

(2010) 06 MAD CK 0177

In the Madras High Court

Case No : Appeal Suit No. 585 of 2002 and C.M.P. No. 6800 of 2002

The Special Tahsildar (Land Acquisition) Adi Dravidar Welfare	APPELLANT
Vs	
Pahnjalai	RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1), 23(1A), 23(2), 4(1)

Citation : (2010) 06 MAD CK 0177

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : Ravi, Additional Govt. Pleader AS, for the Appellant; T.S. Kannaiyan, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—This appeal has been filed by the Land Acquisition Officer viz., the Special Tahsildar (Land Acquisition), Adi

Dravidar Welfare, Vellore against the judgment and decree dated 05.2.2002 of the learned Subordinate Judge, Ranipet made in L.A.O.P. No. 44

of 1997, complaining that the amount awarded as compensation by the Court below is highly excessive and praying for the reduction of the same.

2. A total extent of 2.07 acre comprised in various survey numbers at Melnethambakkam Village, Arcot Taluk, Vellore District was acquired by

the Government for a public purpose viz., for providing house sites to the members of Adi Dravidar Community. Out of the above said extent of

2.07 acres of land acquired by the Government for the said purpose, 0.50 acres of dry land comprised in S. Nos. 51/4 belonged to the

respondent here in/claimant. The Land Acquisition Officer viz., Special Tahsildar (Adi Dravidar Welfare), Vellore conducted the award enquiry

and passed an award on 18.2.1993 in his award No. 17 of 1992-93, fixing the market value of the said property at Rs. 6,940/- per acre (Rs.

69.40 per cent). The Court below calculated an additional market value from the date of Section 4(1) Notification till the date of award at

12%p.a, allowed Solatium at 30% of the market value, added a sum of Rs. 4,941/- towards the value of the claimant's share in the Well and

awarded a total sum of Rs. 13,541/- as compensation for the land of the respondent/claimant acquired by the Government. Since the

respond/claimant was not satisfied with the quantum of compensation awarded by the Land Acquisition Officer, he received the amount under

protest and requested for making a reference u/s 18 of the Land Acquisition Act, 1894 to the Court for determining a reasonable amount as

compensation. Thus a reference was made by the Land Acquisition Officer (the appellant herein) to the Sub-Court, Ranipet u/s 18(1) of the Land

Acquisition Act. The same was taken on file by the learned Subordinate Judge, Ranipet and numbered as L.A.O.P. No. 44 of 1997. After giving

opportunity to the respondent/claimant to put in his claim statement, the learned Subordinate Judge conducted trial of the L.A.O.P without a

counter being filed by the appellant herein/the Referring Officer as the same was not filed in time.

3. In the trial, two witnesses were examined as CW1 and CW2 and two documents were marked as Exs.C1 and C2 on the side of the

respondent herein/claimant. On the side of the appellant herein / Referring Officer, one witness was examined as RW1 and 6 documents were

marked as Exs.R1 to R6.

4. The learned Subordinate Judge after considering the pleading and evidence, fixed the market value of the acquired land belonging to the

respondent herein / claimant as on the date of Section 4(1) notification, at Rs. 428/- per cent (Rs.42,800/- per acre). The learned Subordinate

Judge held that the value of the well fixed by the Land Acquisition Officer was correct and the same did not warrant any enhancement. The learned

Subordinate Judge allowed the additional market value at the rate of 12% p.a. from the date of 4(1) notification till the date of award u/s 23(1A) of

the Act and 30% Solatium u/s 23(2) of the Act on the market value of the property. The learned Subordinate Judge also held that the

respondent/claimant would be entitled to an interest on the enhanced amount of compensation for a period of one year from the date on which

possession was taken viz., 4.4.1994 at the rate of 9% p.a. and thereafter, at 15% p.a. till deposit.

5. Contending that the judgment and decree of the learned Subordinate Judge are not based on correct appreciation of law and fact, the Referring

Officer viz., the appellant herein has come forward with the present appeal on various grounds set out in the memorandum of appeal.

6. This Court heard the submissions made by Mr. Ravi, learned Additional Government Pleader (AS), on behalf of the appellant and Mr.

Kannaiyan, learned Counsel appearing on behalf of the respondent. The materials available on record were also perused.

7. The point that arises for consideration in the appeal is as follows:

Whether the market value fixed by the Court below is excessive and whether the amount awarded as enhanced compensation by the Court below

requires reduction?

8. The only contention raised by Mr. Ravi, learned Additional Government Pleader, is that the learned Subordinate Judge erred in relying on the

sale deed under which a property was sold as house site as the basis for fixing the market value of the acquired property which was admittedly an

agricultural land as on the date of notification u/s 4(1); that even if it is assumed that the acquired property did have the potential for being

developed into house sites, the Court below should have allowed a deduction of 65% and that hence the Court below should have held the amount

awarded by the Land Acquisition Officer to be quite reasonable and there was no case made out by the respondent/claimant for enhancement of

compensation. On the other hand, the learned Counsel for the respondent contended that the lower Court, in fact, allowed a higher percentage as

deductions for arriving at the market value of the acquired land on the basis of Ex.C1; that it was the respondent/claimant and not the

appellant/Referring Officer who could have got a grievance against the award of the Court below and that hence the appeal should be dismissed

with cost.

9. In order to prove his eligibility to get enhanced compensation over and above the amount offered by the Land Acquisition Officer in the award,

the respondent/claimant himself figured and deposed as CW1. He has also produced certified copies of a sale deed dated 26.4.1989 registered as

Document No. 348/1989 on the file of Sub-Registrar, Kalavi and another sale deed dated 06.10.1989 registered as 856/1989 on the file of Sub-

Registrar, Kalavai as Exs.C1 and C2 respectively. As per Ex.C1, an extent of 1604 sq.ft house site comprised in S. No. 289/1A and another

extent of 1759.5 sq.ft comprised in S. No. 289/10 had been sold for a total sum of Rs. 13,000/-. But the market value of the said property has

been shown as Rs. 13,456/-. The said document was executed in respect of an area classified as Grama Natham. The rate becomes

approximately Rs. 1742/- per cent. Under Ex.C2, an extent of 6 2/3 cents of dry land abutting the residential area of the village was sold for a sum

of Rs. 7500/- showing its market value as Rs. 9080/-. The sale price as per Ex.C2 comes to Rs. 1,125/- per cent. Since the property sold under

Ex.C1 was a Natham land, meaning a pucca house site, the learned Subordinate Judge chose to treat Ex.C2 as the basis for fixing the market

value of the acquired land and rejected Ex.C1 as not reflecting the market value of the acquired land. Though the property conveyed under Ex.C2

was classified as dry land, the boundaries provided for the same in the document will show that the said land is abutting the residential area of the

village. In fact CW2 was the purchaser under Ex.C1 and the vendor under Ex.C2. He has spoken about the fact that an extent of roughly about 7

= cents of land was purchased by him for Rs. 13,000/- under Ex.C1 and he sold an extent of 6 2/3 cents of land for a sum of Rs. 7500/- under

Ex.C2. CW2's veracity and reliability were not impaired in any way by the cross examination done on behalf of the Referring Officer.

10. As against such clear evidence adduced on the side of the respondent / claimant regarding the genuineness of the document produced as data

sale for the ascertainment of the market value of the acquired land, there is lack of reliable evidence on the side of the appellant herein/Referring

Officer. The data sale relied on by the Land Acquisition Officer has not been proved to be a genuine one reflecting the correct market value. No

one connected with the document was examined on the side of the Referring Officer. In fact not even a certified copy of the sale deed relied on by

the Land Acquisition Officer as the data sale was produced. Lands comprised in Several subdivisions of S. Nos. 148, 149 and 150 in

Melnethambakkam Village, that too undivided shares in some of those survey numbers are said to be sold under the original of Ex.R2 for a sum of

Rs. 9000/-. But the authenticity of the said document has not been established. Only a xerox copy has been produced as Ex.R2. There is also no

evidence as to how and from which source the Referring Officer got that xerox copy of that document. The other documents produced on the side

of Referring Officer as Exhibits, i.e., Ex.R1, R3 to R4 and R6 will not lend any help for determining the correct market value of the acquired land.

The land comprised in survey numbers 148,149 and 150, which is taken as the data land by the Land Acquisition Officer, is on the extreme north

of the village touching the boundary of the village. The acquired land is situated far away from the said land. Clear evidence has been adduced on

the side of the respondent/claimant that the distance between the acquired land and the land selected by the Land Acquisition Officer as data land

is more than 2 kms. The said fact that the distance between the data land selected by the Land Acquisition Officer and the acquired land was more

than 2 kms has also been admitted by RW1. On the other hand, clear evidence has been adduced to the effect that the acquired land is situated at

a short distance from the residential area of the village and that there are houses at a distance of 50 feet from the acquired land.

11. Therefore, the learned Subordinate Judge committed no mistake in selecting the sale under Ex.C2 as the basis on which the market value of the

acquired land could be ascertained. Though the market value reflected in Ex.C2 is Rs. 1125/- per cent, the learned Subordinate Judge has taken

into account the fact that though the subject matter of the said sale was classified as a dry land, it was sold only as a house site as ascertained from

the boundaries of in the said land sold under Ex.C2. A vacant site of 6 2/3 cents surrounded by houses was the one sold under Ex.C2 and hence

the learned Subordinate Judge came to the correct conclusion that while taking Ex.C2 as the basis for fixing the market value of the acquired land

since the acquired land had the potentiality for being developed into house sites, some deduction for developmental charges should be made. Thus,

considering the location of land the learned Subordinate Judge has chosen to allow a deduction of 30% towards developmental charges, a further

deduction of 20% on the ground that the acquired land is situated in a small village and yet another deduction of 10% since there was no industrial

establishment in the village in which the acquired land situates. Of course, the Court can allow a reasonable deduction while comparing a small piece of land sold as house site with a larger extent of land having the potentiality to be developed into house sites. But the other deductions made by the Court below viz., 20% on the ground that the property is situated in a small village and another 10% on the ground that there was no industrial establishment in the village are unwarranted and unjustifiable. However, the deductions for developmental charges should have been at a higher percentage since an agricultural land was compared with a small piece of land sold as house site. Thus, while holding that the other deduction are not justified, this Court holds that the deduction made for developmental charges at 30% is very low and such deduction can be increased to some extent. The total deduction allowed by the Court below comes to 60%. If the entire 60% deduction is taken as the deduction made for developmental charges, still the same shall be more than reasonable and at any rate such deduction cannot be said to be unreasonably low.

12. Therefore, this Court comes to the conclusion that the appellant's contention that the market value of the acquired land fixed by the Court below is excessive cannot be countenanced. As rightly pointed out by the learned Counsel for the respondent /claimant, in fact the respondent/claimant should have come forward with an appeal complaining that the market value fixed by the Court below is unreasonably low. However, the respondent/claimant has not chosen to do so. The appellant cannot be justified in challenging the enhanced compensation awarded by the Court below as excessive. There is no merit in the appeal and the same deserves to be dismissed with cost.

13. Accordingly, the appeal is dismissed with cost. Consequently, the connected miscellaneous petition is closed.