
(1995) 04 MAD CK 0001

In the Madras High Court

Case No : A. No's. 1095 and 1333 of 1989 and C.M.P. No's. 16336/89, etc.

The Special Tahsildar (Land Acquisition), Adi Dravidar
Welfare, Uthamapalayam

APPELLANT

Vs

Velammal and others

RESPONDENT

Date of Decision : 27-04-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 23(1), 23(2), 24

Citation : (1995) 04 MAD CK 0001

Hon'ble Judges : Abdul Hadi, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : Special Government Pleader, for the Appellant; S.V. Jayaraman and
N. Maninarayanan, for the Respondent

Final Decision : Dismissed

Judgement

1. These two Land Acquisition Appeals are by the Government A.S. No. 1095 of 1989 is against the award passed in L.A.O.P. No. 16 of 1984

u/s 18 of the Land Acquisition Act. A.S. No. 1333 of 1989 is against the award passed in L.A.O.P. No. 15 of 1984 under the abovesaid Section.

In L.A.O.P. No. 16 of 1984, the land "acquired is 5.62 acres and in L.A.O.P. No. 15 of 1984, it is 11.55 acres. The publication of Section 4(1)

Notification in the former case it was on 2.12.1982, while in the latter case it was on 27.12.1982. Admittedly, the land acquired are contiguous

lands abutting the outer municipal limits of Bodinaickanur Municipality in Madurai District, to the south of the said Municipal Town and very close

to Bodi- Thcvaram Road. The lands are actually in Melachockanathapuram village and the survey numbers are several sub-divisions of S. No. 314

and 332. The said lands have been acquired, in the first case, to provide house

sites to house less Adidraavidars of Bodinaickanur and in the second case to provide house sites to Vannars and Navidhars of Bodinaickanur Town. While the compensation awarded by the Land Acquisition Officer in both the cases was Rs. 50.92 per cent, the Reference Court has enhanced it to Rs 3,000/- per cent, relying on two sale deeds, one dated 6.3.1981 and another dated 12.3.1981. Admittedly, as per the former sale deed, the value of the lands sold works out to Rs. 8,727/- per cent, and in both the sale deeds, the land sold is in S. No. 309/4, in the above said Melachockanathapuram Village.

2. Though those sale deeds have not been actually filed, the award itself mentions the document numbers of the said sale deeds as Document No. 603 of 1981 dated 6.3.1981, and Document No. 674 of 1981 dated 12.3.1981. Actually they are items 16 and 17 of several items of documents spoken to in the award. Further, the court below also, while narrating the evidence of R.W.1, the witness on the side of the Land Acquisition Officer, states that the said R.W.1 spoke about those documents, stating that in the first of the two, the market value rate worked out to the abovesaid Rs. 7,330/- per cent and in the second, to Rs. 8,727/- per cent. The court below also points out that the said R.W.1. has also deposed that the abovesaid lands in S. No. 309/1 have been sold as house sites and that similarly the acquired lands which abut the abovesaid Municipality limit of Bodinayakanur are also house sites.

3. Now, the first submission of learned Additional Government Pleader is that the court below should not have relied on the abovesaid sale documents dated 6.3.1981 and 13.3.1981 since the lands sold thereunder are only of very small extent being about 1/2 cents in each case. In this connection he also sought to rely on Administrator General of West Bengal Vs. Collector, Varanasi, to contend that sale deeds relating to small extents should not be relied on, when the extent acquired is 5.62 acres in one case and 11.55 acres in the other case. But, Learned Counsel for the respondents, the owners, of the lands in question, points out that the said decision would not actually support the case of the appellant, particularly because even though as per the abovesaid sale deeds, the market value, in one case is Rs. 7,330/- per cent and in another case, it is Rs. 8,727/- per cent, the market value fixed for the acquired land is only Rs. 3,000/- per

cent. In other words, according to him, even though the sales relating to small extents have been relied on, due discount has been given in actually fixing the market value-rate for the acquired lands.

3-A. Now, we shall straightaway consider the rival submission regarding the above side first submission. The relevant observation in Administrator

General of West Bengal Vs. Collector, Varanasi, is as follows:-

It is trite proposition that prices fetched for small plots cannot form safe bases for valuation for large tracts of land as the two are not comparable

properties. (See The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, Mirza Nausherwan Khan and Another Vs. The Collector (Land

Acquisition), Hyderabad, Padma Uppal and Others Vs. State of Punjab and Others, ; Smt. Kausalya Devi Bogra and Others Vs. Land

Acquisition Officer, Aurangabad and Another, . The principle that evidence of market value of sales of small developed plots is not a safe guide in

valuing large extents of land has to be understood in its proper perspective. The Principle requires that prices fetched for small developed plots

cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does admit of and is ripe for use for

building purposes; that building plots that could be laid out on the land would be good selling propositions and that valuation on the bases of the

method of a hypothetical lay-out could with justification be adopted, when in valuing such small, laid out sites, the valuation indicated by sale of

comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of

land required for the formation of roads and other civic amenities; expenses of development of the sites by laying-out-roads, drains, sewars, water

and electricity lines, and the interest on the outlays for the period of detriment of the realisation of the price, the profits on the venture etc., are to be

made. In Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, this Court indicated that deductions for land required

for roads and other developmental expenses can, together, come up to as much as 53%. But the prices fetched for small plots cannot directly be

applied in the case of large areas, for the reason that the former reflects the "retail" price of land and the latter, the "wholesale" price..... In the

present case, Rs. 200/- per decimal for the large extent of the acquired land

works out to 40% of the "retail" price even if we take Rs. 500/- as the "retail" price. That apart, in the case of land with potentialities for more profitable use, it is necessary to acknowledge, and make due allowance for, the possibility that the land might not be applied for the prospective use at all or not applied within a reasonable time.

There is, therefore, no justification to interfere with the determination of the market value of the land approved by the High Court. Contention (a) is accordingly answered against the appellant.

Thus we find that even though the High Court in the abovesaid Supreme Court case relied on the value found in a document relating to a transaction of a small extent, the Supreme Court held that there was no justification to interfere with the determination of the market value by the High Court after making a discount of 40 per cent from the value found in the document relating to a small extent of land.

4. But, in the present case, as we have already pointed out, while the abovesaid two sale deeds of 6.3.1981 and 12.3.1981, both relating to S.

No. 309/4 of the abovesaid village give out the market value as Rs. 7,330/- per cent, in the former case and Rs. 8,727/- per cent, in the latter

case, the court below has only adopted the abovesaid rate of Rs. 3,000/- per cent for the acquired lands. In other words, the court below has

given a discount of about 70%. Further, the abovesaid sales relied on by the court below are more than 11/2 years prior to the publication of

Section 4 (1) notification. That apart, it is also in evidence that the abovesaid S. No. 309/4 is relatively farther away from Bodinaickanur Municipal

Town than the acquired lands. In other words, while, as already stated, the acquired lands actually abut the municipal limits, on the southern side,

the abovesaid S. No. 309/4 is further down south the said Municipal limit on the southern side. No doubt, learned Additional Government Pleader

points out that while the abovesaid S. No. 309/4 actually abuts the abovesaid Bodinaickanur Thevaram north south road, the acquired land

actually does not abut the said road. But, it is in evidence that the acquired land is also close to the said road though actually it does not abut the

road. Further, it is also in evidence that there is a cart-track from the acquired land to the road. That apart, the court below also points out that

R.W.1 has also deposed that the abovesaid Bodinaickanur Town is expanding on

the abovesaid southern side of it, and that on the notification date, lands close to the acquired lands fetched more than Rs. 7000/- per cent. Further, the court below also points out that near the acquired lands, there are cinema theatres, bus-stand, hospital, school, etc.,

5. No doubt, learned Additional Government Pleader also sought to argue that the sale deeds as such, relating to the abovesaid, sales of 6.3.1981 and 12.3.1981 have not been filed by the claimants before the court below and they only filed another sale deed, Ex. A.2, dated 29.4.1983, showing the market value, much below Rs. 3,000/- per cent. But, this contention has no merit in view of the deposition of R.W.1, himself, earlier pointed out, regarding the abovesaid document Nos. 603 of 1981 and 673 of 1981 referred to as item Nos. 16 and 17 in the award itself and the market value for the lands close to the acquired land.

6. Another submission of learned Additional Government Pleader is that the court below should not have granted ""fragmentary compensation"" of a sum of Rs. 2,100/-, on the ground that in one of the acquired lands, comprised in S. No. 332, out of the entire extent of 3.72 acres the acquired land is only 3.65 acres, leaving only 7 cents of land therein to the land owner. This contention has absolutely no merit since the abovesaid fragmentary compensation"" is nothing but severance compensation, which could be given in the abovesaid situation.

7. One other submission of learned Additional Government Pleader is that the court below should not have granted compensation separately for the three wells in the lands acquired. In this regard, the court below has granted Rs. 15,000/- for the well situated in S. No. 314/4 and Rs. 50,000/- for the well situated in S. No. 314/11 and a sum of Rs. 30,000/- for the well situated in S. No. 332/1B. In this regard, learned Additional Government pleader relies on O. Janardhan Reddy and others Vs. Spl. Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others, In that case, the market value was determined on the basis of the nature of crops grown in the acquired lands, taking into consideration the water facility, the owners had from the irrigation wells. In that case, the Supreme Court observed that the determination of compensation for irrigation wells on the basis of their construction costs and payable independently of compensation payable for agricultural lands is not proper. In our opinion, the

abovesaid Supreme Court decision may not, on facts, be strictly applicable to the present case and is distinguishable on facts.

8. Learned Additional Government Pleader contended that since the acquired lands are house sites, the claim of the land owners for value of the

wells should be negated. Learned Additional Government Pleader is not right in his submission. In this context, we may refer to a Division Bench

Judgment of our High Court in *Sub-Collector Vs. Siragam Subbarayudu and Others*, . In that case, the land sought to be acquired was a coconut

grove. The District Judge estimated the value of the land and the trees separately and awarded the aggregate amount as the market value of the

land within the meaning of Cl. 1 of Sec. 23, sub Section (1) of the Land Acquisition Act. He also awarded the amount of 15 per cent on the sum

so arrived at under Sec. 23, sub-Section (2). The Government appealed on the ground that the 15 per cent ought not to have been awarded on

the value of trees. It was argued on behalf for the Government that the 15 per cent awarded for the compulsory nature of the acquisition can be

awarded only on the market value of the land awarded and not on the amount awarded under the other clauses of sub-Section (1), since in that

case the value of the trees falls under Clause (2) sub-Section (1). The Division Bench, while rejecting the contention of the State have observed as

follows:-

Moreover to read the first clause of S. 23 (1) as referring to the bare land without trees, involves the difficulty that there is no provision in the Act

for the separate assessment of compensation for building apart from the land on which they stand. In as much as it is impossible to hold that they

are liable to be acquired without payment of compensation, it must be taken that in S. 23 the word "land" includes "buildings standing thereon". If

so, that must be because buildings are "things attached to the earth", but so, are trees "things attached to the earth" and it is anomalous to interpret

the same word as including one class of things attached to the earth and excluding another.

We avoid this difficulty by including the trees as part of the land, and we can at the same time give due effect to the second clause of sub-Section

(1) by applying that clause to the special cases to which we have already referred.

In the present case the trees were on the land when the Declaration under S. 6 was published and their value is, therefore, included in the market

value of the land on which the allowance of 15 per cent, is to be calculated u/s 23(2).

The appeal, therefore, fails and we dismiss it with costs.

This Judgment was followed by a Division Bench of the Allahabad High Court in Collector of Bareilly Vs. Sultan Ahmad Khan . The Division

Bench has observed as follows:-

The next point urged is that the 15 per cent compensation for a compulsory acquisition should not have been awarded for the wells. We take it that

the wells go with the land and therefore the value of the wells should be added to the value of the land, as part from the wells. In this view the 15

per cent, should be allowed for wells as well. The Judge was therefore right in calculating the 15 per cent on the entire value of the three figures

shown at page 6 of the printed record.

Boys, J. in his concurring but separate opinion has observed as follows:-

It appears to me that the unfounded contentions raised here for the Crown that the learned District Judge had allowed 15 per cent, twice over on

the wells and should not have allowed it at all on the trees have only been rendered possible by the way in which the account has been stated in the

order of the learned District Judge.

Land"" as defined in Sec. 3(a) of the Land Acquisition Act included wells and trees, etc., and if one total market value is shown for it as provided

for by S.33, first, i.e., ""market value of land under Sec. 23, first, Act I of 1923, ""with separate items going to make the total, i.e., ""land under S.20

Circular LA-VIII""; wells under S. 24. ditto"", ""trees under Sec. 98 ditto"", etc., no confusion can arise and much of the time of this Court would

have been saved; for, it would have been impossible to raise the contentions with which have had to deal.

Damage"", if any, for taking trees under S. 23, Second, would similarly appear as an item altogether independent of the market value of the land

and of the ""value"" of the trees as part of the market value of the land.

9. Applying the ratio laid down in the above two judgments to the case on hand, we are of the view that the land owner is entitled for

compensation separately for the wells as well. Therefore, we hold that the land owners are entitled for compensation for their wells which are the subject matter of Appeal No. 1333 of 1989 also. In the result, both the appeals are dismissed. However, in the circumstances of the case, there will be no order as to costs in both the appeals. C.M.P. Nos. 16336 of 1989, 4925 of 1990 and 13374 of 1990, which are for injunction, for vacating the injunction and for stay, are also dismissed.