

(2011) 03 MAD CK 0536
In the Madras High Court
Case No : S.A. 601 of 2006

The Special Tahsildar (LA), Adi Dravidar Welfare	APPELLANT
Vs	
Subramaniam rep. by general Power Agent Ranjana	RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1), 8, 9
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 51

Citation : (2011) 03 MAD CK 0536

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : R. Revathi, G.A. CS, for the Appellant; N. Manokaran, for the Respondent

Judgement

G. Rajasuria, J.—This second appeal is focussed against the judgment and decree dated 28.9.2004 passed by the Principal Sub Court, Gobichettipalayam in L.A.C.M.A. No. 16 of 2001 modifying the award dated 23.3.2001 passed by the Special Tahsildar (Adi Dravidar Welfare) Sathiyamangalam in Award No. 11/2000-2001.

2. The parties, for the sake of convenience, are referred to here under according to their litigative status before the trial Court.

3. Heard the learned Counsel appearing for the parties.

4. The nut-shell facts, which are absolutely necessary and germane for the disposal of this appeal would run thus:

The Government vide Notification dated 3.11.2000 made u/s 4(1) of the Land Acquisition Act, intended to acquire the land belonging to the Respondent/claimant/land owner, measuring an extent of 0.40.5 hectares in Survey No. 391/1, Nallur Village, for the purpose of providing house plots to the landless Harijan people. After complying with the procedures, the Land Acquisition Officer in the process of acquiring the land passed the award dated 23.3.2001 assessing the

compensation in a sum of Rs. 60,215/-per acre and accordingly assessed the rate for the land concerned in a sum of Rs. 69,247/-.

5. Being aggrieved by such quantification of the compensation, the land owner preferred the appeal before the Sub Court, seeking enhancement of compensation in a sum of Rs. 9,86,885/-.

6. During enquiry, before the Sub Court the power agent of the claimant examined herself as P.W.1 and Ex.C1 and Ex.C2 were marked. On the side of the Respondent, the land Acquisition Officer one Arumugam was examined as RW1 and Ex.R1 to Ex.R12 were marked.

7. Ultimately the Sub Court, after conducting enquiry, enhanced the compensation and awarded at the rate of Rs. 5,00,000/-per acre, in addition to the other statutory entitlements to which the claimant/land owner is eligible. In fact, the advalorem Court fee also was not collected by the appellate Court, despite this Court issued direction in that regard.

8. Now this second appeal is by the Government as against the enhancement of compensation awarded by the appellate authority and also as against the non-collection of advalorem Court fee by the appellate authority concerned, on various grounds, inter alia thus:

(i) The lower appellate Court, without any rhyme or reason simply enhanced the compensation multiple times and arrived at the figure as Rs. 5,00,000/-per acre.

(ii)The alleged exemplar document-ExC2 dated 6.12.1999 was relating to a small extent and it cannot be taken as the guideline for enhancing the compensation.

9. Accordingly, the following substantial questions of law are found suggested in the memorandum of grounds of appeal:

a) Whether the Court below had erred in placing reliance on Ex.A1 and A2 where under a small extent of land classified as house site were conveyed where as the land acquired is classified as agricultural land and measuring an extent of 0.40.5 hectares?

b) Whether the reliance placed by the Court below on Ex.A1 and A2 is not in contravention of the judgment of the Apex Court reported in AIR 1995(5) SCC 426 where under the Apex Court has prescribed the guideline that small extent of land cannot be relied upon, for determination of compensation for large extent of land?

c) Whether the Court below had erred in not making necessary deduction towards development charges especially in view of law laid down by the Apex Court judgment reported in The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, where under the Apex Court prescribed the percentage of deduction at 53%?

d) Whether the Court below had erred in not appreciating the provision of

Section 8 of the Act 31/78 which clearly stipulate that nature and classification of land under acquisition as on date of 4(1) Notification is the criteria for fixation of market value and not the probable usage of the said land?

e) Whether the court below had failed to appreciate that the Respondent/claimant ought to have paid *advolverum* court fee as prescribed u/s 51 of the Tamil Nadu Court Fee and Suits Valuation Act 1955 and not a nominal fee u/s 3(1) (B) of Schedule II of the said Act? (extracted as such)

10. My learned predecessor adopted as such the substantial questions of law found suggested in the memorandum of grounds of second appeal.

11. Substantial questions of law (i) to (iv): All these substantial questions of law are taken together for discussion, as they are interwoven and interlinked, interconnected and entwined with one another.

12. I recollect and call up the following decisions of the Honourable Apex Court:

(i) *Subh Ram and Others Vs. Haryana State and Another*, , certain excerpts from it would run thus:

24. Deduction of "development cost" is the concept used to derive the "wholesale price" of a large undeveloped land with reference to the "retail price" of a small developed plot. The difference between the value of a small developed plot and the value of a large undeveloped land is the "development cost". Two factors have a bearing on the quantum (or percentage) of deduction in the "retail price" as development cost. Firstly, the percentage of deduction is decided with reference to the extent and nature of development of the area/layout in which the small developed plot is situated. Secondly, the condition of the acquired land as on the date of preliminary notification, whether it was undeveloped, or partly developed, is considered and appropriate adjustment is made in the percentage of deduction to take note of the developed status of the acquired land.

25. The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water, etc.) then the development cost (that is, percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose of acquisition play a role in determining the percentage of deduction towards development cost.

27. *Administrator General of W.B. v. Collector, Varanasi*⁶ contains a precise statement as to the concept of deducting development cost. This Court stated: (SCC p. 157, para 12)

12. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. ... The principle that evidence of market value of sales of small,

developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued ... is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical layout could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture, etc. are to be made. In *Brig. Sahib Singh Kalha v. Amritsar Improvement Trust*⁷, this Court indicated that deductions for land required for roads and other developmental expenses can, together, come up to as much as 53 per cent. But the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects the "retail" price of land and the latter the "wholesale" price. (emphasis supplied)

This Court referred to and relied upon several earlier decisions including three-Judge Bench decisions in *Mirza Nausherwan Khan v. Collector (LA)*⁸ and *Padma Uppal v. State of Punjab*.

(ii) *Haridwar Development Authority Vs. Raghubir Singh*, , certain excerpts from it would run thus:

9. The claimants do not dispute the appropriateness of the said sale transaction taken as the basis for determination of compensation. Their grievance is that no deduction or cut should have been effected in the price disclosed by the sale deed, for arriving at the market value, in view of the following factors: (i) that the acquired lands were near to the main Bye-pass Road and had road access on two sides; (ii) that many residential houses had already come up in the surrounding areas, and the entire area was already fast developing; and (iii) that the acquired land had the potential to be used an urban residential area. When the value of a large extent of agricultural land has to be determined with reference to the price fetched by sale of a small residential plot, it is necessary to make an appropriate deduction towards to make an appropriate deduction towards the development cost, to arrive at the value of the large tract of land. The deduction towards development cost may vary from 20% to 75% depending upon various factors (see: *Lal Chand Vs. Union of India (UOI) and Another*, . Even if the acquired lands have situational advantages, the minimum deduction from the market value of a small Residential plot, to arrive at the market value of a larger agricultural land, is in the usual course, will be in the range of 20% to 25%. In this case, the Collector has himself adopted a 25% deduction which has been affirmed by the Reference Court and High Court. We therefore do not

propose to alter it.

13. The learned Counsel for the claimant/land owner cited the decision of the Honourable Apex Court reported in *A. Natesam Pillai Vs. Spl. Tahsildar, Land Acquisition, Tiruchy*, certain excerpts from it would run thus:

16. In *Rishi Pal Singh v. Meerut Development Authority*³ this Court while dealing with the issue relating to a large tract of land held as follows: (SCC p. 207, para 5)

5. ... With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount for taking the exemplars of small plots into consideration.

17. Furthermore, in *Administrator General of W.B. v. Collector, Varanasi*¹ this Court has held: (SCC p. 157, para 12)

12. It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical layout could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture, etc. are to be made.

18. The small area of land measuring 1710 sq ft was sold for `20,000 as per Ext. A-3 dated 15-7-1992 which works out to a value of `11 per square foot. A comparison of the two plots, namely, land in Ext. A-3 and the acquired land shows that they are not identical. While the land in Ext. A-3 may not be an excellent guide it is still a better guide than any other document exhibited on record. The same could be used as a relevant yardstick to assess the just and

reasonable compensation in the present case.

19. We find from the counter-affidavit filed by the Respondent State that the said land covered by Ext. A-3 is located out of the Municipal Corporation limit of Trichy, whereas the acquired land is located within the Municipal Corporation limit of Trichy. Consequently, it cannot be disputed that the acquired land, being in the heart of the city and having excellent prospects of being used as a residential site, definitely has an edge regarding the potential value over the land covered by Ext. A-3.

14. The learned Counsel for the Appellant cited the decision of the Honourable Apex Court reported in *The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others*, , an excerpt from it would run thus:

11. The evidence on record shows that the acquired lands were agricultural lands. Obviously, their valuation would differ to a considerable extent from the land used for house sites. In such a case, necessary deductions for the extent of land acquired for the formation of roads and other civil amenities, expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines and the interest on the outlays for the period of deferment of the realisation of the price, the profits on the venture, etc. are to be made. (See *Administrator General of West Bengal Vs. Collector, Varanasi*, . In *Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others*, the deduction for such development was taken as 53%.

15. A perusal of all those decisions would indicate and connote and demonstrate that the Court can take into account the future probable beneficial use, to which the party himself could put that land into. In other words, the likelihood of the agricultural land being used for habitation purpose could rightly be taken into account for assessing the compensation.

16. The learned Counsel for the land owner would submit that according to the Honourable Apex Court's decision, the land owners concerned should be taken as land losers and sympathetically their claim for compensation has to be considered. According to the learned Counsel for the land owner, even though, Ex.C2 is relating to a small area of land, for want of better exemplar that could be taken as the sample document and accordingly, the assessment made by the appellate authority need not be interfered with and there is no

17. Whereas, the learned Government Advocate would submit that the lower authority, without giving due deduction for the value referred to in the sample sale deed-Ex.C2, which is relating to a small extent, simply took it as the proper value and made some deductions, arbitrarily and arrived at a sum of Rs. 5,00,000/-per acre.

18. No doubt, this is a case in which, the land acquisition officer referred to sample sale deeds, but those are all, in my opinion, not reflecting the true value

for the reason that he took into account only the value of agricultural lands and the future beneficial use to which the property could be put into use by the owner himself was not taken into account.

19. Indubitably and indisputably, incontrovertibly and ungainsayably, the property acquired is very near to the habitation area and for that matter, the land acquired is only for the purpose of converting that land into habitation area. Even though the Honourable Apex Court held that the Court need not take into account the use to which the Government might put it into use, yet in the same Judgment, the Honourable Apex Court observed that the possibility of the owner himself putting that land into future beneficial use and earning profit should be considered. As such, for want of better particulars as contemplated under the aforesaid decisions, the sale deed Ex.C2 even though relating to a small extent could be taken as an exemplar subject to off setting the price. As such, I am of the view that 20% should be deducted at the first instance towards off setting the price and as contemplated in the following decisions:

(1) AIR (2007) Supreme Court 740 [Deputy Director, Land Acquisition v. Malla Atchinaidu]

(2) Ravinder Narain and Another Vs. Union of India (UOI),

(3) Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others,

(4) Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others,

(5) Smt. Basavva and others Vs. Special Land Acquisition Officer and others,

at least 1/3rd should be deducted towards development charges. Accordingly if taken, i.e 20% towards off setting the price contemplated in the exemplar document-Ex.C2 and 33 1/3 % towards development charges, the total deduction to be made comes to 53 1/3 %.

20. I am of the view that in the interest of justice 50% could be deducted from the value contemplated in the exemplar document and accordingly, the following formula emerges.

The value per acre as per the exemplar document : Rs.7,46,044/-

The consequential value of the acquired land : Rs.7,46,143/-

Less 50% deduction : Rs.3,73,072/-

Rs.3,73,072/-

21. Accordingly, I direct the Appellant to calculate the compensation and deduct there from the compensation already deposited with solatium and interest, and calculate solatium at 15% on the enhanced compensation as well as interest at 6% p.a. from the date of taking delivery till the date of deposit.

22. Substantial Question of law(v): The perusal of the order of the lower Court is bereft of merits relating to collection of Court fee. It appears, the High Court issued check slip to the Principal Subordinate Judge, Gobichettipalayam for the purpose of collecting advalorem Court fee as contemplated u/s 51 of the Tamil Nadu Court Fees and Suits Valuation Act. However, without doing so, the lower Court simply remarked as though if any appeal or revision is filed, at that time, the Court fee could be collected depending upon the decision that could be arrived at. Such an approach by the appellate authority was without any rhyme or reason and it is deprecated in unmistakable terms.

23. At this juncture, I would like to refer to the decision of the Division Bench of this Court reported in 2010 (2) CTC 1 - The Special Tahsildar, Adi Dravidar Welfare Scheme, Thiruvallur, v. M. Gopinathan, certain excerpts from it would run thus:

18. In Ramaih and Ors. v. Special Tahsildar, Adi-dravidar Wlfare, Cheranmahadevi, Ambasamudram Taluk, Tirunelveli District and Ors. 2008(1) CTC 316, learned Single Judge has taken the view that appeals filed by land owner u/s 9 of the Act 31/1978, Section 51 of Court-Fees Act should not be made applicable. The learned Single Judge has taken the view that Amount determined u/s 7 of the Act does not become an award and it becomes an award only when authority tenders amount u/s 11 and therefore Section 51 of Court Fees Act not applicable and only Article 3, Schedule II of Court Fees Act applies.

19. In Gunasekar and Ors. v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli 2008(2) CTC 595 referring to Ananthi Ammal's case, learned Single Judge has taken the view that in an appeal filed u/s 9 of the Act Court Fee is payable in terms of Section 51 of the Tamil Nadu Court Fees Act. The learned Single Judge has held as under:

25. In paragraph 14, the Supreme Court makes a clear distinction between a reference u/s 18 of the Land Acquisition Act 1894 and the award/order u/s 7 against which an appeal is prescribed u/s 9 of the Act 31 of 1978. It further held that evidence produced by the person interested before the authority becomes part of the record of the Court in appeal u/s 9 of the Act 31 of 1978, whereas under the Land Acquisition Act, the compensation has to be established in the Reference Court. The Supreme Court clearly holds that the amount determined under the Act 31 of 1978 is compensation and the determination u/s 7(2) is an award after full-fledged enquiry. The Rules provide for the procedure for such determination. Rule 4 provides the method for determination of market value of the land. Rule 5 provides the procedure for determination of the amount. The land owner has got a right to let in evidence and establish his claim and if aggrieved by the determination, appeal against the award granting compensation for the land acquired. A clear distinction has been drawn between the provisions of the Central Act, Land Acquisition Act and Act 31 of 1978, the State Act. The Supreme Court clearly comes to the conclusion that what is filed u/s 9 is an Appeal against the award. Therefore, the amount determined and payable by the

competent authority is a compensation and the order passed is an award/order subject to appeal at the instance of the aggrieved land owner. In view of the above stated legal position as held by the Apex Court, there can be no hesitation to come to the conclusion that an aggrieved land owner or person interested while filing an Appeal u/s 9 of the Act 31 of 1978, seeking enhancement of the compensation amount being the difference between the amount determined and the amount claimed in Appeal, is therefore liable to pay Court Fee u/s 51 of the Court Fee Act.

Learned Single Judge has made a clear distinction between the award passed under the Central Act and determination the amount u/s 7 of Act 31/1978. Once there is determination of the amount by an order or award u/s 7(2) of Act 31 of 1978, while filing Appeal claiming enhanced amount, Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act gets attracted. We uphold the view taken by learned Single Judge in Gunasekar and other v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli 2008(2) CTC 595. We hold that for appeals preferred u/s 9 of the Act 31/1978, Court Fee is payable in terms of Section 51 of Tamil Nadu Court Fees Act.

24. A mere poring over and perusal of the above judgment would make it clear that at the time of entertaining appeal under the Tamil Nadu Land Acquisition Act the *advolorem* Court fee on enhanced claim should be collected, but that was not done so. In fact, the land acquisition officer awarded a sum of Rs. 69,247/-per acre, however, the appeal was filed seeking enhancement and that was quantified in a sum of Rs. 9,86,885/-. The check slip issued by this Court would run thus:

Total enhanced compensation sought for Rs.9,86,885.00

Compensation awarded Rs. 69,247.00

Difference Rs.9,17,638.00

Advalorem Court fee payable thereon u/s 51 of the Court Fees Act Rs. 68,823.50

Court fee paid Rs. 2.50

Deficit Court fee Rs. 68,821.00

25. As such, a sum of Rs. 68,821.00 ought to have been collected from the land owner, which was not collected by the lower Court.

26. Hence, for the purpose of streamlining the procedure I would like to mandate that the land acquisition officer shall calculate the difference in amount yet payable to the land owner as per this judgment and out of that, the sum of Rs. 68,821.00 shall be deducted and deposited in the Court fee account in the treasury and report the same to this Court and the remaining amount shall be deposited in the Sub Court, within a period of three months from the date of receipt of a copy of this order, so as to enable the land owner to withdraw the same.

27. The High Court Registry shall monitor the same and report before this Court.