

(2002) 03 MAD CK 0174

In the Madras High Court

Case No : A.S. No's. 381 and 503 of 1994

The Special Tahsildar (LA) Tamil Nadu Industrial Explosives
Limited, Vellore

APPELLANT

Vs

M.J. John and Tamil Nadu Industrial Explosives Limited

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 24, 4(1)

Citation : (2002) 4 LW 705

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Rani Selvam, G.A, for the Appellant; T.R. Mani, SC and T. Vadivelu, for the Respondent

Judgement

V. Kanagaraj, J.—Both the above Appeal Suits are directed against the Orders dated 29-10-1993 made in L.A.O.P.Nos. 1 of 1988 and

20 of 1987 respectively by the Court of the Subordinate Judge, Vellore.

2. These Appeals have been preferred by the Land Acquisition Officer, representing the Government as against the enhancement of the land value

fixed by the Reference Court thereby praying to set aside the said award passed by the Court of Reference.

3. Tracing the history of the case, it comes to be known that the properties comprised in S.Nos. 7, 8/1, 8/2, 9/1, 9/3 measuring to an extent of

5.26 acres of land (in A.S.No. 381 of 1994), and, the properties comprised in S.Nos. 25, 26/1, 27, 33/1 measuring to an extent of 3.35 acres of

land (in A.S.No. 503/1994 have been acquired by the Government for the purpose of setting up of a Project for Industrial Explosives by Tamil

Nadu Industrial Development Corporation Limited, Gandhinagar, Vellore 6. The

notification u/s 4(1) of the Land Acquisition Act, 1894 has been published on 30-11-1983. The Land Acquisition Officer, having considered the value of the land and also having a comparative study of the lands in question with the data lands and other lands which were sold out in and around the same area, had passed the Award Nos. 1 and 3/86-87 dated 19-12-1986. The details of the award are as follows:

A.S.No. 381 of 1994:

For irrigated dry land ... Rs.250/- per cent

For manavari dry land ... Rs. 43.10 per cent

A.S.No. 503 of 1994:

For tope lands extending 3.35

acres totally valued at ... Rs. 2,29,400/-

For irrigated dry lands ... Rs.250/-per cent

4. On a reference made u/s 18 of the Land Acquisition Act, the Court of Reference held a full enquiry, in which, on the part of the claimant, the claimant in LAOP Nos. 1 of 1988 and 20 of 1987 respectively has been examined as P.W.1 and one Dhanapal was examined as P.W.2. One

P.Arunaghiri has been examined as R.W.1 on the part of the Government, for oral evidence. For documentary evidence, eight documents have

been marked in LAOP No. 1 of 1988 as Exs. A.1 to A.8 and five documents have been marked in LAOP No. 20 of 1987 as Ex. A.1 to A.5 on

the part of the claimant and three documents have been marked in LAOP No. 1 of 1988 as Exs. B.1 to B.3 and one document has been marked

in LAOP No. 20 of 1987 as Ex.B.1 on the part of the Government.

5. In consideration of these evidence placed on record, the Court of Reference having framed proper points for determination of the market value

and having had its own discussion on the facts and circumstances of the case as pleaded by parties, in the context of the evidence made available,

had ultimately arrived at the conclusion to fix the value of the land as given below:

A.S.No. 381 of 1994:

For irrigated and

Manawari dry lands ... Rs.500/- per cent

A.S.No. 503 of 1994:

For tope lands extending 3.35

acres totally valued at ... Rs. 2,69,400/-

For irrigated dry lands ... Rs. 500/- per cent

6. Aggrieved, the Government have preferred the above Appeals on certain grounds as brought forth in the grounds of memorandum of Appeals.

7. In the above circumstances, the only point that arises for determination is whether the Orders passed by the lower Court are liable to be set

aside ?

8. In consideration of the pleadings by parties, having regard to the materials placed on record and upon hearing the learned Additional

Government Pleader representing the Appellant in both the Appeals and the learned Counsel appearing for the Respondents, it comes to be

known that the 4(1) notification in these cases have been published on 30-11-1983 for the purpose of setting up of a Project for Industrial

Explosives by Tamil Nadu Industrial Development Corporation Limited, Gandhinagar, Vellore 6; that the Land Acquisition Officer, having

classified the lands as irrigated dry land and Manavari Dry Land , has fixed the value at Rs. 250/- per cent and Rs. 43.10 respectively; that the

Land Acquisition Officer has also fixed the value of the Tope lands extending 3.35 acres at Rs. 2,29,400/-; that aggrieved, the claimant preferred

the matters to be referred to the Court of Reference, as a result of which, u/s 18 of the L.A. Act, both the above matters have been referred to the

lower Court and the said Court has enhanced the value of the irrigated and manavari dry lands to Rs. 500/- per cent, further enhancing the value of

the Tope lands from Rs. 2,29,400/- to Rs. 2,69,400/-. It is only aggrieved against the enhancement of the values of the lands acquired, the

Government represented by the Land Acquisition Officer and Special Tahsildar (L.A.) have preferred both the Appeals.

9. During arguments the learned Government Advocate appearing on behalf of the Appellant in A.S.No. 503 of 1994 would submit that the total

extent of land acquired from him was 3.35 acres comprised of a well and superstructure with compound; that the Land Acquisition Officer

awarded Rs. 250/- per cent and the same has been enhanced by the Sub-Court as Rs. 500/- per cent for Irrigated dry and Manavari lands. For

the Tope the Land Acquisition Officer granted a sum of Rs. 2,29,400/- and the same had been enhanced as Rs. 2,69,400/- by the Court of

Reference.

10. The learned Government Advocate citing from the petition in A.S.No. 503 of 1994 would further argue that there has been no omission of any

land adjacent to the land in issue and the whole area is covered by the acquisition proceeding and the potential value of the land is very high; that

u/s 24 of the Land Acquisition Act, 1894, the Court shall not consider those items which have been enumerated therein and the 5th Clause in the

Section reads that the Court shall not take into consideration any increase to the value of the land acquired likely to accrue from the use to which it

will be put when acquired, would seek to allow the petition.

11. On the part of the learned counsel appearing on behalf of the Respondents in A.S.No. 503 of 1994, he would submit that it is upto the Court

to evaluate evidence on the basis of the normal human conduct and decide, so far as the oral evidence adduced on the part of the Appellant to the

value of the lands acquired are concerned. At this juncture, the learned counsel would cite a decision reported in SPECIAL DEPUTY

COLLECTOR Vs. KURRA SAMBASIVA RAO 1997 SC 2625 wherein, it is held that;

... The burden of proof that the amount awarded by the Land Acquisition Officer/Collector is not adequate is always on the claimant. The burden

is to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount

awarded by the Land Acquisition Officer/Collector or that the Land Acquisition Officer/Collector proceeded on a wrong premise or applied a

wrong principle of law. The object of the enquiry in a reference u/s 18 of the Act is to bring on record the price which the land under acquisition

was capable of fetching in the open market as on the date of the notification. The relative situation of the acquired land which is the subject of the

sale transaction, the nature of the land, its suitability, nature of the use to which the lands are put to on the date of the notification, income derived

or derivable from or any other special distinctive feature which the land is possessed of and the sale transactions in respect of lands covered by the

same notification, are all relevant factors to be taken into consideration in determining the market value. It is, therefore, the paramount duty of the

Courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration

thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish

guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are possessed of similar

potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the

relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate

market value of the lands. In that process, though some guess work is involved, feats of imagination should be eschewed and mechanical

assessment of the evidence should be avoided. Even in the absence of oral evidence adduced by the Land Acquisition Officer or the beneficiaries

the judges are to draw from their experience the normal human conduct of the parties and bona fide and genuine sale transactions are guiding star

in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden

on the public exchequer to which other everyone contributes by direct or indirect taxes.

On such arguments, the learned counsel would see no reason for enhancing the compensation to that extent as it had been resorted to by the Court

of Reference in these cases and would pray to dismiss the Appeals.

12. In the other Appeal in A.S.No. 381 of 1994, the learned Government Advocate appearing on behalf of the Appellant would further submit

that the Officer made one mistake in the fixation of the value of the land acquired at Rs. 250/- per cent, that is the omission made to consider the

value for 5.26 acres, but took into consideration only 4.59 acres; that no oral evidence has been let in with no comparable Sale Deeds marked in

evidence; that the Officer had fixed the value on Annual Income basis; that the irrigation rights can record punja lands converted to Tope by drift

irrigation, for the well separate value has been given, which is binding; that stating that the amount of Rs. 250/- is inadequate, the respondents went

to the Court of reference; that no evidence was let in to show how much they expected, but only an attempt was made to show that the lands were

irrigated ones and the same was rejected by the Court for higher claim; that the Appellant let in no evidence, that Judge himself has remarked that

the Appellant claimed Rs. 6000/-.

13. At this juncture the learned Government Advocate would also cite from two decided cases, the first one reported in SPECIAL DEPUTY

COLLECTOR Vs. KURRA SAMBASIVA RAO 1997 SC 2625 wherein, it is held as above mentioned and the second one reported in Periyar

and Pareekanni Rubbers Ltd. Vs. State of Kerala, : wherein, it is held that;

(A) Travancore Land Acquisition Act (11 of 1089, since repealed), Ss.4, 6 - Acquisition of Land - Grant of compensation by Collector - Appeal

- Evidence that acquired land could fetch higher market value - Should be adduced by claimant.

Land Acquisition Act (1894), Ss. 18, 23.

The amount awarded by the Land Acquisition Collector in respect of acquired land from an offer and in appeal against his order it is for the

claimants to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value and the amount

offered by the Land Acquisition Collector was inadequate and he proceeded on a wrong premise or principle.

Case law discussed....

14. The learned Government Advocate in A.S.No. 381 of 1994 would further exhort that the burden is on the claimants to show that Officers

committed wrong in the fixation of the value of the land; that the claimants have not discharged their burden .

15. In consideration of the facts pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both,

it comes to be known that the lands in question have been acquired by the Government represented by the Appellant in both the above Appeals

for the purpose of setting up of a Project for Industrial Explosives by Tamil Nadu Industrial Development Corporation Limited, Gandhinagar,

Vellore 6, issuing a notification in both the above cases u/s 4(1) of the Land Acquisition Act, 1894, on 30-11-1983; that the Land Acquisition

Officer having considered the value of the land and having a comparative study of the lands in question with data lands taken into consideration by

him would ultimately pass award in Award Nos. 1/86 and 3/87, dated

19-12-1986 respectively classifying the lands into two categories, the first one falling under the category of Irrigated Dry Lands and fixing the market value of the same at Rs. 250/- per cent in both the above cases and in

A.S.No. 381 of 1994, he would classify the land under yet another category, namely, Manawari Dry Land and fixing the value of the same at Rs.

43.10 per cent; so far as A.S.No. 503/1994 is concerned, though as aforementioned the Land Acquisition Officer has valued the irrigated dry land

at Rs.250/- per cent, yet another classification falling under Tope lands extending to 3.35 acres had been totally valued at Rs. 2,29,400/-.

16. Aggrieved the Government represented by the Appellant, Tahsildar, have come forward to prefer the above Appeal Suits on certain grounds

as brought forth in the pleadings, Grounds of Appeal and in the arguments advanced before the Court as extracted supra.

17. A careful study made into the order passed by the Court of Reference would clearly reveal that it had not only recorded the oral and

documentary evidence placed on record by parties, but also framing proper points for consideration has gone into the various aspects in the

fixation of the market value of the lands acquired in the case in hand, having a comparative study of the evidence placed on record with the facts

pleaded, thus, in full appreciation of the evidence in the manner required by law, as a result of which, ultimately the Court of Reference would

arrive at the conclusion to fix the market value of the land classified as Irrigated and Manawari Dry Lands in A.S.No. 381 of 1994 at Rs. 500/-

per cent as against the fixation of the market value by the Land Acquisition Officer at Rs. 250/- per cent and so far as it is concerned with A.S.No.

503 of 1994 for Tope lands extending 3.35 acres, totally valuing the same at Rs. 2,69,400/- as against the value of the Land Acquisition Officer at

Rs. 2,29,400/-, thus, enhancing a sum of Rs. 40,000/- in this item and further fixing a similar amount of Rs. 500/- per cent as the value of the lands

classified as Irrigated and Dry as against Rs. 250/- per cent valued by the Land Acquisition Officer.

18. It is not only the conclusion arrived at by the Court of Reference which is on sound reasons and in the manner expected by law, but also the

manner in which the said conclusion has been arrived at following the procedures established by law is beyond question. There is absolutely no

patent error or perversity in approach that could be found in the order passed by the Court of Reference fixing the market value with such

enhancement made as seen in the foregoing paragraphs. No other inconsistency or infirmity has also crept in so far as the lower Court Order is

concerned and therefore, the interference of this Court sought to be made into the well considered and merited order passed by the lower Court is

neither necessary nor warranted in the circumstances of the case.

19. Further, the Court of Reference has fixed the statutory benefits, such as, solatium at 30% on the enhanced compensation amount and "interest

which is to be read as "additional amount" at 12% per annum from the date of 4(1) notification till the date of passing of the award, need no

modification. The Court of Reference has further granted interest at 9% for the first year from the date of taking possession of the land and 15%

thereafter, for every subsequent year, on the amount calculated as the market value of the land, till the date of realisation which also need no

interference by this Court.

20. The Apex Court, in its recent judgment delivered in SUNDER VS. UNION OF INDIA REPORTED IN VI (2001) SLT 641 has held that

the claimants from whom the lands have been acquired by the Government for public purpose against which compensation has been granted, with

interest and solatium, are also entitled for interest on the solatium so granted. Their Lordships have held as follows:

In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person entitled to the compensation

awarded is also entitled to get interest on the aggregate amount including solatium".

In view of the above law laid down by the Apex Court, the first respondent/claimant is entitled to the grant of interest on solatium.

21. In result;

i.Both the above Appeals Suits fail and they are dismissed;

ii.The Award and Decree dated 29-10-1993 made in L.A.O.P.Nos. 1 of 1988 and 20 of 1987 respectively by the Court of the Subordinate

Judge, Vellore, are hereby confirmed;

iii.The first respondent/claimant is only entitled to the grant of interest on solatium as mentioned in paragraph 19 above;

iv. However, in the circumstances of the case, there shall be no order as to costs.