**(2003) 10 MAD CK 0179**

**In the Madras High Court**

**Case No :** A.S. No. 55, 128 of 1992, 569 of 1993, 1080, 1359 of 1995, 410, 754 to 760 of 2002, 102 to 104 of 2003

The Special Tahsildar (LA) Neighbourhood Scheme APPELLANT

Vs

Arthanari Gounder and Others RESPONDENT

**Date of Decision :** 17-10-2003

**Acts Referred:**

Land Acquisition Act, 1894 — Section 23, 54

**Citation :** (2004) 2 CTC 121

**Hon'ble Judges :** Prabha Sridevan, J;E. Padmanabhan, J

**Bench :** Division Bench

**Advocate :** R. Asokan, Additional Government Pleader, Duraiswamy, in A.S. No. 1359 and 569 of 2002 and N. Manoharan, in A.S. No. 754 to 760 of 2002, for the Appellant; R. sekar, for Sarvabhauman Associates, for Respondent 1 to 4 in A.S. No. 102/02 and for Respondents Nos. 2 to 6 in A.S. No. 104/02, A. K. Kumarasamy, for Respondent in A.S. No. 410/02, 55 and 128/92, A.K. Sridharan, for Respondent in AS No. 1080/95 and V. Karthikeyan, for Housing Board, for the Respondent

## Judgement

Prabha Sridevan, J.—Vast extent of lands were acquired for the purpose of Neighbourhood scheme for the construction of LIG/MIG/HIG Scheme by the Tamil Nadu Housing Board in the Village of Erode. Section 4(1) Notifications were issued on three different dates as detailed in the tabular column given below:

A.S. No LAOP No Date of Section 4(1) Nan. Village Survey Nos. Value Fixed By The Lao In Rs. (Per Sq. Ft) Value Fixed Uy The Sub-Court In Rs.(Per Sq. Ft.)

55/92 32/87 15.7.81 Periasemur 504/3 3-086.5 Hectares 1.2 9

128/92 25/87 18.2.81 Erode 144/6 1.40 Hectares 1.20 6.08

569/93 Spl. Tahsildar 23/87 18.2.81 Erode 144/4 52 Arcs 1.18 6.25

1359/95 23/87 18.2.81 Erode 144/4 1.18 6.25

1080/95 43/87 19.2.81 Pcriascmur 517/1 1.14.5 0.88 4.00

 

410/02 28/87 18.2.81 Erode 146/4 0.41.0 1.35 13.00

754/02 4/87 19.8.81 Krode

755/02 3/87 19.8.81 Erode

756/02 2/87 19.8.81 Erode 512/1-5

757/02 5/87 19.8.81 Erode 515/1-4 0.8 6.00

758/02 6/87 19.8.81 Erode 516/1-4

759/02 9/87 19.8.81 Erode 6.87.5 Hectares

760/02 19/87 19.8.81 Erode

102/03 22/87 18.2.81 Erode 144/5 0.29.0 1.25 14.00

103/03 24/87 18.2.81 Erode 144/5 0.29.0 1.25 14.00

104/03 26/87 18.2.81 Erode 144/8 0.29.5 1.25 14.00

2. For convenience the parties to these appeals shall be referred as arrayed in the claim petitions. Heard Mr. Sekar appearing for M/s. Sarvabhauman Associates on behalf of the claimants and Mr. A.K. Kumarasamy, Mr. N. Manoharan, Mr. Sridharan appearing on behalf of the claimants and Mr. A. Ashokan, Additional Government Pleader and Mr. Karthikeyan, for Housing Board.

3. The counsel for the claimants would fervently submit that the value was fixed at Rs. 14 sq.ft. after remand and on a careful consideration of the oral and documentary evidence and therefore, the market value of Rs. 14 per sq.ft. should not be reduced. Several decisions were relied on. On the other hand, the learned Additional Government Pleader and the counsel for the Housing Board would contend that even though in respect of lands acquired for identical purposes, market value had been fixed at Rs. 5.35 sq.ft. a fair appreciation of the materials on hand would show that the Sub-Judge had over-estimated the value in these cases without any basis. It appears that some appeals in respect of the same Scheme as the case on hand, had been dismissed as time-barred and in those appeals the market value fixed was Rs. 5.35 per sq.ft. Notwithstanding the fact that the said value had become final insofar as some claimants were concerned, Mr. Karthikeyan submitted that the evidence would show even that value is on the higher side.

4. The following judgments were relied on by the counsel for the appellant, Mr. N. Manoharan:

(i) The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, , where the Supreme Court held that, when no sales of comparable land were available where large chunks of land had been sold, even land transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, expenses involved in formation of a layout, lumpsum payment as also the waiting period required for selling the sites that would be formed.

(ii) P.S. Krishna and Co. Pvt. Ltd. Vs. The Land Acquisition Officer, (Deputy Collector) Hyderabad, , the Supreme Court held that where there is evidence, to show prices of land in a concerned area shooting up contemporaneous to the issue of Section 4(1) Notification, valuation on the basis of the market value then prevailing and deduction of development charges at one fifth of valuation is proper.

(iii) In P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others, , the Supreme Court laid down certain guide lines for deciding the market value of lands.

(iv) In Hasanali Walimchand (Dead) by L.RS. Vs. State of Maharashtra, , the Supreme Court held that where undeveloped lands is acquired its future potential on account of its location should be borne in mind.

(v) In Karan Singh v. Union of India 1998 (I) MLJ 35, it was held that even post-notification transactions can be relied under certain circumstances and more importantly this was referred to by the learned counsel for the petitioner to show that the previous judgment of a Court or an award can form the basis for assessment with due regard being given to all attendant facts.

5. Judgments rendered in respect of identical lands acquired for the same purpose during the same time are also relevant and they are :

(a) In A.S.No. 128 of 1992 and cross objection S.R.No. 47735 of 1994 the Division Bench, consisting of P. Shanmugam and A. Subbulakshmi, JJ., by judgment dated 1.5.2001 fixed the market value per hectare at Rs. 5,08,226. The Division Bench accepted the value fixed by the Sub-Court at Rs. 2,22,244 per acre which roughly works out to Rs. 5.09 per sq.ft. and deducted 33-1/3% therefrom, towards developmental charges. It can be seen that these judgments, which have become final relate to Section 4(1) Notification, dated 18.2.1981 and it is in respect of adjacent lands comprised in. Survey No. 144/6 of the same Erode village.

(b) In A.S.No. 875 of 1991 and cross objection No. 253 of 1992, P. Shanmugam and A. Subbulakshmi, JJ., by judgment dated 7.12.2000 fixed the market value at Rs. 6,59,934 for one acre and ten cents, which works out to Rs. 6 per sq.ft. The lands are situate in S.No. 147/1, Periasemur Village acquired for the same public purpose pursuant to Section 4(1) Notification dated 15.7.1981. Though the revenue village is different, the lands arc located very adjacent and in the same locality commanding same facilities.

(c) Against the award and judgment made in L.A.O.P.No. 2 of 1989, A.S.No. 137 of 1993 and Cross Objection No. 72 of 1994 were preferred. The lands acquired in L.A.O.P.No. 2 of 1989 were comprised in S.No. 145/1,2,3 & 4, Erode village for the same Erode Neighbourhood Scheme, which is next to the acquired land. The earlier award in L.A.O.P.No. 2 of 1986 relating to land in Survey No. 129/5 was relied upon for fixing the market value. L.A.O.P.No. 2 of 1986 relates to Section 4(1) Notification dated 3.12.1980. In L.A.O. P.No. 2 of 1989 the market value was fixed at Rs. 5.53 per sq.ft. as on 8.1.1981, viz., the date of Section 4(1) Notification, which is just a month after 3.12.1980. So in A.S.No. 137 of 1993 and the Cross Objection No. 72 of 1994, the Division Bench consisting of P. Shanmugam and K. Sampath, JJ, on a consideration of the materials before it, by judgment dated 3.7.2002 came to the conclusion that Rs. 5.53 per sq.ft. represented the fair market value of the lands. While fixing the quantum, a deduction of 33.13 per cent was directed to be made on the ultimate compensation amount.

(d) In A.S.No. 593 to 595 of 1991 etc., P. Shanmugam and R. Banumathi, JJ., dealt with appeals arising out of acquisition proceedings notified u/s 4(1) of the Land Acquisition Act on 14.3.1973 and covering Erode and Soorampatti Village in respect of sub-divisions comprised in Section 409 and Section 412. There the Land Acquisition Officer fixed market value at Rs. 1.35 per sq.ft. The learned Sub-Judge answering the reference u/s 30 amended it to one u/s 18, enhanced the market value to Rs. 7 per sq.ft. The appeals were allowed, on the ground of lack of jurisdiction to amend the reference u/s 30 to one u/s 18 and also on merits. On merits too, the Division Bench fixed the market value in A.S.No. 584 of 1986 for the lands comprised in R.S. 113/2 at the rate of Rs. 5 per sq.ft. as fair and reasonable. In A.S.No. 584 of 1986 also the Section 4(1) Notification was published on 14.3.1973.

6. Now we come to the appeals on hand. A.S.Nos. 102 to 104 of 2003 have been preferred against the award passed by the Sub-Judge after remand by this Court.

7. Against the award in L.A.O.P.No. 32 of 1987, Appeal No,55 of 1992 and Cross Objection No. 116 of 1992 were preferred. The Division Bench of this Court by judgment dated 7.12.2000 fixed the market value of the lands at Rs. 6 per sq.ft. As against this, the parties preferred civil appeal Nos. 1580 to 1581 if 2003. The Supreme Court by order dated 21.2.2003 set aside the judgment of the Division Bench on the concession made by the counsel on both side while holding that the those appeals should have been heard alongwith A.S.No. 410 of 2000 and connected matters and in that view, the civil appeals were remanded. In these circumstances, A.S.No. 55 of 1992 and the cross objection are also listed before us.

8. In A.S.No. 55 of 1992, subject matter of acquisition is comprised in survey No. 504/3, which is part of the property covered by the data land, which was sold for 88 paise per sq.ft. in 1979. The subject matter of appeal Nos. 102 to 104 of 2003 are survey numbers, which are located away from the property covered by A.S.No. 55 of 1992. The property covered in A.S.No. 128 of 1992 is survey No. 144/6 in Erode Village. In A.S.No. 875 of 1991 which relates to acquisition

proceedings of lands in survey No. 147/1 of Periasemur Village was fixed at Rs. 6,59,934 for one acre and ten cents, which works out to Rs. 6 per sq.ft.

9. The common question, which requires to be decided in all these appeals is:

"What is the fair market value of the acquired lands as on the date of Section 4(1) Notification in all these appeals ?"

10. Referring Officer relied on Ex-B3 which is the data sale dated 29.8.1979 under which one acre and four cents of agricultural land comprised in R.S.No. 504/1 in Periasemur village was sold for Rs. 40,000. This works out to Rs. 33,984 per acre. These lands are in Periasemur Village and very close to the acquired lands.

11. The claimants relied on Ex-C3, which is a sale deed dated 5.9.1979. Under this document, small extent of 1800 sq.ft. lying to the north of Nasiyanur road was sold for Rs. 18,000 which works out to Rs. 10 per sq.ft. The lands are comprised in S.No. 120/2A, Ex-C1 is a sale deed dated 12.9.1979. Under this document 20 cents in survey No. 125/3 was sold for Rs. 43,560 and it works out to Rs. 2178 per cent or about Rs. 5 per sq.ft. In L.A.O.P.No. 2 of 1986 lands in respect of survey No. 129/4, 5 & 6, market value was fixed at Rs. 5.35 per sq.ft., as on 3.12.1980, the date of Section 4(1) Notification in that appeal. These lands lie to the north of Nasiyanur Road.

12. Exs.C15, C16 and C17 are relied upon by claimants and they have to be considered. Ex-C15 is a sale deed dated 9.3.1981 under which an extent of 1753 sq.ft. in survey No. 115 was sold for Rs. 35,000. This works out to Rs. 19 per sq.ft. It is relevant to note that this plot is part of the layout and small in size. But it was an unapproved house-site. Exs.C16 and C17 are dated 29.8.1981. The property situate in Survey No. 115 in Erode Village were sold in two equal moities under these two documents. The sale consideration works out to Rs. 20 per sq.ft. The topo sketch filed would show that Periasemur Village and Erode are adjacent to each other. The extent of lands that were acquired have already been detailed in the tabular column given above and it is a vast extent of agricultural land though with potentialities.

13. C.W.2 in L.A.O.P.No. 22 of 1987 has deposed in his evidence that his lands are 1-1/2 furlong to the west of the acquired lands in L.A.O.P.No. 28 of 1987 with better location. C.W.2 is the vendor, who executed Ex-C1. His evidence is that the actual consideration received was Rs. 1,75,000 but it was undervalued to avoid stamp duty. C.W.4 is the attesting witness to Ex.C3 sale deed. He admits that Ex-C3 property was sold as house site. R.W.I examined on the side of the Referring Officer has admitted that the Government Hospital, Colleges, and theatres are near the acquired lands. After enquiry and recording evidence in L.A.O.P.Nos. 22, 24 and 26 of 1987, the market value was fixed by the Court below at Rs. 14 per sq.ft. by award dated 10.11.1999 and it is being challenged in the appeal.

 

14. In A. S. No. 137 of 1993 and Cross Appeal No. 72 of 1994, the value fixed by the earlier Division Bench of this Court was referred to and the market value of Survey No. 145/1, 2, 3 and 4 was fixed by deducting 33-1/3% from the value arrived at by the Reference Court. The Court had fixed the market value at Rs. 5.35 sq.ft. The Section 4(1) notification in that case was published on 8.1.1981.

15. In L.A.O.P.No. 6 of 1986, the witnesses claimed that their lands are located north of Nasiyanur Road and had spoken of the locational advantages and that the road is connected to Mettur-Manickampalayam Road. He has spoken about Ex.C6 dated 20.6.1986, where 766 sq.ft. has been sold at the rate of Rs. 7 per sq.ft. Survey No. is 225C. Ex.C7 is dated 14.12.1979, whereunder 2000 sq. ft in survey No. 274C has been sold for Rs. 4600.

16. Ex.C15 is a sale deed dated 9.3.1981 marked in A.S.Nos. 754 to 760 of 2002. It is clear that it is a laid out plot and the property conveyed is comprised in Survey No. 115 located north of Manickampalayam road and an extent of 1752 1/2 sq.ft. has been sold and it works out to Rs. 20 sq. ft. but located in a different locality.

17. Exs.C16 and C17 are sale deeds dated 29.8.1981. Under this half share in 4528,5 sq.ft., has been sold under each of the documents for Rs. 45,150 each. It also works out to about Rs. 20 per sq.ft. The description of the property shows that this is just located to the west of the main road. The topo sketch shows that survey Nos. 512/1 to 5 is a landlocked plot and does not have direct access to the main Manickampalayam road which joins Nasiyanur road nor does it have direct access to the road connected to Nasiyanur road to the Manickampalayam road.

18. On the other hand, Survey Nos. 144 and 145 on the other hand have access to the road connecting Nasiyanur road and Manickampalayam road. Ex.B3 which is the data sale also has road frontage. The topo sketch marked also shows that the lands that are subject matter of acquisition lying in Periasemur Village and Erode Village lie next, on the either side of the Manickampalayam main road without road frontage. Survey Nos. 115 has road access to the main road. Though these properties are landlocked, the potential value of the lands cannot be denied.

19. The lands in L.A.O.P.No. 2 of 1986 referred to in A. S. No. 137 of 1993 abut the road which connects the Nasiyanur road and Manickampalayam road. Ex.C6 in L.A.O.P.No. 6 of 1986 is with reference to survey No. 225/C which is far away from the acquired lands and right on the Nasiyanur road. So we have the sale deeds marked by the claimants, the data sale and the earlier awards as confirmed or modified by the Division Bench of this Court in appeals in respect of lands, which are comparable in all respects and in the locality and very close to the acquired lands. The said fixation by the Division Bench have reached finality.

20. On a consideration of the oral and documentary evidence, the developmental activity in and around the acquired lands and the value fixed for the lands in

other awards in respect of properties in the same locality with similar locational advantages and potentialities as house sites, we are of the opinion that Rs. 6.25p per sq.ft. will be a fair and reasonable value for lands in Survey No. 144/6, 144/4, 146/4, 144/5, 144/8. The value fixed in earlier appeals at Rs. 5.35 sq.ft. in appeals relating to lands nearby referred to supra is one of the parameters which we have applied to arrive at this value and we have also taken note of the passage of time between the dates of Section 4(1) Notification.

21. The date of Section 4(1) Notification in those appeals are almost contemporaneous to the date of Section 4(1) Notification in these appeals. The properties dealt in Exs.C15, C16 and C17 are not only in layouts though unapproved but also consists of small plots and therefore, deduction is needed. Further the acquired properties do not have the same locational advantage which the lands covered by Exs.C15, C16 and C17 command, situate as they are right on the Manickampalayam road not very far from the Mettur road and the Municipal Colony.

22. The land covered by Ex.C3 was also sold as house-site and lies to the north of Nasiyanur road and the value of the land sold as small plots of house-sites cannot be adopted as it is, it can only form the basis. Ex.C3 property has been sold for Rs. 10 per sq.ft. which is also a small extent and has road frontage on Nasiyanur road and it is reasonable to deduct on two counts, viz., small plot and road frontage. Hence, on a consideration of the entire facts, oral and documentary evidence let in by either side, we fix the market value of the acquired land at Rs. 6.25 per sq.ft. as on the date of Section 4(1) Notification. We fix the uniform rate in respect of all the lands acquired and covered by three notifications as well.

23. We have also considered Ex.C6, where the market value is Rs. 7 per sq.ft., in 1986 and we also have Exs.C16 and C17, where the value works out to Rs. 20 per sq.ft. on 29.8.1981. So the uniform steep increase spoken to in P.S. Krishna and Co. Pvt. Ltd. Vs. The Land Acquisition Officer, (Deputy Collector) Hyderabad, does not arise here. Hence, on the facts of these appeals, keeping in mind the value of Rs. 5,35/- per sq.ft. which was also fixed for lands notified u/s 4(1) notification in 1981, we feel that if a deduction of roughly one third is made to the market value, which Ex-C3 fetched, it would be fair. So we fix the market value at Rs. 6.25 per sq.ft. Looking from a different angle also, if 60% deduction is made to the value reflected in Ex.C16 and C17, we also arrive at the same value of Rs. 6.25 per sq.ft.

24. As regards lands in Survey No. 504/3, 517/1, 512/1-5, 515/1-4 and 516/1-4, they do not have the same road access that the aforementioned properties enjoy, the value of these lands are fixed at Rs. 6 per sq.ft., which would be the fair market value viewed from any angle.

25. In the result, A.S.Nos. 102 to 104, 410 of 2002, 55 of 1992 are allowed in part fixing the market value of the land at Rs. 6.25 per sq.ft. with usual solatium,

 

interest on solatium and additional compensation as provided under the Land Acquisition Act. Consequently, A.S.Nos. 754 to 760 of 2002, 1080 of 1995, 569 of 1993 and 1359 of 1993 & A.S.No. 128/92 are dismissed. The parties shall bear their respective costs in all these appeals.