
(2008) 04 MAD CK 0034

In the Madras High Court

Case No : Appeal Suits No"s. 303 to 309 and 406 to 421 of 2004

The Special Tahsildar (LA)

APPELLANT

Vs

Venugopal Pillai (Died) and Others

RESPONDENT

Date of Decision : 01-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 10(1), 17, 18, 23, 23(1A)

Citation : (2008) 04 MAD CK 0034

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : V. Ravi, Special Gov. Pleader, for the Appellant; G. Jermiah in A.S. Nos. 303, 304, 306, 307, 309, 407, 409, 412, 420 and 421 of 2004, A.R. Suresh in A.S. Nos. 305 and 308, 406, 413 and 418 of 2004 and A. Palaniappan in A.S. Nos. 410, 414 and 419/04, for the Respondent

Judgement

K. Raviraja Pandian, J.—An extent of 28.34 acres in block No. II and 29.851/2 acres in block No. III in various survey numbers, (totalling

to 115 survey numbers and part thereof) situated in No. 56, Perumbakkam village, Tiruvallur Taluk and District have been acquired for the

purpose of construction of office building, staff quarters under Master Plan complex in Tiruvallur District headquarters under the provisions of Land

Acquisition Act, 1894 by invoking the urgency clause u/s 17 of the Act. Section 4(1) notification was published in the Tamilnadu Government

gazette on 12.06.1998 and published in the local dailies on 18.06.1998. The substance of the notice was published in the locality on 22.06.1998.

The draft declaration u/s 6 of the Act was approved and published on 23.06.1998. Possession was also taken on 23.12.1998 and 80% of the

compensation was paid. After issuance of notice u/s 9(1) and 10(1) and individual notice u/s 9(3) of the Act, the appellant, the Land Acquisition

Officer, passed awards in Award Nos. 1 and 2/1999 dated 28.06.1999. While passing awards 94 sales statistics which took place from

22.06.1995 to 22.06.1998 were collected. The Land Acquisition Officer has taken items Nos. 33, 34 and 35, sale deeds which relate to survey

Nos. 106/5, etc., 111/1 etc., and 107/1 etc., as data sale deeds and determined the compensation at Rs. 417/- per cent, (i.e., at Rs. 41,700/- per

acre) for wet land and 2/3rd of the amount Rs. 278/- per cent for dry land as reflecting the true and correct market value. The Land Acquisition

Officer granted statutory solatium, additional market value and interest. The other sale deeds were discarded for the reason that some of them

pertain to poromboke land; some of them relate to house sites; some of them relate to meagre extent of land sold for higher value; some of them

situated far away from the acquired land; some of them were combined sale of plot and building; and some of them were low lying land of lesser

value.

2. The claimants/owners of the land received 80% of the compensation on protest and sought for reference u/s 18 of the Land Acquisition Act.

Pursuant to the same the Land Acquisition Officer referred the matter to the Court of Subordinate Judge, Tiruvallur.

3. Before the Reference Court, the claimants claimed Rs. 50,000/- per cent by contending that the compensation determined by the Land

Acquisition Officer was far below the market rate in the vicinity on the date of the 4(1) notification. The officer has not followed the provisions of

Section 23 of the Act for the determination of the compensation. There is no discussion as to how he determined the compensation. The Land

Acquisition Officer has not applied either the capitalisation method or obtained any expert opinion to find out the real market value, or the

comparable sale method valuation.

4. It was further contended that the acquired lands were classified as land situated in urban areas and situated on the southern side of the Highway

Road from Chennai to Tirupathi. The district headquarters is in a walkable distance. There are nationalised banks, schools, hospitals, bazars,

market within the distance of one km. The railway station is situated 2 kms away from the acquired land. There are number of housing layouts and

colonies formed in and around the acquired land. The multi national companies

like "Caterpillar", Lancer company, Hyundai car company are

nearer to the acquired land. There are many Engineering and Arts colleges situated near the land.

5. The claimants marked as many as 18 sale deeds before the Reference Court to sustain their claims. The reference Court has taken into

consideration the sale deed Ex.C1 dated 21.08.1996 which was in respect of the land in survey No. 17/1 Perumbakkam village sold at Rs.

13,085/- per cent. Having regard to the lye of the land and the fact that the land under Ex.C1 is situated on the northern side of the Chennai -

Tirupathi highway, which is in all respects identical to the acquired land, Ex.C1 was taken as a comparable document. On that basis, the Reference

Court determined the value of the lands acquired at Rs. 13,085/- per cent and reduced 25% of the value towards development charges, thereby

determined the compensation to Rs. 9,814/- rounded off to Rs. 9,810/-. Additional amount of 12% from the date of 4(1) notification till the date

of the award; 30% solatium; and interest @ 9% for one year from the date of taking possession, then thereafter 15% till the date of payment of

compensation, were awarded. The correctness of the said award is canvassed in these appeals by the Land Acquisition Officer.

6. Though in the memorandum of appeal, a ground has been taken questioning the correctness of taking Ex.C1 as a comparable sale deed, at the

time of argument, the learned Government Pleader did not press the same. However, he contended that 25% of deduction arrived at by the

Reference Court cannot be regarded as correct percentage of deduction. Having regard to the nature of the land, which is agricultural land, under

developed and low lying land, the deduction could be atleast 65%. In order to sustain his case the Government Pleader relied on the decision of

the Supreme Court in the cases of Smt. Basavva and others Vs. Special Land Acquisition Officer and others, and Land Acquisition Officer,

Kammarapally Village v. Nookala Rajamallu AIR 2004 SC 1031. He further contended that under Ex.C1, dated 21.08.1996 the extent of the

land sold was 12991/2 square feet. The value fetched for the small extent cannot be regarded as reflecting the correct market value. There should

be some deduction for the large area of land acquired.

7. Per contra, Mr.Jermiah, learned Counsel spearheading the arguments on

behalf of all the claimants contended that the potential value of the land, which is situated on the northern side of Madras-Tirupathi Highways, is taken into consideration by the Reference Court in determining the compensation. The facilities available in and around the acquired land has also been elicited from R.W.1, who has admitted in unequivocal terms about the existence of houses and colonies in and around the acquired land and the further fact that the collectorate and other offices, a portion of the Master Plan complex were constructed in the acquired land without making any development is also admitted by him. Hence, the deduction made by the Reference Court at 25% is justifiable one. He further contended that the deduction towards largeness of the area acquired is not applicable to the facts of the present case as the individual holdings of the claimants are very small ranging from a minimum of 4 cents to a maximum of 1.75 acres. The claimants are agriculturists solely depending on their marginal holdings. Having regard to the extent of the land acquired from each of the individual claimant, the reference Court has come to the correct conclusion that Ex.C1 reflects the correct market value of the land.

8. He further contended that 4(1) notification was published on 12.06.1998 whereas Ex.C1 was dated 21.08.1996, two years prior to the date of publication of 4(1) notification. It is common knowledge that every year the value of the land increases. That aspect of the matter has not been taken into consideration. Per year the enhancement of the value of the land can be fixed to atleast of 10%. If that be so, at the time of 4(1) notification the value of the land would have been increased by 20% (10% per year) over and above the value of Ex.C1. In order to substantiate his case, on the above points, he relied on the decisions of the Supreme Court in the cases of Kasturi and Others Vs. State of Haryana, , The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others, , Smt. Lila Ghosh (Dead) through LR Shri Tapas Chandra Roy Vs. The State of West Bengal, and the judgment of a Division Bench of this Court in the case of The Special Tahsildar, Adi Dravidar Welfare Vs. Muthu Konar, .

9. We heard the learned Counsel on either side and perused the materials available on record.

10. Let us consider the contentions raised by the respective parties with reference to the materials on record.

11. The extent of the dry lands acquired is 1.94 acres in block No. II and 3.71 acres in block No. III. It is evident from the award No. 2/99 dated

28.06.1999 that the dry lands are situated in the midst of wet lands and which were also cultivated from the wells in the nearby lands. The Land

Acquisition Officer has accepted that the dry land could be treated on par with the wet lands in the said award itself. This is also accepted by

R.W.1 in his evidence. Hence, we are of the view that the Reference Court is correct in determining the value of the dry land on par with the value

of the agricultural lands. If that be so, there is no necessity for the Land Acquisition Officer for reducing the value of the dry land to 2/3rd of the

value of the wet lands. On this aspect of the matter, we are in agreement with the Reference Court in treating the value of the dry land, which is so

marginal in extent, compared to the extent of land acquired, valued the same on par with the wet land.

12. Let us consider whether the Reference Court is correct in reducing 25% of the value for development expenses. The Reference Court relied

on the decision reported in 1995 (2) LW 561 to adopt 25% deduction for development charges. It is evident from the extracted portion of the

judgment taken in aid that the acquired land in that case was classified as dry land being surrounded by housing colonies and industrial

establishment. That finding was arrived at based on evidence. Further, the potential value of being used as a house site was also taken into account.

For plotting out the land and earmarking the road, the development charges was fixed at Rs. 25%. We are of the view that the said judgment

cannot be factually applied to the present case. As stated in the summation of facts, the lands acquired in these cases are agricultural lands, under-

developed lands in low lying areas.

13. On the principle of deduction in determining the compensation, the Supreme Court in the case of *Kasturi and Others Vs. State of Haryana*, ,

having considered the entire case laws on this issue, has held that in the event of the Court finding that such sales are genuine and are reliable and

the lands have comparable features, sufficient deduction should be made to arrive at the just and fair market value of large tracts of land. The time

lapse for the development and waiting period for development are also relevant consideration for determining of just and adequate compensation.

So holding the Court held that 20% deduction was proper in that case.

14. On the basis of the materials available on record such as award proceedings and the evidence of C.W.1 and R.W.1 it is clear that the acquired

lands are agricultural lands and at the time of acquisition there was paddy cultivation. The lands are not developed lands though certain houses

were built in the nearby area. The acquired lands cannot be regarded as a developed area and it continued to be an agricultural land. Obviously its

valuation would differ to a considerable extent from the lands used for house sites. It is also obvious that Ex.C1 was sold as a house site, which is

of an extent of 12991/2 sq. ft. In accepting the land covered under Ex.C1 as comparable land, the potential value of the acquired land was taken

into consideration. Hence, the decisions in the cases of Kasturi and Others Vs. State of Haryana, Lucknow Development Authority v. Krishna

Gopal Lahoti, 2008 1 LW 117 , The Deputy Director, Land Acquisition Vs. Malla Atchinaidu and Others, and Smt. Lila Ghosh (Dead) through

LR Shri Tapas Chandra Roy Vs. The State of West Bengal, are not advancing the case of the claimants any further.

15. The deduction to be made towards development charges cannot be provided in a straight jacket formula. It would depend upon the facts of

each case. It would vary depending upon the nature of the land, its location, expenditure involved for development and the area required for road

and other civil amenities to develop the land so as to make plots for residential and commercial purposes. The land may be plain or even the soil of

the land may be soft or hard or bearing on the foundation for the purpose of making construction, maybe the land is situated in the midst of a

developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that

may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done

for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In this case, it was not established so. In

the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the

acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of

a developed land. (See The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, and Ravinder Narain and Another Vs. Union of

India (UOI), .)

16. Of-course Ex.C1 has not been doubted by the appellant. The sale took place within the reasonable time prior to the date of 4(1) notification

and the land under Ex.C1 is also just adjacent to the Chennai-Tirupathi highway and possessed of similar advantage. The only difference is that

Ex.C1 was in respect of house site whereas the acquired lands are, in fact, agricultural lands and agricultural operations were being carried on even

at the time of acquisition.

17. In such a case, the necessary deduction for the extent of land acquired for the formation of road and other civic amenities expenses for

development of the site by laying internal roads, drainage, sewer and electricity lines and developing the land suitable for putting up of building and

the interest on the lay out for the period of development and realisation of price, have to be considered. If the above factors are taken into account,

the deduction of 45% of the value of Ex.C1, in our considered view, would be proper.

18. So far as largeness of the area is concerned, we are of the view that such a plea cannot be advanced in the facts and circumstances of the

present case. As seen from the award, the individual holding of each claimant, which was acquired was very marginal ranging from 0.00.4 acres to

a maximum of 1.75 acres. Though a larger extent has been acquired for the purpose of Master Plan Development of the newly formed

headquarters, from the point of view of each claimant, having regard to the extent as stated above acquired from each of the claimant, the concept

of reducing the value of certain percentage for the largeness of the area cannot be made applicable to the present case.

19. In respect of the other contention of Mr.Jermiah as to the enhancement of the value of the land, there appears to be some force. It is common

knowledge that the value of the real estate, i.e., landed property increases year by year as the land available does not increase but the demand for

the same increases. Of-course, in the decision relied on by him, the Division

Bench of this Court in the case of The Special Tahsildar, Adi Dravidar

Welfare Vs. Muthu Konar, , has observed that ""in fixation of rate of compensation under the Land Acquisition Act, there is always some element

of guess work. However, that has to be based on some foundation. It must spring from the totality of evidence, the pattern of rate, the pattern of

escalation and escalation of price in the years preceding and succeeding the 4(1) notification."" After so observing, the Division Bench arrived at a

enhancement of 15% per year. That was a case in which the lands were acquired were dry lands suitable for putting up of construction and as such

they were acquired for the purpose of making provision to house sites to Adi dravidars under the Tamil Nadu Act. But so far as the facts of the

present case are concerned, as already stated, the acquired lands are agricultural lands. Hence, enhancement of valuation in respect of dry land

cannot be taken in an abstract manner as enhancement for the agricultural land. Because the increase in the value of dry land is always on the

higher than the increase in the value of agricultural land, as the former could be used for construction of buildings for residential or commercial

purposes, as it is. The cost involved for developing the dry lands is much lower than the cost involved in developing the agricultural lands for the

purpose of putting up construction of building for the Master Plan complex.

20. Having regard to that the lands are agricultural lands, underdeveloped and require heavy expenses for developing the same, the justifiable

enhancement of the value, in our view, would be 5% per year. If so fixed, the claimants would be entitled to an increase of 10% from the value

stated in Ex.C1 for two years.

21. We have already concluded that 45% of the value has to be deducted towards development charges. The reference Court has already given

25% deduction. Hence, out of the 45% of deduction now arrived at, after deducting the 25% arrived at by the Reference Court and after adding

10% towards escalation of price, the further deduction will be 10% over and above the value arrived at by the Reference Court. The amount

awarded by the Reference Court (Rs.9,810/-) is reduced to the extent indicated above in so far as the value of the land is concerned. Thus, the

value of the land is determined at Rs. 8829/- per cent.

22. The reference Court has granted an additional amount of 12% u/s 23(1-A) of

the Act from the date of publication of 4(1) Notification till the date of the award. In this case, 4(1) notification was published on 12.06.1998. Possession of the land was taken on 23.12.1998. The award was made on 28.06.1999.

23. As per the statutory provisions, the Court is mandated in every case to award an amount calculated at the rate of 12 per cent per annum on the market value for the period commencing on and from the date of publication of the notification u/s 4(1) to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. Thus, it is clear that the starting point for calculation of 12 percentum is the date of 4(1) notification. However, there are two terminal points. One is the date of award and the other is the date of taking possession of the land. If the two terminal points are available after the 4(1) notification, the terminal point, which occurs earlier shall be taken up for calculation of the amount.

Useful reference can be had to the judgment of the Supreme Court in the case of Siddappa Vasappa Kuri and Another Vs. Special Land

Acquisition Officer and anr, .

24. In this case, as stated above, possession has been taken over prior to the date of the award. Hence, the reference Court is not correct in

granting additional amount at 12% till the date of award. The claimants are entitled to the said amount u/s 23(1-A) of the Act from the date of

publication of 4(1) notification, i.e., from 12.06.1998 and till the date of taking possession of the land, i.e., till 23.12.1998 only. The order of the

Reference Court stands modified to this extent in respect of additional amount.

25. In respect of solatium and interest on solatium, the order of the Reference Court stands confirmed in the light of the decision of the Supreme

Court in the case of Sunder v. Union of India, 2001 Suppl. (3) SCR 176.

26. The appeals are disposed of in the above terms. No costs.