(2009) 07 MAD CK 0269

In the Madras High Court

Case No : Appeal Suits No''s. 430 to 454 of 2007 and 472 to 481 and 597 to 604 of 2008

The Special Tahsildar (LA), Karur Broad Guage Railway Scheme — APPELLANT

Vs

S. Subramani and The Deputy Chief Engineer (Construction), Southern Railway, Salem Railway Broad, Gauge Railway Scheme — RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 4(1)

Citation : (2009) 07 MAD CK 0269

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

Bench : Division Bench

Advocate : V. Ravi, Special Government Pleader, for the Appellant; A. Thiagarajan for V.G. Suresh Kumar, Kasturi Rangan, for Sampath Kumar Associates, P. Jagadeesan and N.S. Sivakumar, for the Respondent

Judgement

K. Raviraja Pandian, J.—These appeals are filed by the acquisition authority against the enhanced compensation determined by the Reference Court in respect of the lands acquired for the purpose of laying railway track from Salem to Karur in an extent of 2.01.0 hectare of land in various survey numbers (survey No. 19/3A1A etc.,) in the village of Amanikondlampatti, Salem Taluk, has been acquired by invoking the urgency provision of the Land Acquisition Act. The Requisitioning body is Railways.

2. The notification u/s 4(1) of the Act was issued on 23.02.1999. The Land Acquisition Officer, after following the due procedure contemplated under the Land Acquisition Act passed an award on 28.10.1999. While passing the award, the land acquired has been classified in three categories by the Land Acquisition Officer, viz.,(1) an extent of 1.36.0 hectares as dry agricultural land; (2) an extent of 5480.5 sq. m., as house sites and (3) 994.5 sq. mt., as natham. In respect of dry agricultural land, the Land Acquisition Officer determined the

compensation at the rate of Rs. 46,359/- per acre, which works out to Rs. 1 06 per square feet. The compensation so awarded in total in respect of the first category is Rs. 1,55,706.40. The second and the third categories have been considered together and a sum of Rs. 140.70 per sq. mt. has been determined which works out to Rs. 13.83 per sq. ft. The total compensation determined under these two categories works out to Rs. 7,66,885.35.

3. The claimants, not satisfied with the compensation awarded by the Land Acquisition Officer in the award dated 28.10.1999 got the matter referred u/s 18 of the Land Acquisition Act before the Reference Court. The Reference Court, after taking into consideration the material evidence ? both oral and documentary, adduced before it, determined the value of the land at Rs. 125/- per sq. ft., irrespective of the classification made by the Land Acquisition Officer by treating all the lands on par with each other. In respect of the claimants whose lands have been severed from their remaining land, a compensation at the rate of 25% of the value has been granted. In respect of persons whose dwelling house have been acquired, 25% of the value has been granted. As stated in the summation of facts, the compensation so determined has been put in issue in these appeals both by the acquisitioning body as well as by the requisitioning body.

4. Heard the learned Special Government Pleader for the appellant, learned Senior Counsel appearing for the acquisitioning body (Railways), and learned Counsel who appeared for the claimants-respondents and perused the materials available on record.

5. Mr. Thiagarajan, learned senior Counsel for the acquisitioning body contended that having regard to the number of sales that took place within the period of three years prior to the date of 4(1) notification and having regard to the further fact that 90% of the sales that took place were made on square feet basis, in respect of the land adjoining the land under acquisition, the treatment made by the Reference Court in determining the compensation at square feet basis for the lands cannot be said to be faulty or irregular, but the compensation determined at Rs. 125/- per sq. ft., is without any basis. There is absolutely no material available before the Reference Court to determine the compensation at Rs. 125/- per sq. ft. He further contended that Sl. No. 476 of the data document was sold on 15.04.1998, which is in an extent of 389 sq. m., as house site (4187 sq. ft.), at the rte of Rs. 100.55, which is a smaller extent and which cannot form a basic document to determine the value of the larger extent of land which has been acquired in this case. He further contended that the Reference Court failed to deduct any sum towards development charges. The Counsel for the acquiring body adopted the argument of the Counsel for requisitioning body.

6. The learned Counsel for the claimants argued for sustaining the order of the Reference Court.

7. From the arguments of the learned Counsel on either side, the points that

arise for consideration in this case are as to whether the value of the land determined at Rs. 125/- per sq. ft., is reflecting the fair market price and whether any deduction should be given from the value determined towards development charges and largeness of the area acquired?

8. As contended by the learned Counsel for the second respondent, the sales that took place in and around the land under acquisition, which are 615 in number, were sold on sq. ft. basis as house sites for the purpose of putting up the construction of building. That is the reason for the Counsel for the second respondent to concede that they cannot object for determination of the compensation by square feet basis.

9. We also find, on facts, that almost all the 615 sales were made on the basis of sq. ft. only. It is seen from paragraph 9 of the judgment of the Reference Court, wherein it has categorically been admitted by the appellant - Special Tahsildar, who deposed as DW1 that the lands which are the subject matter of LAOP No. 252, 257, 281 to 285, 287, 288 of 2002 were all house sites. He further admitted that the lands under acquisition, though differently classified in the revenue records, they are house sites only and the lands in and around the acquired lands have been sold as house sites only. The claimants, who deposed before the Reference Court, have also spoken to about this fact that though the land in survey No. 19/3A1A has been classified as agricultural dry and natham, the sales that were effected during the period were on the sq. ft., basis treating the lands as house sites. Hence, on the basis of the documents supported by the evidence adduced by as many as 10 claimants which has been supported by the evidence of DW1, the Special Tahsildar, we can safely come to the conclusion that the action of the Reference Court in determining the compensation at sq. ft., basis is correct and cannot be stated to be faulty.

10. In respect of the value determined by the Reference Court, it is true that before the Reference Court, sl. No. 476 a document dated 15.04.1998 in which land has been sold at Rs. 100.55 per sq. ft., has not been marked by the claimant, but the fact remains that the very document was available before the Reference Court as it was taken as one of the several data lands. By taking into the totality of the circumstances of the case, as to the lie of the land suitable for immediate construction and that Sl. No. 476 document is also one of the several documents gathered by the Land Acquisition Officer for the purpose of determining the value of the land which, on par with the acquired land in all aspects, is more suitable for determining the value of the subject land. As already stated, under that document, a square foot has been sold at Rs. 100.55. On that basis, the Reference Court has determined the value at Rs. 125/- per sq. ft., by enhancing the value by Rs. 25/-.

11. We are not able to sustain the argument of the learned Counsel for the second respondent, that the enhancement of Rs. 25/- over and above the value of the land in Sl. No. 476, because sl.No.476 was sold on 15.04.1998, but the 4(1) notification is dated 23.02.1999. Hence, there must be some escalation in

the price of the house sites. As per Section 23 of the Land Acquisition Act, the value has to be determined by taking into consideration the market value of the land on the date of publication of the notification u/s 4(1) of the Act. As the date of the notification u/s 4(1) of the Act is nearly one year after the date of sale of land under Sl. No. 476, the enhancement of Rs. 25/-, in our view, would reflect the fair market value. If that be so, we are of the view that the determination of the value of the land at Rs. 125/- per sq.ft., is a fair market value of the land and it cannot be regarded as on the higher side. An attempt was made to contend that no amount was deducted from the value determined towards development charges, by relying on the Supreme Court decisions 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. Here again, we are not able to concur with the argument. The public purpose for which the land was acquired in the present case is for formation of railway track from Salem to Karur, which require no development except strengthening the track land and laying the rail track. It is apt, we think to quote certain observations made by the apex Court in the case of Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others, :

We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has to be directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case the land was acquired for the construction of new B.G. line for Konkan Railway. This Court, in Mirza Majid Hussain Vs. State of M.P. and another, and The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, had, noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development charges thereof would not arise.

But the Reference Court has not taken into consideration the largeness of the area which has been acquired, while arriving at the value with reference to small piece of land in Sl. No. 476. The extent of lands sold by document dated 15.04.1998 in S. No. 476 is 398 sq. m.,(4187 sq. ft), whereas the land acquired is an extent of 2.01.0 hectares. Hence, definitely certain percentage in the value has to be deducted towards the largeness of the area acquired.

12. In all reasonableness, a deduction of Rs. 25/- per sq. ft., in our view, would meet the ends of justice. If such a deduction is given, the value of the land would be Rs. 100/- per sq. ft. Thus, the value of the land is determined at Rs. 100/- per sq. ft.

13. The appeals are allowed to the extent indicated above. In respect of other aspects, the order of the Reference Court would remain in tact. The connected miscellaneous petitions are closed in view of the order in the appeal suits.

