(2010) 10 MAD CK 0248

In the Madras High Court

Case No : A.S. No. 751 of 2010 and M.P. No. 1 of 2010

The Special Tahsildar (LA), Salem-Karur Broad Gauge, Railway Scheme — APPELLANT

Vs

Chellamuthu, Selvaraj and The Deputy Chief Engineer(Construction), Southern Railway, Salem-Karur Broad Gauge, Railway Scheme — RESPONDENT

Date of Decision : 25-10-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4(1), 6(1)
Legal Practitioners (Fees) Rules, 1973 — Rule 12

Citation : (2010) 10 MAD CK 0248

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : V. Ravi, Special Government Pleader AS, for the Appellant; A.R. Suresh, for R1 and R2 and V.G. Suresh Kumar, for R3, for the Respondent

Judgement

M. Venugopal, J.—The Appellant/Referring Officer has filed the present Appeal as against the Award dated 19.05.2003 in L.A.O.P. No. 247 of 2002 passed by the Learned Additional District Sessions Judge, (Fast Track Court No. I), Salem.

2. The Appellant/Referring Officer has acquired the lands for the purpose of laying Railway track from Salem to Karur to an extent of 2.01.0 hectare of land in various Survey Numbers including the Survey Nos. 19/3A1A and 19/3A4B measuring an extent of 01.06.750 hectare belonging to the Respondents/ Claimants in Amanikondlampatti Village, Salem Taluk, by invoking the urgency provision of the Land Acquisition Act, 1894. The Third Respondent is representing the Requisitioning body viz., Railways.

3. The Notification as per Section 4(1) of the Act has been issued on 23.02.1999. Section 4(1) Notification has been published in Tamil Dailies in Malai Murasu dated 25.02.1999 and in Dinakaran dated 26.02.1999 and 08.03.1999 in the locality the said notification has been published. Section 6(1) Declaration has

been published on 17.03.1999 at Page 6 to 8, Part II, No.224, dated 17.03.1999. After complying with the necessary formalities prescribed under Land Acquisition Act, an Award has been passed on 28.10.1999 by the Special Tahsildar/Land Acquisition Officer. In the Award, the acquired land has been classified into three categories by the Land Acquisition Officer i.e., (1)an extent of 1.36.0 hectares as dry agricultural land (2)an extent of 5480.5 sq. mt., as house sites (3)994.5 sq. mt., as natham.

4. The Land Acquisition Officer as regards the dry agricultural land fixed the compensation @ Rs. 46,359/- per acre, which comes to Rs. 1.06 per sq. ft. The compensation in respect of the first category in aggregate has been awarded as Rs. 1,55,706.40. However, the Second and third categories have been considered together and a sum of Rs. 140.70 per sq. mt. has been determined which comes to 13.83 per sq. ft. The compensation in aggregate fixed under the two categories comes to Rs. 7,66,885.35.

5. The Respondents/Claimants (brothers) have been granted the compensation of Rs. 14,789/- as compensation in respect of their acquired lands. The Respondents/Claimants have objected to the award of compensation of Rs. 14,789/- and at their instance, the Appellant/Land Acquisition Officer has referred the matter before the Tribunal.

6. Before the trial Court viz., Learned Additional District Sessions Judge, (Fast Track Court No. I), Salem, L.A.O.P. Nos. 247 to 299 of 2002 have been taken up for trial and a Common Award has been passed on 19.05.2003 determining the market value of the land acquired @ Rs. 125/- per sq. ft., irrespective of classification made by the Land Acquisition Officer by considering all the lands on par with each other. For the Claimants whose lands have been severed from their remaining land, a compensation @ 25% of the value has been granted. As regards individuals whose houses have been acquired, 25% of the value has been awarded.

7. Before the trial Court in the Common Award in L.A.O.P. Nos. 247 to 299 of 2002, dated 19.05.2003, on behalf of Claimants Witnesses CW1 to CW10 have been examined and Ex.C.1 to Ex.C.88 have been marked. On the side of the Appellant/Land Acquisition Officer witness RW1 (Special Tahsildar) has been examined and Ex.R1 to Ex.R8 have been marked.

8. Feeling aggrieved against the Award dated 19.05.2003 passed by the Tribunal viz., Learned Additional District Sessions Judge, (Fast Track Court No. I), Salem in L.A.O.P. No. 247 of 2002, the Appellant/Referring Officer has projected the present Appeal before this Court.

9. The Point that arises for determination in this Appeal is Whether the Award dated 19.05.2003 in L.A.O.P. No. 247 of 2002 passed by the Learned Additional District Sessions Judge, (Fast Track Court No. I), Salem, is an excessive or exorbitant one in the eye of law?

10. The Contentions, discussions and findings on Point No. 1:

The Learned Special Government Pleader (AS) urges before this Court that the Tribunal viz., Learned Additional District Sessions Judge, (Fast Track Court No. I), Salem, while increasing the compensation excessively for the land from Rs. 1,14,490/- per hectare to Rs. 125/- per sq. ft. and he also for the trees, building, structures, compound, factory, well motor, pumpset, etc., has not followed the procedures enshrined under the Land Acquisition Act, 1894 and as a matter of fact, the Land Acquisition Officer has granted a proper value of Rs. 1,14,490/- per hectare in respect of the acquired lands after careful scrutnising the sale which is taken place in the locality and prior to the date of 4(1) Notification for acquisition of land etc.

11. It is the contention of the learned Special Government Pleader (AS) that the trial Court has awarded compensation exorbitantly for trees without any evidence of the experts or the documents for the same to justify their enhanced claim and indeed the trial Court has come to the conclusion based on surmises and conjectures and also the other reasoning furnished by the trial Court in its Award are all an unsustainable one in the eye of law and therefore prays for allowing the Appeal in the interest of justice.

12. However, the Learned Counsel for the Claimants brings it to the notice of this Court that in A.S.Nos.430 to 454 of2007, 472 to 481 and 597 to 604 of 2008, this Court by a Judgment dated 16.07.2009 has fixed the value of the land @100/- per sq. ft. after deducting Rs. 25/- per sq. ft and the said Common Judgment in the aforesaid Appeal applies to the facts of the present case.

13. At this stage, this Court recalls the observation of Honourable Supreme Court in the decision Thakur Kuldeep Singh (D) thr. L.R. and Others Vs. Union of India (UOI) and Others, , whereby and whereunder, it is observed as follows:

While fixing compensation, it is the duty of the Land Acquisition Collector and the court to take into consideration the nature of the land, its suitability, nature of the use for which the lands are sought to be acquired on the date of notification, income derived or derivable from or any other special distinctive feature which the land is possessed of, the sale transactions in respect of land covered by the same notification are all relevant factors to be taken into consideration in determining the market value. It is equally relevant to consider the suitability of neighbourhood lands as are possessed of similar potentiality or any advantageous features or any special characteristics available. The Collector as well as the court should always keep in their mind that the object of assessment is to arrive at a reasonable and adequate market value of the land. While doing so, imagination should be eschewed and mechanical assessment of evidence should be avoided. More attention should be on the bona fide and genuine sale transactions as guiding star in evaluating the evidence. The relevant fact6or would be that of the hypothetical willing vendor would offer for the land and what a willing purchaser of normal human conduct would be willing to but as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification u/s 4(1) of the Act. The Judge who sits in the armchair of the willing buyer and seeks an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the court proposed to fix for the acquired lands in the available market conditions. The market value so determined should be just, adequate and reasonable.

In view of the purposoe for which the "circle rates" have been notified by the Ministry of Urban Affairs and Employment, market value of a plot cannot be determined solely on the basis of the circle rates. However, it cannot be ignored in toto. If other materials are available, government rates can also be considered as corroborative evidence. The nature of the land plays an important role. Likewise, market conditions prevailing as on the date of notification are also relevant. Sale price in respect of a small piece of land cannot be the basis for determination of market value of a large stretch of land.

14. In Sangunthala (Dead) through LRs. v. Special Tahsildar (Land Acquisition) and Ors. (2010) 3 SCC 661, the Honourable Supreme Court has held thus:

While determining value of the property acquired the fact whether the land has got building potentiality to be used for building purposes in immediate or in near future needs to be considered. Evidence of CWs established that the lands were near the residential housing colonies and well connected to roads. High Court ignored materials on record and relied only on depositions of Cws 1 and 6 who admitted that initially all the acquired lands were agriculture lands. It thus, fell into an error in concluding that the acquired lands were agriculture lands and erroneously reversed the conclusions arrived at by the Reference Court.

15. In Special Land Acquisition Officer Vs. Karigowda and Others, , the Honourable Supreme Court has held that

...Keeping in mind the facts and circumstances of the case, it will also be just and fair to adopt some liberal approach with some element of guesswork to provide the claimants with just and fair market value of the land in question etc.

16. Further, this Court aptly quotes the observations of the Division Bench in the Judgment in A.S. Nos. 430 to 454 of2007, 472 to 481 and 597 to 604 of 2008, dated 16.07.2009 in Paragraph 8 to 12 which run as follows:

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 conceded 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 asDW1 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 the 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 thing 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 Hasanali Khanbahi and sons v. State of Gujarat : (1995) 2 SCC 422 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. mt., (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 out 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.

17. Inasmuch as the subject matter of the present Appeal A.S. No. 751 of 2010 is covered by the Common Judgment of the Division Bench of this Court in A.S. Nos. 430 to 454 of2007, 472 to 481 and 597 to 604 of 2008, dated 16.07.2009, this Court follows the same and after deducting a sum of Rs. 25/- per sq. ft. fixes the market value of the acquired land @100/- per sq. ft and accordingly allows the Appeal in part without costs.

18. This Court determines the Fees of the Learned Special Government Pleader (AS) as per Rule 12 of Legal Practitioners Fees Rules, 1973 based on the facts and circumstances, in the instant case on hand.

In the result, the Appeal is allowed in part leaving the parties to bear their own costs. Resultantly, the Award passed by the Learned Additional District Sessions Judge, (Fast Track Court No. I), Salem in L.A.O.P. No. 247 of 2002 dated 19.05.2003 stands modified. In other respects, the Award of the trial Court is confirmed by this Court. Consequently, connected Miscellaneous Petition is closed. No costs.

