(2009) 04 MAD CK 0475

In the Madras High Court

Case No : A.S. No''s. 321 and 322 of 1997

The Special Tahsildar, (Land Acquisition) Adi Dravidar Welfare APPELLANT

Vs

Jeyamanimadasamy and Kanagaraj RESPONDENT

Date of Decision : 27-04-2009

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

Citation : (2009) 04 MAD CK 0475

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : S.C. Herald Singh, Addl. Govt. Pleader, for the Appellant; R. Asokan, for A. Sivaji, for the Respondent

Judgement

R.S. Ramanathan, J.—The above appeals were filed by the Special Tahsildar (Land Acquisition), Adi Dravidar Welfare, Srivilliputtur against the awards passed in L.A.O.P. Nos. 9 and 10 of 1992 on the file of the Sub Court, Srivilliputtur.

2. Lands in Survey No. 171/1B of an extent of 0.16.0 and 0.81.0 hectares were acquired under 4(1) Notification dated 18.10.1989 and after complying with the formalities the Acquisition Officer passed an award in Award No. 2/91-92 dated 20.8.1991, fixing the market value at Rs. 120/- per cent. The owners not being satisfied with the fixation of market value by the Acquisition Officer filed L.A.O.P. Nos. 9 and 10 of 1992 on the file of the Sub Court, Srivilliputtur u/s 18 of the Land Acquisition Act for enhancement of compensation. Before the Sub Court, on the side of the claimants 12 documents were marked and on the side of the appellant 4 documents were marked. The learned Sub Judge after considering the exhibits filed by both parties and having regard to the locational advantage and potentiality of the acquired lands enhanced the compensation from Rs. 120/- to Rs. 2000/-. Aggrieved by the same, the present appeals are filed by the appellants.

3. Admittedly, the lands were acquired for providing house sites to the Adi Dravidar of Inam Chettikulam and therefore it can be presumed that the acquired

land has potentiality of being converted into house sites. The appellant while fixing the market value considered 91 sale deeds and after rejecting 90 sale deeds on various grounds has taken into consideration the sale of land in Survey No. 359/1 of an extent of 61 cents which was sold on 3.8.1989 for Rs. 7320/- and accordingly fixed the market value of Rs. 12000/- per acre and awarded Rs. 120/-per cent as market value. The learned Counsel appearing for the appellant vehemently contended that the data land selected by the appellant is situate nearer to the acquired land and it has got the same advantages and disadvantages of the acquired land and hence the learned Sub Judge ought to have accepted the value fixed by the Acquisition Officer and ought not to have enhanced the compensation. He further contended that the land covered under Exs.A1 to A12 were sold as house sites and therefore the value mentioned in those documents should not be taken into consideration and they are also not having the same "Tharam" as that of the acquired lands.

4. Per contra, the learned Counsel appearing for the respondents contended that having regard to the lands covered under Exs.A1 to A12 the compensation fixed by the lower Court is not adequate and the lower Court ought to have fixed Rs. 8000/- per cent and therefore there is no need to interfere with the market value fixed by the lower Court.

5. Point for consideration in these appeal is whether the enhancement of compensation made by the lower Court is justified or not ?

6. It is seen from the award proceedings that Item No. 5 land in Survey No. 176/1A and Item No. 12 land in Survey No. 177 were sold at the rate of Rs. 1,09,012/- per acre in January and March, 1989. These lands are adjacent to the acquired land. Further, lands in Survey No. 203 and its Sub Divisions which are covered under Item Nos. 29, 30, 44 and 45 were sold as house sites at the rate of Rs. 1,75,000/- per acre in June and August, 1989. Similarly, the lands in Survey No. 202 and its Sub Divisions were sold at the rate of Rs. 1,76,000/- per acre in August, 1989 and lands in Survey No. 210 and its Sub Divisions were sold at the rate of Rs. 2,18,000/-, Rs. 1,64,987/-, Rs. 3,92,974/- and Rs. 1,49,402/- vide Item Nos. 10, 19, 20 and 31.The above documents were considered by the Acquisition Officer but rejected those documents on various reasons. It is true that the lands in Survey No. 202, 203 and 210 were sold as house sites. These lands are situate on the South East of the acquired lands and they are nearer to the acquired lands than the data land which is situate far of on the northern side. Therefore, in my opinion, the Land Acquisition Officer should not have considered the data land for the purpose of fixing the market value.

7. The Land Acquisition Officer rejected the lands in Survey Nos. 177, 176/1A on the ground that they were sold as house sites and the extent covered under those sale deeds are very small compared with the extent of acquired land. No doubt the lands in Survey Nos. 176/1A and 177 and the lands in Survey No. 202 and its Sub Divisions, Survey No. 203 and its Sub Divisions and Survey No. 210 were sold as house sites. As stated supra, the land was acquired for providing

house sites and therefore the acquired land has also got the potentiality of being converted into house sites. Therefore, there is nothing wrong in comparing the sale deeds wherein the lands were sold as house sites. It has been held by the Hon''ble Supreme Court that there is nothing wrong in taking into consideration of sale deeds in which small extent of land were sold when no other material is available but subject to same deduction.

8. It is an accepted principle that deductions can be made when small extent of lands were considered for fixing the market value towards development charges. The acquired lands are situate in Inam Chettikulam which is nearer to Rajapalayam and Srivilliputtur and a perusal of Exs. A1 & A12 would lead to an inference that lands in and around the acquired lands are being sold as house sites for Rs. 1200/- to Rs. 4360/- per cent, during the relevant period. Therefore, in my opinion, having regard to the potentiality and locational advantage of the acquired lands and having regard to the fact that neighbouring lands were sold as house sites at an exorbitant rate, the market value of the acquired lands can be fixed at Rs. 2000/- per cent and having regard to the nature of the acquired lands namely undeveloped, 25% can be deducted towards development charges and if so deducted the market value to be fixed at Rs. 1500/- per cent. Accordingly, the market value fixed by the learned Sub Judge at the rate of Rs. 2000/- per cent is reduced to Rs. 1500/- per cent in respect of the acquired lands.

9. In the result, the appeal is allowed in part and the market value of the land is fixed at the rate of Rs. 1500/- per cent. In other aspects, the decree of the lower Court is confirmed.

It is represented by Mr. R. Asokan the learned Counsel for the respondents that in the Judgement and decree it is stated that 12% interest shall be added to the market value. According to Section 23(1A) of the Land Acquisition Act, the Court in every case award an amount calculated at the rate of 12% per annum on such market value and it is not an interest and it is wrongly stated as interest in the Judgement and decree. Therefore, it has to be suitably amended in the decree and Judgement and 12% shall be awarded as per Section 23(1A) of the Land Acquisition Act and it is not an interest as found in the decree and Judgement. In other aspects, the decree of the lower Court is confirmed.

