

(2003) 03 MAD CK 0110

In the Madras High Court

Case No : A.S. No. 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234,, 235, 236, 237, 238, 239, 241, 242, 243, 244 and 245 of 1998

The Special Tahsildar (LA), Krishna Water Supply Project
Unit-3

APPELLANT

Vs

Rathinareddi

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 20
Income Tax Act, 1922 — Section 2(4)
Land Acquisition Act, 1894 — Section 18, 23, 4(1), 6
Partnership Act, 1932 — Section 2

Citation : (2003) 2 LW 267 : (2003) 1 MLJ 781

Hon'ble Judges : M. Chockalingam, J;A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : R. Asokan, Addl. Govt. Pleader, for the Appellant; S.D.N. Vimalanathan in A.S. 207 to 209/1998, G. Jermiah in A.S. 210 to 213, 217 to 220, 222 to 229, 231, 232, 235 to 239, 241, 242, 244 and 245/1998, V. Ayyadurai in A.S. 214 to 216, 233 and 234/1998, M.S. Subramanian in A.S. 230/1998 and A. Palaniappan in A.S. 243/1998, for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The State of Tamilnadu in their Order Ms. No. 1428/PWD dated 2.7.1983 accorded sanction for the

acquisition of lands required for raising full reservoir level of Poondi Reservoir under Krishna Water Supply Project. Following that, the Executive

Engineer, Public Works Department, Krishna Water Supply Project, Chepauk, Madras - 5, in his letter dated 30.1.1985 sent the requisition in the

form prescribed for the acquisition of land measuring 49.61 acres of wet lands in Thomur village, Tiruvallur Taluk, Chengalpet District. Pursuant to

that, a notification u/s 4(1) of the Land Acquisition Act, 1894 for acquisition of wet lands for an extent of 48.83 acres in survey No. 226/1/Part,

etc., was approved in G.O.Ms. No. 700/PWD, dated 13.5.1985 and duly published in the Government Gazette dated 29.5.1985. An enquiry u/s

5-A of the Land Acquisition Act was duly conducted, in which all the parties concerned participated. Finally, a draft declaration u/s 6 of the Act

for the extent of 48.93 acres was approved by the Government by their order dated 31.10.1985, which was also duly published.

2. Admittedly, the lands comprised in survey No. 226/1/B, etc., are classified as wet lands in the revenue account of Thomur village, Tiruvallur

Taluk, Chengalpet District. The award enquiry was conducted by the Land Acquisition Officer after due notice to all persons interested. Out of the

extent of 48.93 acres notified, award was passed only to an extent of 47.09 acres and for the remaining extent of 1.84 acres, award was not

passed. The Land Acquisition Officer fixed the market value at the rate of Rs.53.80 per cent. For so fixing, the said Officer placed reliance on a

sale transaction that took place on 24.8.1982 wherein an extent of 1.03 acres comprised in S. No. 248/12 etc., was sold for a consideration of

Rs.5,540/-.

3. Being dissatisfied with such fixation, the respondents/land owners, exercising their option u/s 18 of the Land Acquisition Act, requested that the

matter may be referred to a Civil Court. In their requisition which was given in writing, they have specifically mentioned that the adjoining lands are

being sold at the rate of Rs.400/- per cent. Before the Reference Court, the respondents/Land owners filed their written statements to the effect

that the acquired lands are fertile fields, cultivable thrice a year with crops like paddy, groundnut, casurina, sugarcane, etc., because they are

getting perennial source of water as there are three tanks around, and that the lands yielded a net income of Rs.10,000/- per acre. It is also

claimed therein that the lands are very close to bus route, Poondi Reservoir and T.B. Park and that the market value is about Rs.500/- per cent

and that there is always steep increase of at least Rs.30/- per cent per annum. The reference Court placing reliance on a sale transaction that took

place on 20.5.1983, wherein an extent of 34 cents comprised in S. No. 113/7 was sold for Rs.34,000/-, which is about eight survey numbers

away from the land in question, thought it fit to fix the market value at Rs.500/- per cent and another Rs.50/- by way of compensation on the

ground that the land owners will have to go for some other work. Questioning the correctness of such fixation viz., at Rs.550/- per cent, the above

appeals have been filed by the State of Tamilnadu.

4. Before the reference Court, on behalf of the respondents/Land owners, one of the land owner by name Rajendran has been examined and three

documents have been filed. On the side of the Revenue, a retired Tahsildar was examined and the Topo sketch of Poondi village has been filed.

5. The question that arise for consideration in these appeals are,

(1) Whether fixing of market value at Rs.500/- per cent is just, legal and proper ?

(2) Whether the reference Court is right in awarding Rs.50/- by way of compensation on the ground that the respondents/land owners have to

seek for some other avocation ?

6. As pointed out already, the Land Acquisition Officer fixed the market value of the lands at Rs.53.80 per cent. If the respondents/land owners

claim that such fixation is wrong and higher amount should have been fixed as market value and seek for reference to Civil Court, the burden is on

them to prove the same. Needless to mention, the method of such proof has to be by production of comparable sale transactions of lands, close by

the acquired lands or by letting in acceptable oral evidence.

7. First let us proceed to consider the documents that have been filed by the Claimants.

The first document that is available for consideration is a sale transaction under Ex.C-1, under which an extent of 1440 sq.ft. was sold for a

consideration of Rs.5,760/-. But this document may not help the Court to arrive at the market value for various reasons. Firstly, Section 4(1)

notification in this case was in May, 1985, whereas this sale transaction took place on 7th August, 1986. Or in other words, it is post notification

sale transaction. Secondly, the property that was sold under the said document comprised in S. No. 326/2 in Senrayanpalayam village. There is no

evidence available on record to show as to what is the distance between the acquired lands, which are in Thomur village and the subject matter of

sale under Ex.C-1 viz., an extent of 1440 sq.ft. comprised in S. No. 326/2 in Senrayanpalayam village.

The other documents available viz., Exs.C-2 and C-3 can be considered together since they are Judgment and Decree of the Subordinate Court,

Tiruvallur in L.A.O.P.298 of 1989. A perusal of the same would show that in respect of the lands acquired pursuant to the notification in August,

1986, of course for the very same purpose as that of the present one, vast extent of lands were acquired in Ramanchery village. For those lands,

the reference Court fixed the market value at Rs.1,400/- per cent and it is stated that on appeal this Court reduced the market value to Rs.750/-

per cent. The difficulty in straight away accepting this document is that the distance between those lands, that is to say, lands acquired in

Ramanchery village and that of the lands in question, is two kilo meters.

Thus, the documents filed viz., Exs.C-2 to C-3 are not of much use for this Court to come to a conclusion with regard to fixation of the market

value of the acquired lands.

8. The respondents/land owners in their written request to the Land Acquisition Officer to refer the matter to the Civil Court, have clearly stated

that the market value of the land is Rs.400/- per cent and in fact the lands situated nearby are being sold at that rate. It is curious to note that in all

the 38 cases, the land owners have made this statement. Of course, it is not as if this statement will prevent and estop them from making higher

claim before the Civil Court. This is for the reason that the Supreme Court has held that while the reference Court deals with the matter, it is not as

if it is sitting in appeal over the award of the Land Acquisition Officer and that the proceedings before the reference Court are original proceedings.

When the proceedings are original proceedings, the land owners can certainly put forth their case, in the sense, they can even claim higher

compensation than what they claimed before the Land Acquisition Officer. As already mentioned the burden is on them to prove that the market

value is so, say in this case Rs.500/- per cent.

9. The lands have been acquired by the State for the purpose of raising full reservoir level of Poondi Reservoir under Krishna Water Supply

Project. As already mentioned, Section 4(1) notification was on 29.5.1985. No sale transactions are available on record in respect of comparable

sale that took place just prior to the notification. In fact, the sale transactions referred to by the Land Acquisition Officer, so also by the reference

Court are those which took place two years prior to the notification u/s 4(1) of the Act. The Land Acquisition Officer has relied on a sale

transaction that took place on 24.8.1982 in respect of the land comprised in S. No. 248/12 etc., and fixed the market value at Rs.53.80 per cent.

However, the reference Court took into consideration the sale transaction that took place on 20.5.1983 in respect of an extent of 34 cents

comprised in S. No. 113/7 and fixed the market value at Rs.500/- per cent.

10. It is settled law, while fixing the market value, the comparable sale transaction which fetched maximum price and which is the most

advantageous to the Claimants, alone should be taken into consideration, since the guideline and principle laid down is that Court should see at

what price a willing seller will sell. {Refer [i] 1969 (1) MLJ SC 45 (Ranee of Vuyyur v. Collector of Madras); [ii] The State of Madras Vs. P.

Seetharamammal and Another, ; and [iii] Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat, }

11. Coming to the present case, what this Court has to examine is, as to whether the reference Court is right in fixing the market value at Rs.500/-

per cent taking the sale transaction in respect of 34 cents of land comprised in S. No. 113/7 that took place on 20.5.1983, as basis. As between

the sale transaction that was taken into consideration by the Land Acquisition Officer and the one that has been taken into consideration by the

reference Court, only the second one is latter in point of time. Before the reference Court, the revenue filed the village map of Thomur village. As

already mentioned, the sale transaction relied on by the reference Court is in respect of 34 cents of land in S. No. 113/7. Nothing is available in the

plan to show as to what is the distance between the acquired lands and the lands in S. No. 113/7. The reference Court has mentioned that in

between the two lands, there are eight survey numbers. In fact, that is wrong and there are only five survey numbers. In the cross examination, the

witness who has been examined on behalf of the revenue has admitted that under the sale transaction dated 20.5.1983, an extent of 34 cents was

sold for Rs.34,000/- in the said survey number. All that this witness has stated is that the Tharam (quality) of the two lands are different. At this

juncture it may be mentioned that it is not the case of the revenue that the said property (S. No. 113/7) was sold for a fancy price or that there are

some special reasons for the property fetching such a price. Thus, the only minus point pointed out by the witness is the quality of the acquired

lands is inferior when compared to S. No. 113/7 and he has not further elaborated on that. The witness who has been examined on behalf of the

land Owners has stated that the acquired lands have copious supply of water and that they are raising three bogams. Strangely, the witness who

has been examined on behalf of the revenue, though would admit having visited the lands on two occasions, would depose that he does not know if

there are three tanks nearby. The said witness would admit that the land owners of the acquired lands have been using pump sets also to irrigate

their lands. This witness would also claim that they are raising crops only one bogam. On a careful analysis of the testimonies of these witnesses,

we are not inclined to accept the testimony of the revenue official that the land owners are raising only one bogam. It may be that the quality of the

lands may be different, which would only mean the value of the same will be somewhat less. It is also to be noted, the sale of 34 cents in S. No.

113/7 was not for a housing plot because that is not the claim of the revenue. If we take the totality of the facts and circumstances, it cannot be

said that the reference Court has erred in committing a mistake in fixing the market value at Rs.500/- per cent.

12. There is yet another test by which this Court can satisfy whether the market value fixed by the reference Court is correct. As already

mentioned, the Land Acquisition Officer relied on a sale transaction that took place in August, 1982. Of course, it is one survey number away from

the acquired lands and the sale price was at Rs.55/- per cent. The reference Court relied on a sale transaction that took place in May, 1983 at the

rate of Rs.1,000/- per cent. It is not the case of the revenue that the said sale fetched fancy price for some reason or the other, and that S. No.

113/7 is also in the same village and as already noted, it is just five survey numbers away and not eight survey numbers as stated by the reference

Court. The only difference mentioned by the revenue officials between these two lands is that the acquired lands are inferior in Tharam. But he has

not further explained that. Suppose, if the soil of the acquired lands are very bad, then it will of course fetch a very low price. A vague statement by

the revenue official that Tharam is less, cannot be acted upon blindly to reduce the market value drastically. Suppose, the Court takes an average

between the two sales i.e., Rs.55/- per cent (sale in respect of S. No. 248/12 etc.) and Rs.1,000/- per cent (sale in respect of S. No. 113/7), the

same would work out to Rs.1,055/- divided by 2, viz., Rs.527/-. Even if we deduct 25% because quality is inferior, we arrive at a figure of

Rs.460/- per cent. It has to be borne in mind that the sale in respect of S. No. 113/7 was in the year 1983, wherein 4(1) notification was in 1985.

For two years, the Court can add 10% every year representing the increase. In that event, we arrive at a figure of Rs.480/- per cent. Now that the

reference Court fixed Rs.500/- per cent, it cannot be said to be excessive. After all, in all these matters, whichever Court fixes the market value, it

has to do some guess work. In this view of the matter, we hold that the market value fixed by the reference Court at Rs.500/- per cent for the

acquired lands, is just and proper.

13. The appellant/State would put forth a contention that the reference Court has erred in awarding Rs.50/- as compensation i.e, 10% of the

market value on the ground that the respondents/land owners have to seek for some other occupation. In reply, the learned counsel appearing for

land owners would contend that by virtue of the provision viz., Section 23, the Land owners are entitled for compensation since they have to

change their place of business or to seek some other avocation.

14. Section 23 of the Land Acquisition Act, 1894 reads as under,

Sec. 23 - Matters to be considered in determining compensation.- (1) In determining the amount of compensation to be awarded for land

acquired under this Act, the Court shall take into consideration-

- firstly,

- secondly,.....

- thirdly,.....

- fourthly,.....

- fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of

business, the reasonable expenses (if any) incidental to such change; and

15. The term "business" has not been defined. There is no explanation clause indicating as to how the said term has to be understood. Suppose, if

a person is carrying on boarding business in a premises and that premises is

acquired, then necessarily he has to shift the business to some other place and in which event he would be entitled for compensation under the heading ""Changing place of business"". Such a person may buy another property in the same town or village and carry on his business or he may take a premises on lease to run a business or it may be even that he may not carry on business at all. Irrespective of all these, such a person would be entitled for compensation. The question is suppose in a given case, an agricultural land is acquired, the owner who is cultivating the said land has to buy some other land to carry on his avocation or livelihood or take some other land on lease for that purpose, whether he would be entitled for compensation as in the case of a hotelier. To put it differently, the question is whether agriculture is a business for the purpose of this Act.

16. As already said, the term business has not been defined or explained. Then necessarily we have to find out what is the meaning of the term

"business".

(a) The Words and Phrases, legally defined Vol.I, Butterworths, 1969, II Edition would place reliance on the ruling in *Rolls v. Miller* (1884) 27

C.D.71 and gives the meaning of the word "business" as,

Business is a wider term than, and not synonymous with, trade; and means practically anything which is an occupation as distinguished from a

pleasure. Profit or the intention to make profit is not an essential part of the legal definition of a trade or business.

(b) The Chambers 20th century Dictionary explains the term "business" as ""employment, trade profession or occupation; matter requiring attention;

dealings, commercial activity; one's concerns or affairs.

(c) The Concise Oxford Dictionary, 10th Edition would give the meaning of the term "business" as ""a person's regular occupation or trade"". The

meaning of the term "occupation" is ""profession"".

(d) Black's Law Dictionary, 7th Edition defines the word ""business"" as ""A commercial enterprise carried on for profit; a particular occupation or

employment habitually engaged in for livelihood or gain.

(e) Webster's Third New International Dictionary gives the meaning of the word "business" as ""occupation, position, trade.

(f) The Lexicon Webster Dictionary would explain the word as ""Commercial

activity engaged in as means of livelihood; a trade, profession, line, or occupation; a particular field of endeavour; a role or function extended over a considerable period of time.

Thus, the ordinary meaning to be taken for the term "business" is "a trade, occupation, or profession."

17. Way back in the year 1954, in P.K. Kesavan Nair Vs. C.K. Babu Naidu, a learned single Judge of this Court had occasion to explain the

term business while considering a case under Madras Building (Lease and Rent Control) Act, 1946. Paragraphs 5 and 6 of the said Judgment

would be of much use for us, which we extract hereunder,

(5) The term ""business"" includes every trade, occupation and profession. According to S.2(4) of the Income Tax Act, 1922, ""business"" includes

any trade, commerce, or manufacture or any adventure or concern of the nature of trade, commerce or manufacture. The word ""business"" has no

technical meaning, but is to be read with reference to the object and intent of the Act in which it occurs. The term ""business"" means an affair

requiring attention and care; that which busies or occupies one's attention and labour as his chief concern; mercantile pursuits; that which one does

for a livelihood; occupation; employment (S. 2(b), Indian Partnership Act; - "Calcutta Turf Club v. Secy. of State", AIR 1921 Cal 44 (A); -

"Exparte Breeull", 1881-16-Ch.D.484; - "A Minck v. Roshanlal" AIR 1931 Lah 390 (C).

(6) According to Ramanatha Aiyar's ""Law Lexicon"" (M.L.J. Office) the phrase "carrying on business" implies a repetition or series of acts. (Per

Brett J. in - "Smith v. Anderson" (1880) 50 LJ Ch 39 . This phrase ""carrying on business"" is in itself one of varying import according to as it is

construed with an implied addition, so as to make it mean the whole business, the principal part of the business, any part of the business or that

part of the business which may properly be supposed to have been contemplated. It has in the English Courts been interpreted according to the

context and the apparent purpose of the Legislature (Vide - "Gocul Das v. Ganeshilal", 4 Bom 416 (E); - "Sein Done Maung v. Chidambaram

Chettiar" AIR 1937 Rang 128 (F) and - "Ellappa Naicker v. Sivasubramanian",

In State of Andhra Pradesh Vs. Abdul Bakhi and Bros., , the Supreme Court considered the said term with reference to a case arising under

Hyderabad General Sales tax Act, 1950. In that case, the Supreme Court observed as under,

The expression "business" though extensively used, is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or

profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business

there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure.

In *Bakhtawar Singh Balkrishan Vs. Union of India and Another*, , a learned single Judge of Delhi High Court while considering the provision of

Section 20 of CPC (Act 5 of 1908), ruled that

The expression ""business"" has very wide import and is understood in different senses in varying contexts. In its generic sense, ""business"" is any

purposeful activity, any activity, directed towards some end, an activity engaged in as normal, logical or inevitable and usually extending over a

period of time. ... While in its narrow sense, it is confined to activity of a commercial nature with a profit motivation, in its wide sense, it is used to

denote conduct of his or its affairs by any person, body or authority. While the meaning to be attributed to the expression would depend largely on

the context, there is, by and large, unanimity that the expression has a very wide import and would encompass almost anything which is an

occupation, as distinct from a pleasure - anything which is an occupation or duty which requires attention is a business.

(Ruling reported in (1884) 27 C.D 71 and Halsbury: Laws of England, Fourth Edn., Vol.10, pages 106-108 were relied on by the High Court)

In *Hindustan Steel Ltd. Vs. State of Orissa*, the Supreme Court had occasion to consider certain provisions of Orissa Sales tax Act, ruled as

under,

The expression ""business"" though extensively used is a word of indefinite import, in taxing statutes it is used in the sense of an occupation, or

profession which occupies the time, attention and labour of a person, normally with the object of making profit.

(Also refer: *Senairam Doongarmall Vs. Commissioner of Income Tax, Assam*, ; *B.C. Munirathinam Naidu Vs. Meena Financiers, Madras* and

Another, .

18. If we consider the meanings given in the various dictionaries and the legal pronouncements referred supra, the following would emerge,

The word "business" has not been defined or explained in the Act or in the Rules framed thereunder. The word "business" has to be understood as

- trade, or
- occupation, or
- profession, or
- livelihood,

which occupies time, attention and labour of a person but will not include if done as a hobby or for pleasure or as a sport. In the absence of any

indication in the Act, all occupations are to be treated equally and there are no reasons to give a restricted meaning. Agriculture is also a business

just as a hotel business or running a provision store, so long it is not carried on as a hobby or pleasure. To claim the benefit of compensation, the

burden is on the owner of the land to show that the acquired land was under cultivation on the date of notification issued u/s 4(1) of the Act.

19. The next question is what is the reasonable compensation to be fixed. This Court in the decision reported in *The Sub Collector Vs. Smt. Lakshmi Ammal*, had to consider what can be the reasonable compensation in respect of a hotel business when such a business place is being

acquired and this Court held that the hotel owner will be entitled for six months net income as compensation in cases where the emergency

provisions are not invoked and in cases where emergency provisions are invoked, compensation of nine months net income would be reasonable.

But so far as cases of this nature are concerned, the question of loss of goodwill earned or developing customer relationship would not arise. After

all, in all these cases as Supreme Court has repeatedly held, the Court has to do some guess work while fixing the compensation. This Court is of

the considered view that the compensation of 9% of the market value would be just and reasonable in cases where emergency provisions are not

invoked and 12% where the emergency provisions are invoked.

20. But as far as the present case is concerned, the respective land owners have not claimed this compensation. Further, the land owners have not

let in any evidence that on the date of Section 4(1) notification, the acquired lands were under cultivation and that was done by them only as a

livelihood and not as a hobby or for pleasure. In these circumstances, it has to be held that the reference Court has erred in awarding Rs.50/- over

and above the market value fixed by it at Rs.500/- per cent.

21. In this view of the matter, the above appeals are allowed in part. The market value of the acquired lands is fixed at Rs.500/- per cent. No

costs.