(2006) 01 MAD CK 0121

In the Madras High Court

Case No : A.S. No. 134 of 2000 and C.M.P. No''s. 14061 of 2000, 5741 of 2002 and 10828 of 2005 and V.C.M.P. No. 15422 of 2002

The Special Tahsildar (Land Acquisition) Adi Dravidar Welfare Tirupathur — APPELLANT

Vs

Valliammal and Others — RESPONDENT

Date of Decision : 05-01-2006

Acts Referred:
Land Acquisition Act, 1894 — Section 23, 24, 25, 4, 4(1)

Citation : (2006) 01 MAD CK 0121

Hon'ble Judges : P.D. Dinakaran, J;K. Mohan Ram, J

Bench : Division Bench

Advocate : R. Asokan, Additional Government Pleader, for the Appellant; R. Subramanian, for the Respondent

Judgement

K. Mohan Ram, J.—The above appeal has been filed by the special Tahsildhar (Land Acquisition). Adi-Dravidar Welfare, Thirupattur against he judgment and decree dated 30.04.1999 massed in L.A.O.P. No. 83 of 1998 on the file)f the Subordinate Judge. Thiruppur. The brief facts are as follows:

The State of Tamil Nadu issued a notification u/s 4(1) of the Land Acquisition Act 1894 (herein after referred to is the "Act".), seeking to acquire the land belonging to the claimants measuring to an extent of one acre and 62 cents situated in 5.F. No. 89/1 of Sollur Village, Vaniyabadi Taluk, for a public purpose namely for providing house sites for Adi-Dravidars. The notification was published in the Tamil Nadu Government Gazette on 12.11.1986. The declaration u/s 6 was punished in the Tamil Nadu Government Gazette on 19.11.1987. The Appellant Special Tahsildar passed an award No. 14 of 1987-S8 dated 24.03.1988. The Special Tahsildar fixed the market value of the acquired and at the rate of Rs. 12.173/- per acre, treating the same as agricultural land and he also awarded a sum of Rs. 3.255/- for the well situated in the acquired land. The land was taken possession on 12.06.1991.

2. Aggrieved by the award, the claimants submitted an application u/s 8 of the Act seeking enhancement of the market value. In the counter statement filed by the claimants, it is averred that the value of the well dug has been fixed at Is. 1.00.000/- instead of Rs. 3.255/-. The acquired lands are situated within the Ambur Municipal limits. The acquired land is in a residential area and located near the Chennai Calicut National High way and the Chennai Bangalore and Chennai Coimbatore railway line is nearer to the acquired land. The Ambur Railway Station and Vinnamangalam Railway Station are situated near the acquired land. It is further averred in the counter statement that near the acquired lands, there are number of industries, tanneries, bus-stand, and there are about one hundred industries near the acquired land and the acquired land has got the potential for being developed as house sites. The data land relied upon by the Special Tahsildar is located in a far off place and the Special Tahsildar has failed to take into consideration the sale deeds dated 29.08.1986 and 03.09.1986 and the claimants have claimed compensation at the rate of Rs. 50/- per Sq. Feet. In support of their case, the claimants examined P.Ws.1 to 3, Exs. C1 to C4 were got marked. The Special Tahsildar was examined as R.W.1 and Exs. R. 1 to R.4 were marked.

3. The Reference Court on appreciation of the evidence came to the conclusion that the acquired land is suitable for being used as house sites. There are number of tanneries and other industries like D.A.W., South East, and Hyderabad Bank and there is a village road abetting the acquired land. The Reference Court has also pointed out that R.W.1, the Special Tahsildar had admitted that since the acquired land is nearer to the Chennai Calicut High Way and there are residential colonies near the acquired land, the acquired land was selected by the Government for providing house sites to Adi-Dravidar''s and hence has held that the acquired land has got the potentiality for being used as house sites.

4. P.W.1. Mahendran. who is the fifth claimant, has spoken to about the various advantages available to the acquired land. He has stated that the acquired land is to cited near the Ambur Municipal limits in Sollur village. There are number of tanneries. K.R. Polytechnic is there, roughly about 100 tanneries are there, and aluminum industries, plastic industries are also there. There are schools, offices. Post office, etc.. are located near the acquired land and the acquired land is located in a developed area and it is suitable for house site and in and around the acquired land, plots have been sold for housing purposes and the Special Tahsildar has erred in valuing the acquired land as a punja land on acreage basis. He has also stated that the data land relied upon by the Special Tahsildar is about 11/2 to 21/2 furlong from the acquired land and there is no road, transport and other facilities for the data land and the data land is not fit for being used as house sites. The claimants relied upon Ex. C.1. Sale deed dated 29.12.1986 in which an extent of 729 Sq. Feet has been sold for Rs. 4,375/-. P.W.1 has stated that distance between the land conveyed under Ex. C.1 and the acquired land is about 200 feet. Ex.C.2 is a Sale Deed, dated 03.09.1986 under which an extent of 231 Sq. Feet has been sold for a sum of Rs. 4.000/-. The

purchaser in Ex.C.2 has been examined as P.W.2. P.W.2 has stated that the distance between the acquired land and the land sold under Ex.C.2 is about 1 furlong. He has also stated that the acquired land and the lands conveyed under Exs. C.1 and C.2 have similar advantages. The claimants have also marked Exs.C.3 and C.4 dated 12.09.1990 and 21.11.1989 respectively, which are after the publication of 4(I) notification i.e. after 12.11.1986.

5. The Special Tahsildar, who was examined as R.W.1 has admitted that the acquired land is suitable for being used as house sites. He has also admitted that number of tanneries are located near the acquired land and he has admitted that on the east of Survey No. 129 runs the Chennai Calicut Highway and Survey No. 136 is on the east of the acquired land and Survey No. 129 is further east of Survey No. 136 and near Survey No. 129 residential quarters of D.A.W. and tanneries are located. He has also admitted that the acquired land, abuts a village road and water facility is available. Through R.W.1. Ex. R.1 which is a register containing statistics of sales effected during 12.11.1983 to 11.11.1986 has been marked. Ex.R.2, Sale Deed dated 18.07.1985 has been marked. Apart from that. Ex.R.3 topo-sketch and Ex.R.4, the award dated 24.03.1985 have been marked.

6. The Reference Court on a consideration of the oral evidence of P.Ws.1 to 3 and R.W.1 concluded that the acquired land is situated in a developed area, number of tanneries and other industries are located near the acquired land and the acquired land has got the potentiality for being used as house sites and hence its potential value has to be assessed. The Reference Court pointing out that since land conveyed under Ex.C.2, Sale Deed lies within the Ambur Municipality, it cannot be relied upon and hence rejected the same. Similarly, the Reference Court did not place any reliance on Exs.C.3 and C.4 Sale Deeds, which have come into existence much after the publication of the 4(1) notification. The Reference Court on a consideration of Ex. C.1 and Ex.R.2, in the light of Ex.R.3. topo-sketch has come to the conclusion that the data land lies far away from the acquired land, whereas the land conveyed under Ex. C.1. Sale Deed is situated nearer to the acquired land and hence has relied upon Ex. C.1 for fixing the market value of the acquired land. The Reference Court has pointed out that since the land conveyed under Ex. C.1 is in a village, the value of Rs. 6.00 per Sq. Feet, is higher. The Reference Court has also relied upon the value of Rs. 5.00 per Sq. Feet fixed in the judgment dated 12.02.1997 passed in L.A.O.P. Nos. 9. 10 and 11 of 1995 on the file of the same Court. The Reference Court has pointed out that since the acquired land lies in a village, the value of the acquired land cannot be fixed on square feet basis. On the ground that the land conveyed under Ex. C.1 lies in a village, the Reference Court has deducted 5% of the value and has further deducted 10% towards development charges and after the said deductions, the Reference Court has fixed Rs. 2.22.156/- as the market value per acre for the acquired land. The Reference Court concluded that the value of Rs. 3.255/-fixed for the well situated in the acquired land is less and enhanced the same to Rs. 6.510/-.

7. The learned Government Advocate appearing for the appellant contents that the Reference Court erred in deducting only 15% from the value, whereas 40 to 60 should have been deducted towards development charges. The claimants are not entitled for compensation for the well, since, the land value has been fixed on the basis of potential value and contended that interest should not have been awarded on the 30% sollation also. He further contended that the Reference Court ought to have accepted the value fixed by the Special Tahsildar on the basis of the data land and ought not to have fixed the market value on the basis of Ex. C.1. Sale Deed.

8. Per contra, the learned counsel appearing for the respondents / claimants submits'' that the data land lies far away from the acquired land whereas, the land conveyed under Ex. C.1 lies very nearer to the acquired land. The learned counsel for the respondents further contents that the deduction made by the Reference Court is perfectly in order as the Apex Court itself has in a number of cases deducted only 20% towards development charges.

9. The short point that arises for consideration is whether the market value arrived at by the Reference Court on the basis of Ex. C.1. Sale Deed and the percentage of deduction made by the Reference Court are in accordance with the principles laid down by the Apex Court in various cases.

10. We are of the considered view that since the Reference Court has held that the acquired land is suitable for being used as house sites and its potential value has been fixed. The Reference Court in the light of the Apex Court judgment reported in has erred in awarding separate compensation for the well in the acquired land. The claimants are not entitled for any separate compensation for the well. Similarly, the Reference Court committed an error in relying upon the order dated 12.12.1997. passed in L.A.O.P.Nos.9. 10 and II of 1995 by the same Court when the certified copy of the judgment has not been produced before the Court and no evidence has been adduced in respect of land covered by the said order.

11. The Apex Court in the judgment reported in 1998(1) MLJ 35 (S.C.) (Karon Singh Vs. Union of India), has held that "it is only the previous judgment of a Court or an award which can be made the basis for assessment of the market value of the acquired land subject to the party relying on such judgment, to adduce evidence for showing that due regard being given to all attendant facts, it could form the basis for fixing the market value of the acquired land". In this case, admittedly the order dated 12.12.1997 passed in L.A.O.P.Nos.9. 10 and 11 of 1995 has not been produced before the Court and no evidence has been adduced and therefore the Reference Court erred in relying on the same. The Apex Court in the decision reported in Padma Uppal and Others Vs. State of Punjab and Others, has held that "it is the settled proposition that price fetched for small plots of land cannot be applied to the lands covering a very large extent and that the large area of land cannot possibly fetch a price at the same rate at which small plots are sold". In the case reported in Gulzara Singh and Others Vs.

State of Punjab and Others, . the Apex Court has upheld the deduction of 1/3rd land towards the developmental charges. In K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), the Apex Court reiterated that when genuine and reliable sale deeds of small extents were considered to determine the market value, the same will not form the sole basis to determine market value of large tracts of land. Sufficient deduction should be made to arrive at the just and fair market value for large tracts of land. In Special Land Acquisition Officer, Bangalore Vs. V.T. Velu and Others, the Apex Court has held that at least 1/3rd of the land acquired is to be set apart for road purpose, developmental purpose and other civil amenities. In 1998 (2) SCC 1467. the Apex Court upheld the deduction of 1/3rd price towards the cost of development for the housing scheme. It has been held in Ravinder Narain and Another Vs. Union of India (UOI), It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparision of the price paid for small plots of land. However, in such cases necessary deductions/adjustments have to be made while determining the prices".

In the same judgment, it has been laic down that while determining the market value of the land acquired, it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the pari of the owner. The compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must alike to be dis-regarded, neither must be considered as acting under any compulsion. The value of the land is not to be estimated as its value to the purchaser. Bui similarly this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion may always betaken into consideration for what it is worth. Section 23 of the Act enumerates the matters to be considered in determining compensation. The first criterion to be taken into consideration is the market value of the land on the date of the publication of the notification u/s 4(I). Similarly. Section 24 of the Act enumerates the matters which the Court shall not take into consideration in determining the compensation. A safeguard is provided in Section 25 of the Act that the amount of compensation to be awarded by the Court shall not be less than the amount awarded by the Collector u/s II. Value of the potentiality is to be determined on such materials as are available and without indulgence in any fits of imagination. Impracticability of determining the potential value is writ large in almost all cases. There is bound to be some amount of guesswork involved while determining the potentiality, it can be broadly stated that the element of speculation is reduced to a minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

i) The sale is within a reasonable time of the date of notification u/s 4(1).

ii) It should be a bona fide transaction.

iii) It should be of the land acquired or of the land adjacent to the land acquired; and

iv) It should possess similar advantages.

It is only when these facts are present, it can merit a consideration as a comparable case.

12. Keeping the aforesaid principles in mind, we feel that on the basis of the instances pressed into service by the acquiring authority namely, the appellant and the land owners, namely the respondents Ex. C.1. Sale Deed can be relied upon to fix the market value of the acquired land, after deducting 1/3 rd of the value towards developmental charges. Admittedly, a perusal of the topo-sketch shows that the land covered under Ex. C.1. Sale Deed lies nearer to the acquired land, whereas the data land relied upon by the acquired officer, lies far away from the acquired land. Therefore, the Reference Court was right in relying upon Ex. C.1. Sale Deed. But the Reference Court failed to consider the fact that the acquired land is not a developed land, but it has to be developed. The acquired land is not abutting any national highway or a main road, but it is only abutting a village road. On that ground alone, it cannot be said that the deduction of 10% is enough. It is not contended by the counsel for the respondents that the acquired land is a developed land. Therefore, in the light of the above said principles laid down by the Apex Court, we feel that a deduction of 1/3rd ought to have been made by the Reference Court, while arriving at the market value of the acquired land. Therefore, the judgment and decree of the Reference Court is liable to be modified and accordingly it is modified as follows:

13. As per Ex. C.1 one acre of land has been sold at Rs. 2,61.360/-. If a deduction of 33.33% is made, the value per acre will come to Rs. 1,75.1 11.20. Therefore, we fix the value of the acquired land at Rs. 1,75.111.20 per acre and accordingly the claimants will be entitled to a sum of Rs. 2,83,680.14 for 1.62 acres. The claimants are not entitled to claim separately towards value of the well as pointed above. The judgment and decree of the Reference Court shall stand modified accordingly. Coming to the contention of the counsel for the appellant, that the claimants are not entitled for interest on the 30% solatium as awarded by the Reference Court, we have to hold that the submission is liable to be rejected in the light of the provisions of the Land Acquisition Act as well as the judgment of the Apex Court reported in Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, The respondents will be entitled to all the statutory benefits as awarded by the Reference Court. Accordingly, the appeal is allowed in part as indicated. No costs. Consequently, the connected CMPs are closed.

