated that the acquired lands and the data land are similar. The data land that is referred to is the subject matter of Ex.B-2, under which an extent of 39 cents of wet land comprised in T.S. No. 6/5 was sold for Rs. 27,500/-.

5. When we turn to the evidence of PW-1, we find that this witness has claimed that apart from the location of schools, banks, there is also a Kalayana Mandapam and a Mahal known as "Dharamvir Mahal", but of course, this has been disputed in the cross examination. This witness also would claim that the acquired land and the land that is the subject matter of Ex.A-1 are similar.

6. From the evidence of PW-1 and RW-1, it is clear that the acquired lands are situated within the Ambur Municipal Limits in a developed area. That being so, but for the acquisition, the land owners might have used it for non-agricultural purpose viz., that they would have been plotted out and sold as house sites.

Hence, the acquired lands have to be treated as non-agricultural lands and now, the endeavour of this Court is to examine the documents and find out as to what is the market value that can be fixed.

7. While the land owners would impress upon this Court that the market value of the acquired lands can be fixed taking Ex.A-1 as a relevant sale transaction, on behalf of the Revenue, it is contended that the sale transaction under Ex.B-2 alone should be taken into consideration and the market value can be fixed accordingly.

8. Learned counsel appearing for the respondents in fact would repeatedly draw the attention of this Court to Ex.A-1 sale transaction, where an extent of 1365 sq. ft. comprised in TS. No. 8/1 was sold at the rate of Rs. 25.65 per sq. ft. and which property is also the subject matter of acquisition, and submit that the Reference Court has deducted nearly 37% or so and fixed the market value only at Rs. 16/- per sq. ft. That being so, any further deduction would seriously affect the interests of the land owners.

9. On the contrary, learned Government Advocate, appearing for the State would contend that the property, that is the subject matter of Ex.B-2, is also the subject matter of the acquisition and under the said document, the property was sold at the rate of Rs. 1.60 per sq. ft. The learned counsel would further contend that in the absence of any evidence that there was a steep increase in the price of housing plots in the area, there can be no justification for blindly adopting Ex.A-1 transaction as the basis for fixing the market value.

10. Ex.B-4 is the topo sketch. We find that Ambur-Sanankuppam Road is clearly indicated. On the right side of the road, S. No. 8 is indicated. On the left side, the acquired lands are located. Only S. No. 5/10A abuts the said Road. The other Survey Numbers, that are the subject matters of these appeals, are rather interior.

11. As already mentioned, both the lands that are the subject matter of the sale transactions under Ex.A-1 and Ex.B-2 have been acquired. The Supreme Court, in the decision reported in The Dollar Company, Madras Vs. Collector of Madras, as well as in Spl. Tehsildar, Land Acqn., Vishakapatnam Vs. Smt. A. Mangala Gowri, , has ruled that the price paid in the sale or purchase of the land acquired within a reasonable time from the date of acquisition of the land in question would be the best piece of evidence. Hence, this Court has to take up the exercise of studying the location of the various survey numbers acquired and decide the market value of the land, keeping in mind the said two sale transactions viz., Ex.A-1 and B-2.

12. Under Ex.A-1, an extent of 1365 sq. ft. comprised in TS.8/1 was sold for a total consideration of Rs. 35,000/- on 27.8.1992, which would work out to Rs. 25.65 per sq. ft. As we have already mentioned, this Survey Number is on the right side of Ambur-Sanankuppam Road and abuts the said Road. The other document available is Ex.B-2. Under the said document, an extent of 39 cents

comprised in TS.6/5 was sold for a total consideration of Rs. 27500/- which would work out to Rs. 1.60 per sq. ft. As could be seen from the plan, the said Survey Number (TS.6/5) is somewhat interior and it does not abut the Ambur-Sanankuppam Road. From the plan, it is evident that to reach TS. No. 6/5, one has to take a left turn on the Ambur-Sanankuppam Road, then a right turn and again a left turn and the road appears to be a narrow road. S. No. 8/1 and S. No. 5/10A are similarly situated, whereas the other survey numbers viz., 5/8, 6/3, 6/4, 6/5 and 11/4 are interior. Certainly, on this reason, there bound to be difference in the market value.

13. Then the question would be, what can be the difference. While the subject matter of the land in Ex.A.1, comprised in S. No. 8/1 fetched Rs. 25.65 per sq. ft in the year 1992, the land, that is the subject matter of Ex.B2, comprised in S. No. 6/5, in the year 1991 i.e., just one year before Ex.A-1 transaction, fetched only Rs. 1.60. Of course, PW-1 has made a categorical statement that the price of the acquired lands went up every year prior to acquisition. As to what was the rough increase in price between 1991-92, the witness PW-1 has not spoken to. Hence, it is here, we have to make a guess work.

14. As far as S. No. 5/10A is concerned, we have no difficulty and we can sustain the market value fixed by the Reference Court at Rs. 16/- per sq. ft. The extent involved also is only 4 cents. Out of the remaining land, the market value of which we have to decide, there is a dry land viz., S. No. 5/78 and the remaining are wet lands. The expenses to develop a dry land as house sites would be less when compared to the wet lands. We are of the view, the vast difference in prices between these two lands (Ex.A-1 and Ex.B2) is because of their location. Of course, we do take note of the fact that PW-1 has claimed that every year, the price goes up before acquisition. This claim of PW-1 has not been disputed by the Revenue in the cross examination by putting any question.

15. Learned counsel appearing for the appellant/State would contend that since the subject matter of the sale transaction under Ex.A-1 is only 1365 sq. ft., apart from the fact that the acquired properties, barring T.S. No. 5/10A, are situated interior, deduction at least by 50% must be made. On the other hand, learned counsel appearing for the land owners would point out a decision of the Supreme Court reported in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib, wherein the Supreme Court has laid down that a deduction of 20% would be sufficient and that, in fact, in this case, the Reference Court has deducted about 37% and that being so, this Court may not interfere further and reduce the market value fixed by the Reference Court.

16. It is necessary that this Court has to point out that the Supreme Court, way back in 1995, in the decision reported in K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), , has clearly laid down that what is the percentage to be deducted towards development charges and largeness of the area would depend upon the facts of each case.

17. Keeping what all we discussed earlier and also taking into consideration the location of the properties and the area involved, we are of the view that fixation of the market value with reference to TS.5/10A at Rs. 16 per sq. ft. is just and proper.

With regard to S. No. 5/8, which is a dry land and the extent being 1 acre and 2 cents, taking note of the fact that it does not abut the road and is situated in the interior and also the largeness of the area, we are of the view that Rs. 12/- can be fixed as the market value of the land.

With regard to the remaining lands, which are wet lands viz., 6/3, 6/4, 6/5 and 11/4, taking note of the fact that they are wet lands and are situated in the interior, we are of the view that the market value of the land can be fixed at Rs. 10/- per sq. ft.

18. In the result, the appeals are allowed to the extent indicated above. Connected C.M.P. stands closed.

