

(2009) 08 MAD CK 0098

In the Madras High Court

Case No : A.S. No's. 483, 484, 486, 487, 489, 491, 492, 493 and 494 of 2002

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

Vs

Chandra Ammal and Others RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23(1A), 23(2), 28, 4(1)

Citation : (2009) 08 MAD CK 0098

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

Bench : Single Bench

Advocate : A. Ravi, Special Government Pleader, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—All these appeals have been preferred by the Government through the Special Tahsildar, Land Acquisition, Adi

Dravidar Welfare Department, Madurantakam against the common judgment and decrees dated 30.04.1996 made in L.A.O.P. Nos. 30 of 1994

to 33 of 1994, 36 of 1994 to 38 of 1994, 40 of 1994 and 41 of 1994. The above said L.A.O.Ps along with three other L.A.O.Ps namely

L.A.O.P. Nos. 34, 35 and 39 of 1994 were disposed of by a common judgment of the learned Additional Subordinate Judge, Chengalpattu dated

30.04.1996.

2. A total extent of 8.91 acres (equivalent to 3.605 Hectares) of dry land in Neelamangalam village, Cheyyur Taluk, formerly Chengalpattu

District, now Kancheepuram District) comprised in various subdivisions of Survey No. 147, 148 and 239 was acquired by the Government for

providing house sites to house less Adi Dravidars of said village. The notification u/s 4(1) of the Land Acquisition Act for the above said acquisition

was published in the Tamil Nadu Government Gazette on 12.11.1991. Publication of the same was also made in the newspapers on 05.12.1991.

After hearing objections in respect of the proposed acquisition and following the procedure, the Government decided to go ahead with the

proposed acquisition. The declaration u/s 6 of the Land Acquisition Act 1894, which was approved by the Government in its G.O.3(D) No. 662,

Adi-Dravidar and Tribal Welfare Department dated 15.09.1992 was published in the Tamil Nadu Gazette and the newspapers on 13.09.1992.

Publication in the locality was also effected in the locality. After award enquiry, the Land Acquisition Officer fixed the market value of the acquired

land at the rate of Rs. 86/- per cent relying on a sale deed dated 11.08.1989 and awarded compensation to the land owners from whom the

above said lands were acquired. The land owners, not satisfied with the amount awarded as compensation by the Land Acquisition Officer, made

requests for making reference to the Court u/s 18 of the Land Acquisition Act for fixing reasonable amount as compensation for the lands under

acquisition. Accordingly, the Land Acquisition Officer, namely the Special Tahsildar (Land Acquisition), Adi Dravidar Welfare Department,

Madurantakam made references u/s 18 of the Land Acquisition Act. The same were taken on file by the trial court as L.A.O.P. Nos. 30 of 1994

to 33 of 1994, 36 of 1994 to 38 of 1994, 40 of 1994 and 41 of 1994. The claimants and the L.A.O.P. Nos. 30 of 1994 to 33 of 1994, 36 of

1994 to 38 of 1994, 40 of 1994 and 41 of 1994 (Referring Officer)

3. The trial court, namely the learned Additional Subordinate Judge, Chengalpet conducted a common trial in all the above said L.A.O.Ps in which

one witness was examined as CW1 and one document was marked as Ex.A1 on the side of the claimants in all the above said L.A.O.Ps. Similarly

RW1 was examined and exhibits B1 to B4 were marked on the side of the Referring officer. The learned Additional Subordinate Judge, after

hearing the argument advanced on either side considered the evidence (both oral and documentary) adduced on both sides in the light of such

arguments and upon such consideration, came to the conclusion that the sale deed dated 29.10.1991 bearing document No. 1782 of 1991

registered on the file of Sub Registrar, a certified copy of which has been produced as Ex.A1 reflected the correct market value of acquired land

as on the date of 4(1) notification. In accordance with the said finding, the trial court fixed the market value of the acquired land at Rs. 250/- per

cent and awarded enhanced compensation in all the above said L.A.O.Ps. The learned Additional Subordinate Judge also calculated the statutory

benefits like, additional market value from the date of 4(1) notification till the date of award or date of taking possession whichever is earlier,

Solatium, interest in accordance with the relevant provisions, namely Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act. Accordingly,

the Government was directed to pay enhanced compensation in all the above said L.A.O.Ps.30 to 41 of 1994. As against the decrees made in

L.A.O.P. Nos. 30 to 41 of 1994 the Government has come forward with separate appeals, totally 12 in number. However, in three such appeals,

namely AS No. 485 of 2002, filed against the award made in L.A.O.P No. 39 of 1994, A.S. No. 488 of 2002 filed against the award made in

L.A.O.P No. 34 of 1994 and A.S. No. 490 of 2002 filed against the award passed in L.A.O.P No. 35 of 1994, service of notice has not yet

been completed. Hence omitting the above said three appeals, the remaining 9 appeals are taken up for disposal by this common judgment.

4. A issue that arises commonly in all these appeals for consideration is whether the market rate fixed by the trial court for the acquired land is

excessive warranting reduction of the amount awarded by the trial court as enhanced compensation?

5. The only point on which the referring officer has come forward with these appeals is on the question of fixation of market value for the acquired

land as on the date of notification u/s 4(1) of the Land Acquisition Act. The Land Acquisition Officer fixed the market value at Rs. 86/- per cent.

As against the same, the learned Additional Subordinate Judge has fixed the market value of the acquired land at Rs. 250/- per cent. Regarding the

method adopted for calculation of total amount of compensation, there is no controversy and it is admitted on behalf of the appellant by the learned

Special Government Pleader that the total amount of compensation has been fixed following correct procedure prescribed under the Act. On the

other hand, the learned Special Government Pleader would contend that the appellant is aggrieved by the fixation of the market value at the rate of

Rs. 250/- per cent as against Rs. 86/- per cent adopted by the Land Acquisition Officer.

6. According to the submissions made by the learned Special Government Pleader, the document relied on by the learned Acquisition Officer was

the one which reflected the correct market value of the acquired land, as the same was a document pertaining to a portion of the acquired land

itself. It is the specific contention of the learned Special Government Pleader that whenever there are documents which happened to be executed

within the period of scrutiny in respect of the very same survey number comprising the acquired land, then such sale deed should be preferred to

any other sale deed. The above said contention of the learned Special Government Pleader, at the out set seems to be a tenable one. However,

when there are sale deeds relating to adjacent lands which have more proximity of time with the 4(1) notification in comparison with the sale deeds

that happened to be executed in respect of a portion of the survey number relating to the acquired land itself, then if both the lands are comparable,

the former should be preferred and the latter should be rejected as not reflecting the correct market value of the acquired land as on the date of

4(1) notification.

7. In the cases on hand, the sale deed relied on by the Land Acquisition Officer was one that came into existence on 11.08.1989 whereas the sale

deed relied on by the claimants as reflecting the correct market value of the acquired land is of the date 21.10.1991. There was a time gap of 2

years and add between the sale deed relied on by the Land Acquisition Officer and the sale deed relied on by the claimants. The Court can take

Judicial notice of the fact that during the relevant period, the market value of the acquired land should have increased. In fact the certified copy of

the sale deed relied on by the Land Acquisition Officer has been marked as Ex.B4, whereas the certified copy of the sale deed relied on by the

claimants has been marked as Ex.A1. The data sales collected by the Land Acquisition Officer has been marked on the side of the respondent as

Ex.B2. The topo-sketch showing the lay of the acquired land and the adjoining lands in the area has been marked as Ex.B3. A comparative study

of Exs. A1, B3 and B4 will show that the property sold under Ex.A1 is the land adjoining the acquired land.

8. The Land Acquisition Officer, who has been examined as the sole witness on the side of the respondent before the trial court made an attempt

to explain the reason for the rejection of Ex.A1 by stating that the the soil quality of the land sold under Ex.A1 was higher than the acquired land.

But, what was the basis on which the soil quality of the lands were fixed have not been stated by RW1. In addition to that he has also admitted that

the register relating to the soil quality of the lands has not been produced. Both the lands are classified in the Revenue records as dry lands. It is not

the case of the appellant that the lands sold under Ex.A1 had better facilities than the acquired land. In the award by the Land Acquisition Officer,

soil quality has not been cited as reason for the rejection of the sale under Ex.A1. On the other hand, the only reason assigned therein was that a

sale in respect of a portion of the property comprised in survey number relating to the acquired land has been selected as the sample sale for

fixation of the market value of the acquired land.

9. A thorough re-appreciation of evidence adduced in these cases will show that the Land Acquisition Officer made a search for a document

reflecting lesser market value. It is not the case of the appellant that the sale under Ex.A1 was not a genuine one. It is not the case of the appellant

that the said sale deed had been created for the purpose of seeking compensation at a higher rate. However, the learned Special Government

Pleader made an attempt to show that the said document would have been created for the said purpose after coming to know that the adjoining

land was sought to be acquired by the Government. But the learned Special Government Pleader cannot improve the case by introducing a new

plea which had not been taken before the trial court. No suggestion was put to CW1 when he was in the box to the effect that the said sale did not

reflect the market value of the land and that the price quoted therein was higher than the market value. It was also not suggested to the said witness

that the purchaser had a keen interest to purchase that property so that he could have offered a higher price than the market value. It is also clear

admission made by RW1, that the properties were inspected and measured only after the publication of Section 4(1) notification was effected.

When such is the case, this Court finds no reason whatsoever to reject Ex.A1, as not reflecting the market value of the acquired land. The sample

sale relied by the Land Acquisition Officer was of the year 1989. Within two years thereafter the market price would have increased considerably.

In fact the increase in market price from the date of Ex.B4 to the date of Ex.A1 is less than 3 times. Therefore, this Court finds no defect or

infirmity in the finding of the learned Additional Subordinate Judge to the effect that it was Ex.A1 and not Ex.B4 which would reflect the correct

market value of the acquired land as on the date of 4(1) notification. There is no scope for interfering in the said finding of the trial court.

10. As pointed out at the beginning of the judgment that there is no other controversy regarding the method adopted for arriving at the total amount

of compensation. Since the only contention raised on behalf of the appellant is that the market value fixed by the trial court is at a higher rate is the

award of the lower court (Additional Subordinate Judge of Chengalpattu) deserves to be confirmed. There is no merit in these appeals and the

same deserve to be dismissed. Accordingly, all the appeals are dismissed. However, there shall be no order as to the cost since none of the

respondents have chosen to appear either in person or through the advocate.