
(2010) 07 MAD CK 0230

In the Madras High Court

Case No : A.S. No's. 581 to 584, 587, 589 to 592, 594 to 603, 606, 607, 608, 609, 612 to 629, 631 to 633, 634 to 638, 640, 642 to 647, 649, 650, 652, 771 to 776, 778 to 782 and 784 of 2004 and 574 to 585 of 2005

The Special Tahsildar (L.A.)

APPELLANT

Vs

Panjavarnam

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1), 4, 4(1), 51A

Citation : (2010) 07 MAD CK 0230

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ravi, Spl. G.P, for the Appellant; D. Balaraman in A.S. Nos. 583, 584, 608 and 619/2004 and 585/2005, A.K.R. Ravi in A.S. No. 584 of 2005 and Srinath Sridevan in A.S. Nos. 591, 592, 595, 607, 612, 613, 618, 625, 626, 628, 634, 636, 645, 647, 649, 650, 652, 772, 773, 774, 779, 780 and 781 of 2004 and 576, 577, 580, 581 and 583/2005, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard Mr. V. Ravi, learned Special Government Pleader (AS), Mr. Srinath Sridevan, Mr. D. Balaraman and Mr. A.K.R. Ravi, learned Counsel appearing for respondents.

2. Both sides agreed to argue the matter on the basis of the original records circulated by the Registry as well as the Typed set of documents filed by the appellant State.

3. These 83 appeals were grouped under the caption "Master Plan Complex Tiruvarur". They were arising out of the land acquisitions made for the purpose of constructing a Master Plan Complex at Tiruvarur to locate the offices of the District Collector.

4. The lands of the respondents/claimants were acquired for the purpose of constructing a Master Plan Complex in Tiruvarur Town. The proposal was mooted

by G.O.Ms. No. 449, Revenue, dated 14.5.1997. The lands were to be acquired to an extent of 95.50.0 hectares in Vilamal Vilage, Tiruvarur Taluk. Out of the lands acquired, 94.74.5 hectares were Nanja lands and 0.75.5 hectares were Punja lands. Section 4(1) notification was issued on 07.10.1997. After following due procedure, an uniform rate of compensation of Rs. 363.64 per cent or 898.19 per Are was ordered by the acquiring authority. The land owners found that the compensation worked out to was Rs. 0.83 paise per sq.ft. But, the market value will come anywhere in the range of Rs. 60.00 per sq.ft. in that area.

5. On the land owners" raising objections, the matter was referred to for determination of the market value by the jurisdictional Reference Court. The Reference Court, i.e. Sub Court, Tiruvarur took up the References and registered them as various LAOPs starting from LAOP Nos. 65 of 2000 to 164 of 2000 and 38 of 2001 to 41 of 2001. At the request of the parties, a joint trial was conducted and witnesses were examined in LAOP No. 144 of 2000. In the LAOP, on behalf of respondents/claimants, eight witnesses were examined as Exs.C.1 to C.8 and three documents were filed and marked as Exs.C.1 to C.3. On the side of the acquisition authority, the Land Acquisition Officer one Nagarajan was examined as R.W.1. On his behalf, statistical data for various land transactions including the topo plan was marked as Ex.R.1. Ex.C.1 was the sale deed, dated 23.4.1997, Ex.C.2 was the sale deed, dated 8.8.1997 and Ex.C.3 was the notification issued under the Tamil Nadu Government Gazette for the entire land of the claimants, dated 5.10.1997.

6. The Reference Court framed the following two issues:

(a) Whether the compensation determined by the acquiring authority for the lands covered by the original petitions were proper? If not, what is the market rate of the land?

(b) The Compensation, to which the claimants are entitled to?

7. The acquiring authority considered statistical data for one year before the notification issued u/s 4(1), dated 7.10.1997 in Vilamal Village. There were 29 land transactions had taken place. Out of which 27 related to Nanja lands and 2 related to Punja lands. In the lands coming under Tiruvarur Municipality, 2 Punja lands were sold. Since in the entire lands acquired, only 0.75.5 hectare alone were Punja lands, the compensation was worked out on the basis of rate relating to Nanja lands. Out of 27 lands, the acquiring authority rejected Serial No. 7 relating to Survey No. 473/6, stating that it was sold as an house site and it cannot be a true basis. In respect of Serial Nos. 13 and 14, they were sold at Rs. 0.83 per sq.ft. on 10.3.1997. He considered that those two lands in respect of soil, tharam and village account are comparable to the lands which are acquired and taking that as the basis, the compensation was worked out at Rs. 363.64/- per cent or Rs. 898.19 per Are.

8. The transactions relating to Serial Nos. 24,25 and 27 were rejected by stating that they are far away from the lands which are sought to be acquired. Similarly

in Punja lands coming within the municipal limits in Serial Nos. 1 and 2, it was considered that the land has been sold along with tiled house and they are situated within Tiruvarur Municipality. It was also recorded that out of 0.75.5 hectares of land, 0.53.0 hectares of land were originally Nanja lands. As paddy was grown in that land, for the entire extent of land, rates were fixed as if they are Nanja lands. With reference to the bore-well and building including pump set found in the land, no compensation was granted in the light of the Government Order in G.O.Ms. No. 952, Revenue, dated 4.12.1998. Hence no compensation was worked out in respect of those properties. Since the claimants never questioned the denial of compensation on those counts, this Court is not inclined to go into the legality or justification of such denial. All the appeals are dealt with only regarding the market rate fixed for the lands acquired.

9. It is curious that except by furnishing statistical data for 27 transactions that took place in the village one year prior to Section 4(1) notification, no attempt was made by the acquiring authority to produce any particular document and no explanation was forthcoming with reference to rejection of other transactions other than Serial Nos. 13 and 14. In fact, the acquiring authority had chosen the lowest value available in that area by making as data lands in Survey No. 426/4 to an extent of 0.66 Are and 0.29 Are respectively. Though the other datas were sought to be rejected on the ground that they are smaller extent of lands, but there is no explanation forthcoming in respect of Serial Nos. 24,25 and 27. The average market value had ranged from Rs. 0.83 per sq.ft. fixed by the acquiring authority to Rs. 20/- in Survey No. 477/2. How the two sale deeds covered in Ex.C.1, dated 23.4.1997 and Ex.C.2, dated 8.8.1997 never came to the notice of the authorities is not explained. Those 27 documents were dated from September, 1996 to September, 1997 and the date of Section 4(1) notification was 26.9.1997.

10. On the side of the land owners, it was pointed out that Exs.C.1 and C.2 were also Nanja lands. In fact Exs.C.1 and C.2 were also found in Survey No. 477/2 and the said land was coming under the same survey number found in Serial No. 19 in the statistical data. They were also registered around the same time on 24.4.1997 and it had fetched Rs. 20/- per sq.ft. The claimants in their evidence also stated that their lands are more comparable to the land found in Serial No. 19.

11. The court below considered the evidence of R.W.1 and held that R.W.1 did not file any document to show that the date land is comparable to the lands which are acquired. Hence his evidence cannot be accepted. Further, in his cross examination R.W.1 had stated that all the lands were situated in Tiruvarur to Thanjavur Highway on its southern side and closer to Tiruvarur to Mannargudi Road. The court below also found that it was wrong for the acquiring authority to go for the lowest sale price which was no way comparable and what was comparable is the sale transaction in serial No. 19, which had fetched Rs. 20/- per sq.ft. R.W.1 also admitted that they had not mentioned the guideline value,

though he had claimed that they had also looked into the guideline value before fixing the market value. Therefore, the court below had rejected the evidence of the acquiring authority and accepted the evidence of the claimants. It also accepted that Exs.C.1 and C.2 are the true indicators of the market rate. But at the same time, it held that serial No. 19 in Survey No. 477/2 had only small plots to an extent of 2162 sq.ft. and that cannot be said to be the guideline value when large tracts of lands are acquired. Therefore, it considered that certain discounts should be made.

12. In that view of the matter, the court below found that the claimants are entitled for higher compensation and what was fixed by the acquiring authority at the rate of Rs. 0.83 per sq.ft. was very low. It also found that the data land shown by them is far away from the acquired land and also held that u/s 51A, the registered sale deed can be accepted as a valid piece of evidence. Hence, it relied upon Exs.C.1 and C.2 and rejected the claimants' demand for Rs. 60/- per sq.ft and arrived at a figure of Rs. 1080/- per cent. Based on the said market rate, the court below granted 30% solatium and additional compensation and statutory interest were ordered vide its judgment and decree dated 7.7.2003. As against the said judgment and decree, these appeals were filed.

13. Though there was an interim order granted by this Court on conditional basis, the same was not initially complied with. Subsequently, after the self working order was given, applications for extension of time were filed. But both miscellaneous petitions were dismissed by this Court. Though it is stated that belatedly certain amounts were deposited by the acquiring authority, that need not deter in dealing with the merits of the appeals.

14. In the grounds of appeal, it was contended that the court below was wrong in enhancing the compensation by relying upon Ex.C.1, which was five months prior to Section 4(1) notification. Reliance placed upon Exs.C.1 and C.2 cannot be made as they were sold as house sites and will not reflect the market value. The exemplar in Ex.C.1 was not the true indicator of the market price. Further, no deduction was given towards development charges. The court below should have granted 65% deduction as development charges on the rate fixed by it.

15. Mr. Srinath Sridevan, learned Counsel for some of the claimants submitted that it is immaterial that the recital in the sale deed should mention for which it was sold and what is relevant is comparable nature of the land as well as the document of the neighbouring land sold. For the purpose of determination of compensation, the market value alone matters. He also stated that a mere furnishing of statistical data cannot help. On the side of the appellant, though evidence was let in, but no document was produced except statistical data. He also submitted that even if there are smaller exemplar of sale of land, there is no bar from considering those documents provided sufficient discount is given. He also submitted that even if it was for the location of Government offices or any other building, the purpose was not relevant, and the market rate to be provided to the land owners.

16. The Supreme Court vide its decision in General Manager, Oil and Natural Gas Corporation Limited v. Rameshbhai Jivanbhai Patel and Anr. reported in 2008 (14) SCC 745 in paragraphs 13 and 14, observed as follows:

13. Primarily, the increase in land prices depends on four factors - situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation of market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.

14. In the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

17. The contention that exemplar of sale of small plots cannot be taken into account has to be rejected. The Supreme Court in Karnataka Urban Water Supply and Drainage board, etc. Vs. K.S. Gangadharappa and Another etc., in paragraph 8 held as follows:

8.16. 6. Where [a] large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criterion. Reference in this context may be made to three decisions of this Court in Collector of Lakhimpur v. Bhuban Chandra Dutta, Prithvi Raj Taneja v. State of M.P. and Kausalya Devi Bogra v. Land Acquisition Officer.

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices.

18. In determining the market value, in the very same judgment in the same

paragraph, it was held as follows:

8. ...Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality.

9. It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification u/s 4(1);

(ii) it should be a bona fide transaction;

(iii) it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages.

10. It is only when these factors are present, it can merit a consideration as a comparable case see *Special Land Acquisition Officer v. T. Adinarayan Setty*.

These aspects have been highlighted in *Ravinder Narain v. Union of India* SCC pp. 483-84, paras 6-10.

17. The deduction to be made towards development charges cannot be proved in any straitjacket formula. It would depend upon the facts of each case.

19. The Supreme Court very recently in *Special Land Acquisition Officer v. Karigowda and Ors.* reported in 2010 (5) SCC 708, observed in paragraph 83 as follows:

83. It is also an accepted judicial norm that the claimants can be given the benefit of awarding compensation on the basis of the genuine sale instance containing the highest rate, provided it has been proved in accordance with law and is a comparable instance. Such sale instance must satisfy all the requirements and prerequisites stated in the Act. It should be a bona fide transaction and should also be in a reasonable proximity to the date of notification u/s 4 of the Act....

20. The Supreme Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, held that the statistical data produced by the acquiring authority cannot be relied upon by the Reference Court as the Reference u/s 18(1) is not an appeal and such date will have to be proved by evidence on record. In this connection, it is necessary to refer to the following passages found in paragraph 4(1) and (3) which is as follows:

4. The following factors must be etched on the mental screen:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the

award and the court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is produced and proved before the court.

...

(3) The court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

21. If it is seen in the above context, then it clearly shows that the claimants have proved to the satisfaction of the Reference Court that they are eligible to get higher compensation as per Exs.C.1 and C.2 which documents were ignored by the acquiring authority while determining the compensation. These two documents were more comparable to Serial No. 19 of the statistical data than serial Nos. 13 and 14 referred to by the acquiring authority. Further, the acquiring authority did not consider all documents which are in the statistical data and deliberately ignored serial No. 19 stating that it is the smaller plot of land. There were also documents providing larger area of lands, which were ignored. On the other hand, Exs.C.1 and C.2 were taken as the basis by the Reference Court. The Reference Court had rejected the higher claim made by the land owners at the rate of Rs. 60/-, but fixed the rate somewhere around Rs. 2.50 per sq.ft. In doing so, it also took note of any development to be made on the land. It can be presumed that sufficient discounts were given even considering the market rate found in smaller plots of lands covered by Exs.C.1 and C.2. The ground raised that they were only five months prior to the date of Section 4(1) notification cannot be a valid argument. So long as the documents were proved in a manner pointed out by the Supreme Court in its decision in Karnataka Urban Water Supply and Drainage Board's case (cited supra), no exception can be taken to the reference court accepting that evidence.

22. Under these circumstances, this Court is not inclined to entertain these appeals. The grounds raised by the appellant are misconceived and bereft of merits. Hence all Appeal Suits will stand dismissed. However, under the peculiar circumstances of the case, the parties are allowed to bear their own costs in these appeals.

23. Though a common judgment is rendered, the learned Special Government Pleader (AS) is entitled for separate counsel fee in each appeal.