(2010) 07 MAD CK 0272

In the Madras High Court

Case No : Appeal Suit No''s. 742 to 758 of 2009

The Special Tahsildar (LA) SIPCOT Irungattukottai Scheme/ Sriperumbudur Scheme — APPELLANT

Vs

A. Arumugam, Ravi and The Chairman and Managing Director SIPCOT — RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:
Land Acquisition Act, 1894 — Section 18(1), 23, 24

Citation : (2010) 07 MAD CK 0272

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ravi, Special Govt. Pleader AS, for the Appellant; A.R. Suresh, for R1 in AS. 743 to 758/2009 and M. Devaraj, for SIPCOT for R2 in AS. 743 to 758/2009 and R3 in A.S. 742/2009, for the Respondent

Judgement

K. Chandru, J.—These appeals were filed by the Special Tahsildar, Land Acquisition, SIPCOT Unit-4, Irungattukottai Scheme challenging the judgment and decree passed in various LAOPs on the file of the Sub Court, Kancheepuram.

2. The following table shows the Serial Number, Name of the claimant, LAOP Numbers of the court below and the Appeal Suit numbers:

Sl. No Name of the Claimant LAOP. No. A.S. No. 1 1. Arumugam 2. Ravi LAOP.1156/2008 A.S.742/2009 2 Shanmugam LAOP.1157/2008 A.S.743/2009 3 Kannammal LAOP.1158/2008 A.S.744/2009 4 Varadappa Naicker LAOP.1159/2008 A.S.745/2009 5 Varadappa Naicket LAOP.1160/2008 A.S.746/2009 6 Rajagopal LAOP.1161/2008 A.S.747/2009 7 Parthasarathy LAOP.1162/2008 A.S.748/2009 8 Vadummal LAOP.1163/2008 A.S.749/2009 9 D. Muthu LAOP.1164/2008 A.S.750/2009 10 D. Muthu LAOP.1165/2008 A.S.751/2009 11 P. Krishnaveni LAOP.1166/2008 A.S.752/2009 12 Velu Naickar LAOP.1167/2008 A.S.753/2009 13 Selvarathinam LAOP.1168/2008 A.S.754/2009 14 Veerapandiyan LAOP.1169/2008 A.S.755/2009 15 V. Ramakrishnan

LAOP.1170/2008 A.S.756/2009 16 Samburammal LAOP.1171/2008 A.S.757/2009 17 Ponnambalam LAOP.1172/2008 A.S.758/2009

3. The lands were acquired from the respondents/claimants for the purpose of establishing SIPCOT. The acquiring authority fixed the compensation at the rate of Rs. 227/- per cent. The land owners objected to the lower rate of compensation. Therefore, reference was made u/s 18(1) for the determination of the market value by the jurisdictional reference court, (in the present case, it was the Sub-Court, Kancheepuram). The various references were registered as LAOP. Nos. 1156 of 2008 to 1172 of 2008 by the Reference Court. On the side of the respondents/claimants, one Ramakrishnan was examined as C.W.1 and seven documents were filed and marked as Ex.C.1 to C.7. On the side of the appellant, one Mr. Rajaram, the then Special Tahsildar was examined as R.W.1 and Mr. Sridhar, Manager of SIPCOT was examined as R.W.2.

4. The Reference Court on the basis of all these materials found that the compensation awarded to the land owners were not sufficient and the market rate was fixed at Rs. 5,384/- per cent together with 30% solatium as well as the statutory interest payable. Aggrieved by the common award dated 30.04.2008, the present appeals were filed.

5. Notice was issued to the respondents and they are represented by counsel.

6. The contention raised in the appeal memorandum were that the court below had fixed exorbitant compensation without records and in violation of the guidelines prescribed under the Land Acquisition Act 1894; the documents marked as Ex.C.1 to C3 were sale of lay outs, which cannot be relied upon ; the genuineness of Ex.C.4 to C.6 were not proved before the Court below ; even otherwise, Ex.C.4 to C.6 cannot be taken note and the evidence of C.W.1 is an exaggerated version, therefore, the Award proceedings are liable to set aside.

7. The Reference Court held that Ex.C.4 to C.6 came into existence prior to the 4(1) notification and they correctly reflect the value of the land acquired. Thereafter, the Reference Court went on to refer the judgment of this Court and Supreme Court before deciding the actual value of the land. While considering the actual value of the land, the Court below made an average value of the sale consideration found in Ex.C.4 to C.6 and arrived at the figure of Rs. 7,179/- after deducting 25% towards development charges and it fixed the land value at Rs. 5,384/- per cent.

8. The court below also took note of evidence of R.W.1, who admitted that the lands in the Sirumangadu village were acquired on the basis of the value calculated on the square feet rate and they are all house sites; the acquiring authority also leased out such acquired land to various industrial companies for huge amounts. After ordering compensation at the rate of Rs. 5,384/- per cent, the Court below also ordered 30% solatium and with statutory interest payable. This is after adjusting the amount already paid by the acquiring authority. It is against this common award dated 30.04.2008 passed by the Sub Court,

Kancheepuram, the present appeals have been filed.

9. Mr.V.Ravi, learned Special Government Pleader (A.S) contended that the Court below has committed a grave error in relying upon Ex.C.4, which relates to Thirumangalam Village. He also produced a copy of the said Exhibit. He further contended that the Court below also took the value of the land as Rs. 2,13,620/- from the sale deed Registration No. 6343/97, whereas, the document itself shows that it is only Rs. 1,75,000/- ; similarly, Ex.C.6 does not relate to Thirumangalam village, wherein, the consideration which is shown as Rs. 95,000/- related to two different schedule of properties ; Ex.C.5 is the only document relating to Sirumangadu Village, wherein, the sale consideration was Rs. 23,115/- and that is an exemplar of small plot, therefore, that should not be the basis for ordering high compensation.

10. He also submitted that in respect of acquisition of land in Thirumangalam village, a Division Bench of this Court on an occasion to deal with the same in A.S. 490 of 2007 and batch cases in The Special Tahsildar (Land Acquisition), Unit 4, SIPCOT, Irungattukottai Scheme, Katrambakkam Village, Sriperumbudur v. Maniammal and Ors. dated 01.12.2009, found that the development charges imposed by the Court below was on the lower side viz., 34% and the direction was given to deduct 53% of the development charges in arriving at the market value. Therefore, while the market value per cent was arrived at Rs. 5,000/- per cent by deducting 53%, the market value was arrived at Rs. 2,250/- per cent. In this context, the Division Bench found that the evidence let in by the authorities in that case reflect that while setting up the industrial plot in the acquired land, huge amount have to be spent for infrastructural facilities and therefore, it fixed 53%. It also found that the lands are 45 kilo meters away from the city. On the strength of this order, the learned Special Government Pleader (A.S) stated that in the present case, not only the market value of the land should be brought down since Sirumangadu is little away from Highways, whereas, Thirumangalam is closer to Highways, but also, the development charges should be at the rate of 53% as ordered by the Division Bench.

11. However, this Court is not inclined to accept the said submission regarding deduction towards development charges. On the question of development charges, there cannot be any uniform reduction. It should be based upon the evidence let in by the parties regarding development that was required in the land. In the present case, R.W.1 had admitted that Sirumangadu village, where lands were acquired were house sites.

12. The Supreme Court in Kanta Devi and Others Vs. State of Haryana and Another, has held that the normal reduction of rate is 1/3 rd of the market value. In the present case, no evidence was let in for the purpose of claiming development charges. Nevertheless, the Court below ordered 15% deduction for the development charges.

13. In Thakur Kuldeep Singh (D) thr. L.R. and Others Vs. Union of India (UOI)

and Others, , the Supreme Court after setting out guidelines u/s 23 and 24 of the Land Acquisition Act held that the extent of development required should be established and if the land is situated in a commercial hub, the market rate cannot be fixed on the circle rate; the locality and prevailing circumstances must be taken into account as a relevant ground.

14. The Supreme Court in a very recent decision reported in Special Land Acquisition Officer Vs. Karigowda and Others, in the case of Special Land Acquisition Officer Vs Karigowda and others had held in paragraph 75 that instances of adjacent villages can be taken into consideration for the purpose of determining fair market value and where lands of a number of villages are acquired for the same public purpose or difference schemes but on the commonality of purpose and unite development, the price of the land of the adjacent village can also be taken into account. In this context, it is necessary to refer to the following passages found in paragraphs 75, 76 and 77:-

75. It is a settled principle of law that lands of adjacent villages can be made the basis for determining the fair market value of the acquired land. This principle of law is qualified by clear dictum of this Court itself that whenever direct evidence i.e. Instance of the same villages are available, then it is most desirable that the court should consider that evidence. But where such evidence is not available court can safely rely upon the sales statistics of adjoining lands provided the instances are comparable and the potentiality and location of the land is somewhat similar. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for such determination. Once it is shown that situation and potential of the land in two different villages are the same then they could be awarded similar compensation or such other compensation as would be just and fair.

76. The cases of acquisition are not unknown to our legal system where lands of a number of villages are acquired for the same public purpose or different schemes but on the commonality of purpose and unite development. The parties are expected to place documentary evidence on record that price of the land of adjoining village has an increasing trend and the court may adopt such a price a the same is not impermissible. Where there is commonality of purpose and common development, compensation based on statistical data of adjacent villages was held to be proper. Usefully, reference can be made to the judgments of this Court in Kanwar Singh v. Union of India and Union of India v. Bal Ram.

77. In this regard we may also make a reference to the judgment of this Court in Kanwar Singh v. Union of India where sale instances of the adjacent villages were taken into consideration for the purpose of determining the fair market value of the land in question and their comparability, potential and acquisition for the same purpose was hardly in dispute. It was not only permissible but even more practical for the courts to take into consideration the sale statistics of the adjacent villages for determining the fair market value of the acquired land.

(Emphasis added).

15. Further, it is not as if the court cannot take the exemplar of sale of small land, provided adequate discount can be given. The Supreme Court also further held in Sagunthala v. Special Tahsildar (Land Acquisition) and Ors. reported in 2010 3 SCC 661 that the purpose of acquisition and potential use of the land also to be taken into account as a relevant factor for providing compensation. If the lands are already developed, the question of further claiming such development charges will not arise.

16. Considering the fact that large extent of lands are taken away and the claimants have been dispossessed when such lands are the only source of their living, it cannot be said that the Reference Court has ordered higher compensation. In the present case, the learned Special Government Pleader had relied upon the judgment relating to Thirumangalam Village only for the purpose of pressing into service the deduction of 53% made towards development charges. This Court is not willing to adopt the same rate. At the same time as held in Karigowda''s case the value of the land of the adjacent village is also a relevant factor. It is contended by the learned Special Government Pleader that Ex.C.4 to Ex.C.6 are sale deeds of adjacent village and should be eschewed because it related to Thirumangalam. However, relying upon the acquisition on Thirumangalam and Katrambakkam, where a Division Bench had fixed market value at the rate Rs. 5,000/- per cent, the learned Special Government Pleader (AS) contended that, the market value fixed in the present case relying upon Ex.C.5 was not proper, if that was the only exemplar available.

17. As held by the Supreme Court in Karigowda''s case, the value of the land belonging to the adjacent villages can also be a true indicator if there is large scale acquisition. Once if Thirumangalam and Kutharambakkam are neighbouring villages, then Rs. 5,000/- is also be a market rate, if that was taken as a basis as ordered by the Reference Court, 25% deductions are made, then the compensation payable should be worked out to Rs. 3,750/- per cent. Accordingly, that be a fair compensation in respect of acquisition made.

18. On the side of the respondents/claimants, it was contended that more than 300 acres were acquired for the purpose of setting out huge automobile unit. Already it is popularly claimed this area as the "Detroit of India". There was no promise forthcoming regarding any other rehabilitation measures other than the compensation payable for the acquired land.

19. It will be worthwhile to quote from a recent decision of the Supreme Court in Mahanadi Coal Fields Ltd and Anr. v. Mathias Oram and Ors. in SLP (C) 6933 2007 dated 19.07.2010. In that case, the Supreme Court pointed the dangers of an half hearted implementation of the Land Acquisition laws. The following passages found in paragraphs 7, 10 and 11 may be usefully reproduced below:

7. Seen thus, the whole issue of development appears to be simple, logical and commonsensical. And yet, to millions of Indians, development is a dreadful and

hateful word that is aimed at denying them even the source of their sustenance. It is cynically said that on the path of ''maldevelopment'' almost every step that we take seems to give rise to insurgency and political extremism (which along with terrorism are supposed to be the three gravest threats to India''s integrity and sovereignty.

10. This is not to say that the relevant laws are perfect and very sympathetic towards the dispossessed. These are various studies that detail the impact of dispossession from their lands on tribal people. It is pointed out that even when laws relating to land acquisition and resettlement are implemented perfectly and comprehensively (and that happens rarely), uncomfortable questions remain. For a people whose lives and livelihoods are intrinsically connected to the land, the economic and cultural shift to a market economy can be traumatic.

11. On many occasions laws are implemented only partially. The scheme of land acquisition often comes with assurances of schools, hospitals, roads, and employment. The initial promises, however, mostly remain illusory. The aims of income restoration and house resettlement prove to be very difficult. Noncompliance with even the basic regulations causes serious health problems for the local population and contamination of soil and water.

20. Under these circumstances, all the appeals are allowed in part. The compensation awarded by the court below is modified and fixed at Rs. 3,750/- per cent together with other statutory dues viz., solatium, additional compensation interest as per the statutory requirements.