(2008) 04 MAD CK 0057

In the Madras High Court

Case No : A.S. No''s. 156 of 1999

The Special Tahsildar, Land Acquisition, Adi Dravidar Welfare — APPELLANT

Vs

V. Balusamy (Died) and Others — RESPONDENT

Date of Decision : 25-04-2008

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 4(1)

Citation : (2008) 04 MAD CK 0057

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : So. Paramasivam, for the Appellant; M. Ajmalkhan, for R.2, A. Sivaji, for R3 and M. Thirunavukarasu, for R4 and R5, for the Respondent

Judgement

G. Rajasuria, J.—This appeal has been focussed as against the judgment and decree passed in L.A.O.P. Nos. 252 of 1992 dated

22.10.1998 by the learned Subordinate Judge, Srivilliputhur.

2. By the consent of both sides, the main appeal has been taken up for disposal.

3. Heard both sides.

4. A re''sume'' of facts absolutely necessary and germane for the disposal of these two appeals would run thus:

The Government after making Notification u/s 4(1) of Land Acquisition Act dated 04.12.1990, acquired the land in Survey Nos. 657/1A1 and

662/1A (1.18.0 Hectare) in Muthuramalingapuram Village as per law. As such the Land Acquisition Officer, after complying with the formalities

and relying on the sale deed dated 07.06.1990, assessed the value of the land acquired in a sum of Rs. 14,289/- (Rupees Fourteen Thousand Two

Hundred and Eightynine only) per Acre, in other words a sum of almost Rs. 143/- per cent was awarded as compensation.

4. Being aggrieved by and dissatisfied with the said award, the land owners u/s 18 of the Land Acquisition Act got the matter referred to the Sub

Court, Srivilliputhur for enhancement of compensation, which Court enhanced the value per cent of land acquired to the tune of Rs. 1,700/-

(Rupees One Thousand and Seven Hundred only) based on Ex.A.2 the sale deed dated 15.06.1990 marked before it.

5. Challenging the said enhancement by the Sub Court, the Land Acquisition Officer preferred this appeal on various grounds, the gist and kernel

of them would run thus:

The Sub Court took into account Ex.A.2, which is a sale deed relating to a small piece of land situated far away from the land acquired and it

cannot be taken as a governing factor for assessing the value of the land acquired. Accordingly, the appellant prays for reducing the compensation.

6. The points for consideration are (i) what should be the appropriate compensation to be awarded relating to the land acquired by the

Government and (ii) whether there is any infirmity in the judgment passed by the Sub Court, Srivilliputhur?

7. Points: As many as three documents were marked before the Subordinate Judge as under:

1) Ex.A.1 Sale deed dated 12.12.1983

2) Ex.A.2 Sale deed dated 15.06.1990

3) Ex.A.3 Sale deed dated 01.12.1990

It is quite obvious that Ex.A.1 emerged almost 7 years anterior to the date of said notification u/s 4(1) of the Land Acquisition Act. Hence, it was

correctly excluded from the purview of the Sub Court. Ex.A.3 emerged just 3 days anterior to 4(1) notification, which was also correctly excluded

by it. However, Ex.A.2 dated 15.06.1990 which emerged 6 months anterior to Section 4(1) of Land Acquisition Act Notification, was adopted

correctly by the Sub Court, for the reason that no other document could be located in order to assess the value of the land acquired in a just and

proper manner. No doubt Ex.A.2 relates to a land which is situated 1 1/2 Kms. away from the land acquired, even then on that ground alone

simply it cannot be excluded, when there is no clinching and plausible evidence available. The land owners are entitled to just compensation. In this

regard, the decision of the Honourable Apex Court in Smt. Basavva and others

Vs. Special Land Acquisition Officer and others, , could rightly be

cited. An excerpt from it, would run thus:

3. Having given our consideration, the question that arises for consideration is whether the High Court has committed any error of law in fixing the

compensation at the rate of Rs. 56,000/- per acre? On the principle of deductions in the determination of the compensation, this Court in K.

Vasundara Devi Vs. Revenue Divisional Officer (LAO), has considered the entire case law and has held that the Court, in the first instance, has to

consider whether sales relating to smaller pieces of lands are genuine and reliable and whether they are in respect of comparable lands. In the event

the Court finds that such sales are genuine and reliable and the lands have comparable features, sufficient deduction should be made to arrive at the

just and fair market value of large tracts of land. The time-lag for real development and the waiting period for development are also relevant

consideration for determination of just and adequate compensation. Each case depends upon its own facts. For deduction of development charges,

the nature of the development, conditions and nature of land, the land required to be set apart under the building rules for roads, sewerage,

electricity, parks, water etc. and all other relevant circumstances involved are to be considered. In this case, the facts recorded by the High Court

are that Ex.P.10 sale deed is dependable sale but it is in respect of a small plot of land situated at a distance of more than 1 Km. It is also found

that the land in the area is not developed and there is no development in those lands though the lands are capable of being used for non-agricultural

purpose. On those findings the High Court held that the market value under Ex.P.10 cannot form the sole basis but keeping in view the

developments the lands are capable of fetching compensation at the rate of Rs. 56,000 after deducting 65%. For developmental charges, that

deduction between 33-1/3 to 53% was held to be valid by this Court in several judgments. In Vasundara Devi case 63% deduction was upheld. In

view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in

view the fact that the lands under Ex.P.10 were situated at far-flung places from the lands under acquisition and since the land takes long time for

development it has given additional deduction of 12%, i.e.53 + 12% = 65% in determination of the compensation. On the basis of the rationale

referred to above, the principle adopted by the High Court cannot be said to be illegal. Thus considered, we hold that there is no justification for

interference in the finding recorded by the High Court or to further increase the compensation.

Accordingly, it is clear that even though the sale deed relates to a land which is situated a little far away from the acquired lands and also relating to

smaller extent, nonetheless in the absence of any other clinching evidence it could be considered, but due deduction should be made towards

development charges. It is also a trite proposition that the purpose of the acquisition should also be considered. Here the purpose of acquisition is

for converting the agricultural land into plots for being allotted to the landless Adidravidas. Hence, Ex.P.2 could rightly be taken as a sample

document for assessing the compensation. However, while doing so, the Sub Court has committed an error in not deducting 1/3rd value towards

development charges.

8. The learned Counsel for the claimants would contend that the deductions made by the Sub Court requires no interference. At this juncture my

mind is redolent with the decision of the Honourable Apex Court in Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others, . An

excerpt from it would run thus:

17. The deduction to be made towards development charges cannot be proved in any straitjacket formula. It would depend upon the facts of each

case.

18. 7...It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes,

normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain

variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic

amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land

may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area

all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in

developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental

purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area

adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land

is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one

portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage,

sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the

developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that

account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation

towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is

difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or

adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot,

particularly when vast tracts are acquired, as in this case, for development purpose.

The aforesaid aspects were highlighted in Kasturi v. State of Haryana SCC pp.359-60, para 7.

19. A reference may also be made to what has been stated in Kiran Tandon v. Allahabad Development Authority, State of W.B. v. Kedarnath

Rajgarhia Charit. Trust Estate and V. Hanumantha Reddy v. Land Acquisition Officer.

The perusal of the said decision would clearly indicate that the normal rule is to deduct 1/3 value towards development charges. If the land

acquired is a vast area then that standard 1/3rd deduction has to be increased. Taking into consideration the fact that Ex.A.2 itself emerged 6 months anterior to Section 4(1) notification and that too it relates to a land situated 1 1/2 Kms. away from the land acquired and it also relates to a

smaller areas, as such 1/3 should necessarily be deducted from the value as in Ex.P.2, towards development charges. Accordingly, if worked out

by deducting 1/3rd value from the value of Rs. 2,250/-, it comes to Rs. 1,500/-, which could be taken as the proper value of the land acquired per

cent.

9. In the result, this appeal is partly allowed and the award of the Subordinate Judge, Srivilliputhur, shall stand modified. The land value shall be

assessed at the net rate of Rs. 1500/- (Rupees One Thousand and Five Hundred only) per cent. All other statutory entitlements shall follow. In

other aspects the award shall hold good. As observed in the M.P.s ordered, the rival claimants shall get their right decided by approaching the

appropriate Court concerned. No costs.