

(2009) 12 MAD CK 0231
In the Madras High Court
Case No : S.A. No. 296 of 2007

The Special Tahsildar (Land Acquisition) Adi Dravidar Welfare	APPELLANT
Vs	
Saroja Ammal, Ekambaram, Savithri and Jayalakshmi	RESPONDENT

Date of Decision : 16-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4, 4(1), 8

Citation : (2009) 12 MAD CK 0231

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : Bhavani Subbarayan, Special Government Pleader CS, for the Appellant; S.N. Ravichandran, for the Respondent

Judgement

R. Banumathi, J.—Being aggrieved by enhancement of compensation from Rs. 54,000/- per acre to Rs. 1,000/- per cent and Rs. 1,00,000/- per acre, Government has preferred this appeal.

2. Brief facts which led to filing of Second Appeal are that an extent of 1.48 Acre (or) 0.60.0 Hectare of land situate in S.No. 37/3 and 38/2 in Govindampadi Village, Vellore Taluk, Vellore District was sought to be acquired for the purpose of providing house sites to homeless adi-dravidars in Govindampadi under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter shortly called as Act 31/78. Land Acquisition Officer has taken sale deed Document No. 588/95 dt. 05.03.1995 in Survey No. 8/3, under which 0.06 acres of land was sold at Rs. 3240/- and fixed the market value at Rs. 54,000/- per acre. After due adherence to all statutory provisions under the Act 31/78, an award was passed in Award No. 18/95-96 dated 26.3.1996 awarding compensation of Rs. 91,908 as under:

The true area of the land... 1.48 acre (a) Market Value of the land... 79,920/-	
(b) Solatium at 15%... 11,988/-	Total 91,908/-

3. Being dissatisfied with quantum of compensation, respondents filed an appeal before Sub Court in C.M.A. No. 6/96. During pendency of appeal, Ganesa Mudaliar died and his legal representatives were brought on record as appellants. The learned Subordinate Judge has taken Ex.A1 sale deed dated 30.06.1987 in Survey No. 31/6A under which 5 cents was sold as house site for Rs. 7,000/-. Finding that Ex.A1, sale deed was after Section 4(1) notification, learned Subordinate Judge fixed the market value at Rs. 1,000/- per cent and Court awarded compensation of Rs. 1,70,200/- as under:

Area Acquired - 1.48 acre	Value of 1.48 acre at the rate of Rs. 1000/- per cent -	
Rs.1,48,000/-	15% Solatium -	Rs. 22,200/-
Rs.1,70,200/-	LESS Compensation already paid	Rs. 91,988/-
	Balance Payable	Rs. 78,212/-

Court has ordered payment at the rate of 6% interest from the date of taking compensation till the date of deposit.

4. In this Second Appeal the following substantial questions of law were formulated for consideration:

i. Whether the Court below erred in not appreciating the fact that the market value for the land acquired had been fixed taking into consideration date sale deed under which the land similar in nature, soil, tharam and classification to the land acquired had been conveyed?

ii. Whether the Court below had erred in placing reliance on Ex.A1 where under a small extent of land classified as house site were conveyed where as the land acquired is classified as agricultural land and measuring an extent of 1.48 acre?

iii. Whether the Court below had erred in not making necessary deduction towards development charges especially in view of law laid down by the Apex Court judgment reported in 2003 (12) SCC 334 where under the Apex Court prescribed the percentage of deduction at 53%?

iv. Whether the Court below had erred in not appreciating the provision of Section 8 of the Act 31/78 which clearly stipulate that nature and classification of land under acquisition as on date of 4(1) notification is the criteria for fixation of market value and not the probable usage of the said land?

5. The learned Special Government Pleader contended that Ex.A1 sale deed was subsequent to Section 4(1) notification and while so Court below ought not to have taken Ex.A1 as basis for enhancing the market value at Rs. 1,000/- per cent. It was further argued that when small extent was taken for comparison, reasonable deduction ought to have been made for developmental charges and without making deduction, the enhancement cannot be sustained.

6. The learned Counsel for respondent Mr. S.N. Ravichandran submitted that when in the nearby vicinity, property was sold as house sites, learned

Subordinate Judge rightly fixed the value per cent and no exception could be taken. It was further submitted that the value per cent fixed itself is very low and therefore, no further deduction need be made.

7. An extent of 0.06 acres of land was sold in S.No. 8/3 under sale deed dated 05.03.1995 for Rs. 3240/-. Taking that as basis, Land Acquisition Officer fixed Rs. 540/- per cent and fixed the value per acre at Rs. 54,000/-. Even though Survey No. 8/3 is stated to be nearby acquired lands, from Ex.R3 plan, it is seen that the data land in S.No. 8/3 is quite far away from the acquired lands. As pointed out by the Court below, there is no evidence as to what is the distance of the data land from the acquired land and the potentiality of development for the data land.

8. When claimants file appeal claiming enhancement, Claimants have to prove and demonstrate that compensation awarded by the Special Tahsildar is not adequate and the same does not reflect the true market value of the land on the date of notification u/s 4 of the Act. This could be done by the Claimants by adducing evidence to the effect that on the relevant date, market value of the land in question was such at which the buyer and seller were willing to sell or purchase the land.

9. Referring to capitalization method for determining the value of the land, in State of Maharashtra and Another Vs. Basantibai Mohanlal Khetan and Others, , the Supreme Court held as under:

...In order to appreciate this ground of objection, it is necessary to examine whether the classification of the land under the Act into the land in municipal area and the land in rural area for purposes of determining the amount payable on acquisition is bad. It is not denied that the land in municipal area commands various advantages which are not available in the case of land in rural areas.

10. Determination of the market value of the land depends upon facts and circumstances of each case, amongst them would be the price of the land, amount of consideration mentioned in a deed of sale executed in respect of similarly situated land near about the date of issuance of notification under Sec4(1) of the Act. The area of the land, nature thereof advantages and disadvantage occurring therein amongst others would be relevant factors for determining the actual market value of the property.

11. Ex.A1 is the sale deed dated 30.06.1987 under which Murugesu Gounder sold 5 cents in S.No. 31/6A to one Jayammal for Rs. 7,000/-. Even in 1987, Survey No. 31/6A, in Govindampadi Village was sold as house site. In his evidence Ekambaram has stated that the acquired land is nearby schools and in the midst of developed area and has potentiality for development. Raji who has signed as witness in Ex.A1 was examined as CW2. In his evidence CW2 has stated that the site in S.No. 31/6A is at distance of about 20 feet from the acquired land and there is a road in between the acquired land and his house site purchased under Ex.A2. CW2 has further stated that under Ex.A1 the plot was

purchased as house site. When the nearby area was sold as house site even in 1987, the Land Acquisition Officer was not justified in taking S.No. 8/3 agricultural land as data land. As pointed out earlier under Ex.A1, 5 cents was sold for Rs. 7,000/- i.e., Rs. 1400/- per cent. The learned Subordinate Judge has observed that Ex.A1 sale deed is 1 ? years after Section 4(1) notification and therefore fixed the market value at Rs. 1000/- per cent. The view of learned Subordinate Judge is that Ex.A1 sale deed is 1 ? years after Section 4(1) notification is factually incorrect. Ex.A1 is of the year 1987 and 4(1) notification is of the year 1996, nearly 10 years after Ex.A1. In fact, while taking Ex.A1 as the data land, the learned Subordinate judge ought to have fixed higher value. Since no cross objection is filed, I do not propose to go into the same.

12. The learned Special Government Pleader Ms. Bhavani Subbrayan has contended that when the Court has taken smaller extent as comparable sale, Court ought to have made deduction for developmental charges. Placing reliance upon The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, it was contended that for determining the value of agricultural land, deduction should be made in respect of developmental expenses, interest on the outlays and the Lower Court erred in not allowing any deduction for developmental charges.

13. Of course, deduction for development charges ought to be adequately provided for, but it varies from place to place, area to area. As pointed out earlier, in this case the learned Subordinate Judge under factual misconception reduced the value Rs. 1,400/- to 1,000/- per cent. In fact a higher value should have been fixed. Having regard to facts and circumstances of the case, this Court is of the view that no further deduction need be made.

14. As per order in M.P. No. 1 of 2007 dated 12.03.2007, entire amount was ordered to be deposited. As per order in M.P. No. 1 of 2008, claimants were permitted to withdraw one half of the amount so deposited.

15. The enhanced compensation of Rs. 1,48,000/- cannot be said to be on the higher side. The solatium awarded at 15% of the market value and interest awarded at the rate of 6% from the date of taking compensation till date of deposit of the amount is in well accordance with the provisions of the act. No substantial questions of law are involved warranting interference exercising jurisdiction under 100 C.P.C.

16. In the result, the judgment and decree made in C.M.A. No. 6/96 dated 26.2.2004 on the file of Sub Court, Vellore enhancing the compensation and award of interest and solatium are confirmed and the Second Appeal is dismissed. Claimants/respondents are entitled to withdraw the entire amount deposited to the credit of C.M.A. No. 6/96 dated 26.2.2004 on the file of Sub Court, Vellore immediately on receipt of copy of this judgment. Balance amount if any payable has to be deposited by the Special Tahsildar (Land Acquisition), Adi Dravidar Welfare, Vellore within a period of twelve weeks from the date of

receipt of copy of this judgment. On such deposit of balance amount, the claimants are entitled to withdraw the balance amount so deposited. No costs.