(2010) 08 MAD CK 0319

In the Madras High Court

Case No : Appeal Suit No''s. 110, 111, 112, 113, 114, 115, 116, 117, 118, 120, 372, 373, 376, 377, 378, 379, 381, 382, 383, 384, 561, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572 and 573 of 2007 and connected MPs

The Special Tahsildar (LA), Inner Ring Road Scheme APPELLANT

Vs

A.E. John Bascoss RESPONDENT

Date of Decision : 20-08-2010

Acts Referred:

Citation : (2010) 08 MAD CK 0319

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ravi, Special Govt. Pleader, for the Appellant;

Judgement

K. Chandru, J.—These appeals were preferred by the Special Tahsildar, (Land Acquisition), Inner Ring Road Scheme, Chennai challenging the common judgment dated 29.11.2005 made in L.A.O.P. Nos. 1, 2, 6, 7, 8, 9, 11, 12, 13, 15, 16, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40 of 2002 and 73 of 2003 on the file of the Additional District Court, Fast Track Court No. I, Chengalpattu.

2. (i) The land of the respondents/claimants which was situated in Madipakkam Village-I to the extent of 4.69.5 hectares was acquired for forming and improving the Southern Sector of Inner Ring Road from KM 14/1, G.S.T. Road (N.H.45) to join at KM 13/4 at Mahapalipuram Road. A notification u/s 4(1) was issued by G.O.Ms. No. 61, Highways Department, dated 18.3.1998. After conducting enquiry u/s 5A, an award came to be passed in Award No. 3/2001 dated 20.08.2001 acquiring the land of the respondents/claimants. The Acquiring Authority fixed the market rate of compensation at Rs. 12.15 per sq.ft. The aggrieved land owners objected to the lower rate of compensation. Therefore, the matter was referred for determination of market value by the jurisdictional Reference Court under various references. Those references are registered as

L.A.O.P. Nos. 1, 2, 6, 7, 8, 9, 11, 12, 13, 15, 16, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 40 of 2002 and 73 of 2003.

(ii) All the original petitions are clubbed together by a joint memo filed by both parties and evidence was recorded in L.A.O.P. No. 11/2002 before the Reference Court. On behalf of the claimants, six witnesses were examined as C.W.1 to C.W.6. C.W.1 is a claimant in L.A.O.P. No. 11/2002. C.W.2 is a claimant in L.A.O.P. No. 35/2002. C.W.3 is a claimant in L.A.O.P. No. 4/2002. But, however, the said L.A.O.Ps., were removed from the batch of cases. C.W.4 is a claimant in L.A.O.P. No. 1/2002, C.W.6 is a claimant in L.A.O.P. No. 2/2002 and C.W.5 is a Surveyor of buildings, by name, Sulaiman. On behalf of the claimants, 14 documents were filed and marked as Exs.C.1 to C.14. On the side of the Acquiring Authority, the then Special Tahsildar, Velusamy was examined as R.W.1 and on his side, two documents were filed and marked as Exs.R1 and R2. Ex.R1 is the award passed by the Acquiring Authority in Award No. 3/2001. Ex.R2 is the sale deed issued in favour of one K.R. Srinivasan by the Balaji Nagar Government Employees'' Development Colony Housing Society dated 22.1.96.

3. The Court below on appreciating the evidence (both oral and documentary) came to the conclusion that the compensation awarded by the Acquiring Authority at the rate of Rs. 12.15 per sq.ft was on the lower side and enhanced the compensation to Rs. 100/- per sq.ft.

4. Aggrieved by the common judgment, all these appeals were filed. The following table will show the names of the claimants, the Number of the L.A.O.Ps., and corresponding Appeal suit.

Sl. No.	Name of the Claimant	LAOP. No.	A.S. No.
1.	A.E. John Bascoss	LAOP No. 16/2002	A.S. No. 561/2007
2.	S. Bagyalakshmi	LAOP No. 19/2002	A.S. No. 563/2007
3.	R. Mukundun	LAOP No. 20/2002	A.S. No. 564/2007
4.	V. Saraswathi	LAOP No. 22/2002	A.S. No. 565/2007
5.	M. Padmavathy	LAOP No. 23/2002	A.S. No. 566/2007
6.	O.A. Venugopalan	LAOP No. 24/2002	A.S. No. 567/2007
7.	M. Mahalakshmi	LAOP No. 26/2002	A.S. No. 568/2007
8.	J. Srinivasan	LAOP No. 27/2002	A.S. No. 569/2007
9.	S. Senthilkumar	LAOP No. 28/2002	A.S. No. 570/2007

-- 10. 1. V. Narayanan LAOP No. 29/2002 A.S. No. 571/2007 s/o Vadivelu

2. Shanthi Narayanan w/o Narayanan -- 11. Padmavathi LAOP No. 30/2002 A.S. No. 572/2007 -- 12. C.K. Subramanian LAOP No. 31/2002 A.S. No. 573/2007 -- 13. T. Sivagamasundari LAOP No. 21/2002 A.S. No. 110/2007 -- 14. D. Purusothaman LAOP No. 32/2002 A.S. No. 111/2007 -- 15. K. Pakkiyam LAOP No. 33/2002 A.S. No. 112/2007 -- 16. P. Mani LAOP No. 34/2002 A.S. No. 113/2007 -- 17. S. Susila LAOP No. 35/2002 A.S. No. 114/2007 -- 18. R. Subramani LAOP No. 36/2002 A.S. No. 115/2007 -- 19. E. Anbu LAOP No. 37/2002 A.S. No. 116/2007 -- 20. K. Ramachandran LAOP No. 38/2002 A.S. No. 117/2007 -- 21. A.S.L. Rajan LAOP No. 40/2002 A.S. No. 118/2007 -- 22. E. Sivasubramanian LAOP No. 73/2003 A.S. No. 120/2007 -- 23. The Secretary, Govt. LAOP No. 1/2002 A.S. No. 372/2007 Servant Welfare Housing Society -- 24. J. Ettiyammal LAOP No. 2/2002 A.S. No. 373/2007 -- 25. S. Kalyana Sundaram LAOP No. 6/2002 A.S. No. 376/2007 -- 26. 1. T. Arjunan LAOP No. 7/2002 A.S. No. 377/2007 2. T. Murugavel both are sons of late Tulasinga Naicker 3. T. Chandran S/o late Tulasinga Naicker -- 27. R.V. Arul LAOP No. 8/2002 A.S. No. 378/2007 -- 28. R. Lalitha LAOP No. 9/2002 A.S. No. 379/2007 -- 29. G. Govindarajan LAOP No. 11/2002 A.S. No. 381/2007 -- 30. G. Ramachandran LAOP No. 12/2002 A.S. No. 382/2007

-- 31. S. Ganapathy LAOP No. 13/2002 A.S. No. 383/2007
-- 32. M. Ranganathan LAOP No. 15/2002 A.S. No. 384/2007
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5. The grounds set out in the memorandum of appeals filed in the appeals are threefold and there are as follows:

(1) The grant of compensation at the rate of Rs. 100/- per sq.ft was exorbitant.

(2) The consideration made on the basis of Exs.C4 to C9 without verifying whether those lands belong to Madipakkam Village is erroneous and such compensation cannot be done.

(3) The average rate of sale arrived at by the Reference Court was erroneous.

(4) The Exs.C4 to C9 are exemplars of sale of small plots of land and therefore they cannot be compared with the land as acquired.

6. It is seen from the records that the Acquiring Authority himself took note of the sale transactions for the period from 20.7.1995 to 19.7.1998 in respect of lands within 1.6 km radius from the centre point of the lands which were acquired. Thus he considered 390 sales made in the Ullagaram village, 443 sales made in Adambakkam, 866 sales made in Velachari and 1836 sales in Madipakkam Village. Thus, 2535 sales were considered. But, however, the authority rejected most of the sale transactions on the ground that they relate to Government Poromboke land or sold as house sites. He considered that Survey No. 16/14 with a land measuring 1791 sq.ft. in Survey No. 267 of the sale statistics was sold at Rs. 21,761/- by Doct. No. 615/1996 dated 13.3.96 and that works out to Rs. 12.15 per sq.ft. It is also claimed that the said land lies within half a kilo metre from the acquired land and the said land is also a wet land whereas the acquired lands are manavari lands. Though they differ in the classification, they are similar in all other respects. Thus by rejecting as many as 2535 sale transactions, the authority arrived at the data land as the one found in Survey No. 267 dated 13.3.1996. Even that was two years before the Section 4(1) notification made on 18.3.1998.

7. The respondents/claimants even before the Reference Authority contended that there was a steep appreciation in the land costs were in that area as being adjacent to the Madras Metropolitan Corporation. The lands were situated either in a Municipality or in a Town Panchayat and are having all facilities. In fact, adjacent to the land there is Vyasvidyalaya Matric Higher Secondary School on the southern western side and other sides were surrounded by Balaji Nagar Government Employees'' Welfare Housing Society and Puzuthivakkam Bus Terminus is only situated at 250 metres from the land acquired and therefore, they all contended that Exs.C4 to C9 are the true indicators of the comparable land and the Court below should accept those exemplars.

8. The Reference Court on appreciating the evidence in para 11 found that Exs.C4 to C9 though may be situated in the neighbouring Revenue Village but since the Acquiring Authority himself indicated such an exemption by considering various sale transactions within a radius of 1.6 kilo metre, there was nothing wrong in taking note of Exs.C4 to C9. Since Exs.C4 to C9 are having different rates of sale, namely, Rs. 271, Rs. 225, Rs. 176, Rs. 130, Rs. 180, Rs. 161, Rs. 168 and Rs. 120, in order to fix the correct value the Reference Court arrived at average sale value and had fixed at Rs. 150/- per sq.ft. Even though the value was fixed on the basis that the lands have already become house sites and many houses are surrounded by the acquired land yet the Court below deducted 1/3rd towards the development charges. The aggrieved land owners have not challenged the deduction towards the development charges. Therefore, this Court is not called upon to decide the deduction even for house sites in the formation of the bypass road. But it is sufficient to take note of the fact that the Court below had arrived at the correct market value and rejected the low rate of compensation awarded by the Acquiring Authority.

9. The contention that the exemplars relied on were sale of small plots of land and cannot be taken note of does not stand to scrutiny. The Supreme Court vide judgment in Rishi Pal Singh and Others Vs. Meerut Development Authority and Another, has held that while there is acquisition of vast track of land, the exemplars of small plots can be considered for determining the market value when other relevant material evidence are not available. In such cases the exemplars of sale of small plots can be considered after making adequate discount. In the present case, Reference Court granted such a discount and had in fact reduced 1/3rd towards alleged development charges.

10. It must be noted that the Supreme Court in Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others, has held that the deduction towards development charges cannot be made in a straightjacket formulae and should depend upon the facts of each case.

11. It must also be noted that the Supreme Court in Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, has held that while determining the amount towards the development charges the purpose for which the land acquired is relevant as to whether any deduction for development charges at all can be made. In that particular case, the Supreme Court having found that the lands were acquired for laying out a railway line held that there is no question of any deduction towards the development charges. In the present case lands were acquired for the purpose of road expansion. It is an admitted fact that the lands were already used as house sites and does not require any further deduction towards development charges. In the present case, the land owners themselves have lost heavily on account of deduction towards development charges and the attempt to seek for further deduction even towards the land value is uncalled for.

12. With reference to the potential use of the land as a factor to be taken into

account, the Supreme Court in Sagunthala (dead) Through Lrs. v. Special Tahsildar (Land Acquisition) and Ors. 2010 (3) SCC 661 in para 35, 37 and 38 had observed as follows:

35. This Court in Avinash Dhavaji Naik v. State of Maharashtra has observed as follows: (SCC p.175, paras 14-15)

14. The potentiality of a land for the purpose of development as also for building purposes would depend upon a large number of factors. For the said purpose, the court may not only have to bear in mind the purpose for which the lands were sought to be acquired but also the subsequent events to some extent.

15. In a case of this nature the court may proceed on the presumption that such a vast tract of land viz. 96 villages were sought to be acquired at the same time for construction of New Bombay. We are not unmindful of the fact that development in the entire area was not possible at one point of time. Development of the area must have taken place in phases. We are also not unmindful of the fact that the price of the land may skyrocket depending upon the development as also future potentiality.

37. It has been further held in Atma Singh that the

market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when let out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put and whether it is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. (See p.572, para 5)

38. Following these principles laid down by this Court we hold that the High Court and the Land Acquisition Officer failed to take into consideration the advantages and facilities, as discussed above, which were available in the acquired land. Moreover, the very purpose for which the land was being acquired is also a relevant factor.

13. Further, the Supreme Court in Special Land Acquisition Officer Vs. Karigowda and Others, in para 91 has observed as follows:

91. It is a settled rudiment of law that the court, in given facts and circumstances of the case and keeping in mind the potentiality and utility of the land acquired, can award higher compensation to ensure that injustice is not done to the claimants and they are not deprived of their property without grant of fair compensation. Reference, in this regard, can be made to the judgment of this Court in Land Acquisition Officer v. Kamadana Ramakrishna Rao.

14. Even very recently a judgment dated 11.8.2010 in Civil Appeal No. 36 of

2004 in A. Natesam Pillai v. Spl. Tahsildar, Land Acquisition, Tiruchy, the Supreme Court emphasised the consideration of potential use of the land in paras 13 and 22 and observed as follows:

13. This Court in Administrator General of West Bengal Vs. Collector, Varanasi, has held:

Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. This Court in State of Uttar Pradesh Vs. Major Jitendra Kumar and Others,

It is true that the sale deed Ex.21 upon which the High Court has relied is of a date three years later than the notification u/s 4 but no material was produced before the court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex.21 under which the Housing Society itself had purchased land in the neighbourhood of the land in dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ex.21.

But this principle could be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction.

22. Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, in so far as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration. The present acquired land has all the potentiality to be used as building sites, even in the immediate future, as it is located at a place in and around which building activity has already started. The evidence on record also clearly indicates that acquired land is abutting the main road. The acquired land is also surrounded by schools, Panchayat union office, shops and residential building in all three sides. The High Court also found, as a matter of fact, that the area where the acquired land is situated is fit for construction of houses. On an overall consideration and appreciation of the records, we feel that the deduction due to the small size of the exemplar land can easily be set off with the corresponding increase in price of the acquired land when compared with the land in Ex.A3 from the point of view of potential value.

15. In these circumstances, all the appeals are misconceived and this Court is not inclined to interfere with the well considered judgment of the Reference

Court and all these Appeals are dismissed. However, since the respondents are not before this Court and in the peculiar circumstances, the parties are allowed to bear their own costs. Though all the appeals are dealt with by a common judgment, the Special Government Pleader is entitled to get separate set of fees in respect of each set of papers. Connected pending M.Ps. are dismissed.