

(1998) 11 MAD CK 0139
In the Madras High Court

The Special Tahsildar (Land Acquisition) (A.D.W.)	APPELLANT
Vs	
Subbuthai	RESPONDENT

Date of Decision : 27-11-1998

Acts Referred:

Citation : (1999) 1 MLJ 539

Hon'ble Judges : V. Kanagaraj, J

Bench : Division Bench

Judgement

V. Kanagaraj, J.—The above appeal suit is directed against the judgment and decree dated 30.9.1985 made in L.A.O.P.No. 3 of 1984 by the Court of Subordinate Judge, Srivilliputhur, thereby fixing the value of the land at Rs. 30,000 per acre as against the fixation of the value of the same at Rs. 3,000 per acre by the Land Acquisition Officer.

2. So far as the facts of the case are concerned, the appellant-Special Tahsildar (Land Acquisition) Adi Dravidar Welfare, Aruppukottai acquired an extent of Ac. 1.86 cents of land belonging to the respondent herein for the purpose of constructing residential buildings for the Adi Dravidar people and determined the value of the land as Rs. 3,000 per acre, as per his order dated 25.1.1984.

3. In the above land acquisition proceeding, notification u/s 4(1) of the Land Acquisition Act was issued on 3.3.1983 and the Award has been passed in Award No. 6/83-84 on 25.1.1984. The land, totally measuring Ac. 1.86 cents, fall under two survey numbers, (1) Survey No. 235/1B in an extent of Ac.0.95 cents, and (2) Survey No. 235/2 in an extent of Ac.0.91 cents both of Amathur village in Virudunagar Taluq.

4. The land owner/claimant having not been satisfied with ,the said award made by the Land Acquisition Officer, referred the same to the Court of Subordinate Judge, Srivilliputhur. After conducting an enquiry, during which, the owner/claimant would mark one document i.e., the registration copy of the sale deed dated 7.12.1982 executed by one Chellaiah in favour of Narayanaswamy as

Ex.A-1 and the respondent would mark three documents as Exs.B-1 to B-3, Ex.B-1 being the registration copy of the sale deed executed by one Perumalswamy in favour of one Ramanujam dated 28.8.1981, Ex.B-2 being the rough sketch and Ex.B-3 being the list of registration details and the oral evidence adduced on both sides being nil, the lower court, in consideration of the said evidence placed on record and upon hearing the counsel for the respective parties, would have its own discussions and would ultimately arrive at the conclusion to fix the value of the land at Rs. 30,000 per acre. The lower court also awarded interest at 12% p.a. from the date of notification u/s 4(1) of the Land Acquisition Act till the date of award by the Land Acquisition Officer or the date of delivery of possession of the property, whichever is earlier, further ordering interest at 9% p.a. on the difference of amount to be paid to the claimant from the total amount calculated, for one year from the date of delivery of possession and at 15% p.a. for every subsequent year till the date of realisation, as per its judgment dated 30.9.1985.

5. Aggrieved against the judgment and decree passed by the Court of Subordinate Judge, Srivilliputhur, the Special Tahsildar (Land Acquisition), Adi Dravidar Welfare, Aruppukottai has preferred the above appeal suit before this Court.

6. During arguments, the learned Government Advocate appearing on behalf of the appellant would contend that at the outset, so far as the evidence placed on record before the lower court is concerned the legal question as decided by the Apex Court has to be considered and would cite the decision of the Apex Court reported in Union of India (UOI) and Others Vs. Sunil Chandra Saha and Another, and this judgment has been followed in the decision of the Apex Court reported in Meharban and others etc. etc. Vs. State of U.P. and others, and would argue that according to the above judgments of the Apex Court, for the documents to be appreciated properly, the claimant must adduce reliable and acceptable evidence to prove proper, just and adequate compensation to the acquired land, then the burden will shift to the State to disprove it and that the sale transactions filed either in narration of award or the documents held, is no evidence without examination of either the vendor or the vendee.

7. It is relevant to consider at this juncture the earliest judgment delivered by the Apex Court on this proposition of law is on reported in The Collector, Raigarh v. Dr. Harisingh Thakur and another (19 1979 S.C. 472, wherein it has been held that,

It is also not disputed that the Special Land Acquisition Officer did not lead any evidence worth the name to show the price of the comparable sites in question and remained content with the production only of the sale statement made by Jujhar Singh, N.A.W.1. Now the sale statement consisted mostly of sales relating to the year 1951 which is not relevant for the question in hand. Moreover the sale statement by itself without examining either the vendors or the vendees or the persons attesting the sale deeds is not admissible in evidence and cannot be

relied upon.

It is further held that,

While it is no doubt true, as my learned brother Jaswant Singh has rightly observed, that the statement of average of sales, prepared by Jujhar Singh, N.A.W.1, was not admissible in evidence unless the Collector proved the transactions in question, upon which it was based, there is no denying the fact that the acquired land was nothing but agricultural land and the mode of valuation had necessarily to be upon that basis.

So far as the judgment of the Supreme Court reported in Union of India (UOI) and Others Vs. Sunil Chandra Saha and Another, is concerned, it has been observed therein that,

We do not propose to express any opinion on merits. Suffice it to state that neither the claimants nor the Land Acquisition Officer had adduced any legally admissible evidence in proof of the market value prevailing as on the date of notification or in rebuttal. The appellants-beneficiaries are entitled to a notice and participation in the award inquiry as well as in the reference and could adduce evidence in rebuttal to the claim of higher compensation. Unfortunately, the appellants had no notice nor an opportunity to adduce evidence. Both the claimants and the Land Acquisition Officer merely marked the sale deeds without examining either the vendor or the vendee to bring on record the circumstances in which the sale deeds came to be executed, the distance of the lands to the acquired lands, the nature of the respective lands and whether they would offer comparable sales to determine just and fair market value to the acquired lands. In the absence of such relevant and material evidence it would be difficult to determine compensation in respect of the acquired lands. The appeals are allowed accordingly. The award and decree of the reference court as confirmed by the High Court stand set aside. The cases are remitted to the reference court for disposal.

Following the above judgment, the Apex Court in its judgment reported in Meharban and others etc. etc. Vs. State of U.P. and others, has again held that

The court, while determining the compensation must sit in the armchair of a willing and prudent vendor and put a question whether the market value sought to be determined would be capable of fetching that hypothetical price and should determine a just and adequate compensation for the land acquired. In the instant case since none connected with the sale deeds was examined, the sale deeds are inadmissible in evidence though certified copies marked u/s 51 A are available. So, all the sale deeds stand excluded. It is the duty of the court to take all the relevant factors into account, before determination of the compensation. Applying the acid test, in view of paucity of evidence, instead of evidence, instead of remitting the matter to the reference court and prolonging the agony of the claimants the appropriate course would be to base the award of the reference court in respect of similar lands which has become final. That would

form the foundation and base to determine the compensation treating that area as a block. That was determined after giving necessary deductions towards developmental charges, as required under law. The belting in this case is not reasonable for the entire lands are situated in well-defined and developed blocks. The lands are possessed of immediate potential value as building sites. The city is a fast-growing industrial and commercial city and in many a part it is already developed, there is pressure on the land for the developmental activities, viz., for building and commercial purposes. Under these circumstances the court must take into account reasonable rise in prices.

8. In the present case in hand, the lower court has fixed the value of the land mainly based on Ex.A-1 registration copy of the sale deed dated 7.12.1982 executed by one Chellaiah in favour of one Narayanaswamy for a sale consideration of Rs. 900, thereby selling Ac.O.03 cents of land. This document has been relied upon by the respondent herein. Another document filed before the lower court is Ex.B-1 the registration copy of another sale deed dated 28.8.1981, wherein the sale transaction has taken place in between one Perumalswamy and Ramanujam, the former as the vendor and the latter as the vendee, wherein the sale price is Rs. 330. In consideration of this document, i.e., Ex.B-1, the Land Acquisition Officer has fixed the market value of the land in question at Rs. 30 per cent. Likewise, placing reliance on Ex.A-1 sale registration copy, the lower court has fixed the price of the land at Rs. 300 per cent.

9. It is pertinent to note that both these documents are connecting other landed properties, said to be lying adjacent to the land in question and the transactions have been done under both these documents in between third parties, either as vendors or as vendees and no one is connected to the parties to the above proceedings. Nor either on the part of the appellant, so far as Ex.B-1 is concerned, or on the part of the respondent, so far as Ex.A-1 is concerned, took the least step to examine either the vendors therein or the vendees or even the attestors or scribe to ascertain the contents of the document, thus, giving sufficient and reasonable opportunity for the other side also to cross examine the witness with regard to the veracity of the contents of the documents, prior to accepting the validity of the contents of the said documents. Hence, within the meaning of the proposition of Law as ruled by the Apex Court, these documents i.e., Exs.A-1 and B-1 could not be appreciated on the face value of the same, without being able to appreciate the evidence of the parties or either of the parties to the sale transactions therein.

10. In the above circumstances, without a way out, this Court is inclined to remand the above matter to the lower Court with direction to give adequate opportunity for both parties to produce their witnesses connected to the documents marked as Exs.A-1 and B-1 and on examination of such and other witnesses, if need be and in consideration of such evidence adduced pertaining to these documents and some other documents, which may be produced by parties to the contest and in full consideration of the evidence placed on record, to

decide the fixation of the marked price of the land in question and to pass award in consideration of the other legal positions and in accordance with law.

11. However, since it is a long pending matter, wherein the notification u/s 4(1) of the Land Acquisition Act had been issued as early as on 8.3.1983 and in fact the proceeding before the lower court itself since been over 14 years back, it is undesirable to waste any more time and hence a further direction is given hereby to the court below to expedite the procedures established by law and giving such reasonable opportunities for parties to cause production of the witnesses and conduct the trial proceedings in such expeditious manner, taking up the above matter out of turn and on the priority basis and conducting the trial proceedings even on the day-to-day basis, pass the award within six months from the date of receipt of this order and the records connected to the subject matter and report compliance to this Court.

12. In result, the above appeal suit is remanded to the lower court i.e., the Court of Subordinate Judge, Srivilliputhur, with the above observations.