

(2012) 02 MAD CK 0318

In the Madras High Court

Case No : A.S. No. 124 of 2011 and M.P. No. 1 of 2011

The Special Tahsildar (LA), Sipcot II Hosur

APPELLANT

Vs

Sonnappa (Deceased) and Deviramma and Others

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2012) 02 MAD CK 0318

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : S. Pasupatheeswaran, Spl. G.P, for the Appellant;

Final Decision : Allowed

Judgement

G. Rajasuria

1. Animadverting upon the judgement and decree passed by the Subordinate Judge, Hosur, dated 26.4.2010 in LAOP No. 63 of 1997, the Government has filed this appeal. Heard the learned Special Government Pleader (AS) appearing for the appellant.

2. Despite notice having been served on the respondents and their names also found printed in the cause list, there is no representation on behalf of the respondents. Hence, I would like to dispose of the matter on merits.

3. A recounting and r'esume of facts absolutely necessary and germane for the disposal of this appeal would run thus:

The Government vide Notification dated 6.9.1995 made u/s 4 (1) of the Land Acquisition Act, intended to acquire the land measuring an extent of 0.44.0 hector in Survey Nos. 142/B2B3 in Moranapalli Village, Hosur Taluk, for the purpose of expansion of Hosur SIPCOT, Phase-II. After complying with the procedures, the Land Acquisition Officer acquired the land and passed an award assessing the compensation in a sum of Rs. 248630.20/- per hectare, based on

data collected by him.

4. Being aggrieved by such award, the land owner got the matter referred to the Sub Court u/s 18 of the Land Acquisition Act.

5. During enquiry, before the trial Court the claimant examined himself as P.W.1 and Exs.C1 and Ex.C11 were marked. On the side of the Government, no one was examined and no document was marked.

6. Ultimately the Sub Court passed the award enhancing the compensation to Rs. 3,26,000/- per acre.

7. Being dissatisfied with such awarding of compensation, the Government has preferred this appeal on various grounds.

8. Placing reliance on the grounds of appeal, the learned Special Government Pleader would contend that the lower Court was not justified in placing reliance on Ex.C7, which is relating to a small plot of land, whereas, the land acquired is a vast extent of land along with other tracts of land for expansion of SIPCOT Industrial complex Phase-II. Even though 60% deduction was made by the trial Court, the exemplar document-Ex.C7 does not reflect the true value of the land acquired and there is nothing to show that the land acquired and the land contemplated in the exemplar document are of the same type and quality. The Land Acquisition Officer, after collecting enormous data, arrived at a just compensation, warranting no interference by the trial Court, however, the lower Court, simply enhanced the compensation to Rs. 3,26,000/- per acre, without any basis, warranting interference in appeal.

9. The point for consideration is as to whether the lower Court is justified in enhancing the compensation by placing reliance on Ex.C7-the sale deed dated 20.12.1994, which is with reference to a small plot, whereas, the land acquired is a large tract of land for expansion of industrial complex.

10. A mere poring over and perusal of the judgement of the lower Court would clearly indicate and exemplify that it took into account as many as ten documents, namely, Exs.C1 to C10 and it is just and proper to refer to the details relating to those documents.

11. In fact, Exs.C1 and C2-the sale deeds dated 21.3.1994 and 28.2.1994 are relating to only a small piece of land measuring 1320 sq.ft and 2180.5 sq.ft, in S. No. 317 and S. No. 162, respectively, which are in a different Survey numbers away from the land acquired and emerged nearly one and half years anterior to the land acquisition proceedings and obviously and axiomatically those documents fail to create confidence in the mind of the Court.

12. Ex.C3-the sale deed dated 8.8.1994 is relating to a small piece of land in S. No. 320/5B, which is situated far off from the land acquired and as such the lower Court has correctly not placed reliance on the said document.

13. Ex.C4-the sale deed dated 21.8.1994, Ex.C5-the sale deed dated 21.11.1994

and Ex.C6-the sale deed dated 21.11.1994 are emerged relating to an extent of 1312.5 sq.ft, 1920 sq.ft in S. Nos. 37/2 and 324, which also are situated far off from the land acquired and as such the reasons assigned for not placing reliance on Ex.C3 is also mutatis mutandis applicable to Exs.C4 to C6 also.

14. Ex.C9-the sale deed dated 24.2.1995 emerged in the same year of Section 4(1) Notification, so to say, only six months prior to the land acquisition proceedings and it is quite obvious that such a document cannot be relied upon for the reasons already adhered to supra.

15. Ex.C10-the sale deed dated 7.9.1995 emerged after the publication of Section 4(1) Notification and as such the same has been rightly rejected by the lower Court.

16. Ex.C7 and Ex.C8 are relating to small plots in S. No. 151 and the value contemplated in those documents are also similar.

17. The core question arises as to whether the lower Court was justified in taking Ex.C7 as the exemplar document, which is referring to a small plot, even though, the land acquired is a large tract of agricultural land. The indubitable and unassailable fact is that in the adjacent area concerned, the lands were carved out into plots and sold and there is no doubt about it. The exemplar document Ex.C7 emerged during December 1997, whereas, Section 4(1) notification relating to this matter was made on 6.9.1995. Hence, there is nothing to doubt the genuineness of Ex.C7. The trial Court also correctly not placed reliance on Ex.C1 to C6 and also Exs.C9 and Ex.C10, because, the above details would unambiguously and unequivocally highlight and spotlight the fact that the lands involved in those documents are not nearer to the lands acquired. Whereas in Ex.C7 and Ex.C8, the plots contemplated are situated in S. No. 151, which, as per the map is very near to the land acquired. Hence, the trial Court's view in choosing Ex.C7 as the exemplar document cannot be found fault with.

18. My mind is reminiscent and redolent of the following decision of the Honourable Apex Court:

Chandrashekar (D) by L.Rs. and Others Vs. Land Acquisition Officer and Another, , certain excerpts from it would run thus: 18. Having given our thoughtful consideration to the analysis of the legal position referred to in the foregoing two paragraphs, we are of the view that there is no discrepancy on the issue, in the recent judgments of this Court. In our view, for the "first component" under the head of "development", deduction of 33-1/3 percent can be made. Likewise, for the "second component" under the head of "development" a further deduction of 33-1/3 percent can additionally be made. The facts and circumstances of each case would determine the actual component of deduction, for each of the two components. Yet under the head of "development", the applied deduction should not exceed 67 per cent. That should be treated as the upper benchmark. This would mean, that even if deduction under one or the other of the two components under the head of "development" put together,

should not exceed the upper benchmark.

19. In Lal Chand's case (supra) and in Andhra Pradesh Housing Board's case (supra), this court expressed the upper limit of permissible deductions as 75 per cent. Deductions upto 67 percent can be made under the head of "development". Under what head then, would the remaining component of deductions fall? Further deductions would obviously pertain to considerations other than the head of "development". Illustratively a deduction could be made keeping in mind the waiting period required to raise infrastructure, as also, the waiting period for sale of developed plots and or built-up areas. This nature of deduction may be placed under the head "waiting period". Illustratively again, deductions could also be made in cases where the exemplar sale transaction, is of a date subsequent to the publication of the preliminary notification. This nature of deduction may be placed under the head "de-escalation". Likewise, deductions may be made for a variety of other causes which may arise in different cases. It is however necessary for us to conclude, in the backdrop of the precedents on the issue, that all deductions should not cumulatively exceed the upper benchmark of 75 percent. A deduction beyond 75 per cent would give the impression of being lopsides, or contextually unreal, since the land loser would seemingly get paid for only 25 per cent of his land. This impression is unjustified, because deductions are made out of the market value of developed land. Whereas the acquired land is undeveloped (or not fully developed). Differences between the nature of the exemplar land and the acquired land, it should be remembered, is the reason/cause for applying deductions". Another aspect of this matter must also be kept in mind. Market value based on exemplar sale, from which a deduction in excess of 75 per cent has to be made, would not be a relevant sale transaction to be taken into consideration, for determining the compensation of the acquired land. In such a situation the exemplar land and the acquired land would be uncomparable, and therefore, there would be no question of applying the market value of one (exemplar sale) to determine the compensation payable for the other (acquired land). It however needs to be clarified, that even though on account of developmental activities (under the head "development"), we have specified the upper benchmark of 67 per cent, it would seem, that for the remaining deduction(s), the permissible range would be upto 8 percent. That however is not the correct position. The range of deductions, other than under the head "development", would depend on the facts and circumstances, may even exceed 8 per cent, but that would be so only, where deductions for developmental activities (under the head "development") is less than 67 per cent, i.e., as long as the cumulative deductions do not cross the upper benchmark of 75 per cent. We therefore hold, that the range for deductions, for issues other than development costs, would depend on the facts and circumstances of each case, they may be 8 percent, or even the double thereof, or even further more, as long as, cumulatively all deductions put together do not exceed the upper benchmark of 75 percent.

20. Before applying deductions for ascertaining the market value of the

undeveloped acquired land, it would be necessary to classify the nature of the exemplar land, as also, the acquired land. This would constitute the second step in the process of determination of the correct quantum of deductions. The lands under reference may be totally undeveloped, partially developed, substantially developed or fully developed. In arriving at an appropriate classification of the nature of the lands which are to be compared, reference may be made to the developmental activities referred to by us in connection with the "first component", as also, the "second component" (in paragraph 17 above). The presence (or absence) of one or more of the components of development, would lead to an appropriate classification of the exemplar land, and the acquired land. Comparison of the classifications thus arrived, would depict the difference in terms of development, between the exemplar land and the acquired land. This exercise would lead to the final step. In the final step, the absence and presence of developmental components, based on such comparison, would constitute the basis for arriving at an appropriate percentage of deduction, necessary to balance the differential factors between the exemplar land and the acquired land.

(emphasis supplied)

19. The developments in the law relating to assessment of compensation is stood expounded in the cited precedent *supra*. The trial Court in its judgement itself placed reliance on various judgements including the judgement of the Supreme Court and found that 60% deduction in an over all manner would meet the ends of justice.

20. I would like to point out that whenever a large tract of agricultural land acquired has to be valued, placing reliance on an exemplar document concerning a small plot of land, certainly some amount has to be deducted towards off setting the price and it could be up to 20%; then 1/3rd of the amount should be deducted towards development charges and that would come to 33 1/3% and thereafter, some percentage has to be deducted towards efforts to be taken for carrying out the development activities. As such, as per the current law relating to assessment of compensation, the deduction could be from 20% to 75% depending upon the factual scenario involved in a case and there could be no straight jacket formula.

21. In this case, the value of a small plot of land, as contemplated in Ex.C7, was taken as the basis for assessing the large tract of agricultural land acquired. As such, 60% deduction resorted to by the lower Court, warrants no interference. The land losers have not preferred any appeal or cross-appeal expressing grievance over it also. However, I could see one arithmetical error in the assessment made by the lower Court. As per the exemplar document-Ex.C7, the following formula emerges.

Extent of land contemplated in Ex.C7

875 sq.ft i.e. 2.00872 cents

Value of the acquired land =

Rs. 16,200/-

i.e. one cent =

Rs. 8065/-

One acre =

Rs. 8,06,500/-

After 60% deduction the value of one acre comes to =

Rs. 3,22,600/-

22. However, the lower Court fixed the value of one acre at Rs. 3,26,000/-, which has to be rectified accordingly. Except for this minor correction, I do not think that any other interference with the judgement of the trial Court is required. The claimant also obviously and axiomatically entitled to the solatium and other statutory entitlements mutatis mutandis. Accordingly, the appeal is allowed to the extent indicated above and the decree shall stand modified to the extent stated supra. However, there is no order as to costs.