(1994) 12 MAD CK 0075

In the Madras High Court

The Special Tahsildar, Land Acquisition — APPELLANT

Vs

G. Rajendra Bose — RESPONDENT

Date of Decision : 12-12-1994

Acts Referred:
Land Acquisition Act, 1894 — Section 11, 17(1), 18, 23, 24

Citation : (1995) 1 MLJ 413

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

A.R. Lakshmanan, J.—The above three appeals have been filed against the common order of the learned Subordinate Judge, Srivilliputhur, dated 3.5.1991 in L.A.O.P. Nos. 13 to 15 of 1989.

2. The lands in Kooraikundu village in Survey Nos. 157/2A, 158/1 A, 158/1B, 158/1C and 159/4 are the lands acquired for the construction of Government offices and residential quarters for the district head quarters of Kamarajar District as per the notification issued u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the Act). The same was published in the Extraordinary issue of the Tamil Nadu Government Gazette dated 28.3.1985 and the substance of the said notification had been published in the locality on 30.3.1985. The Government have approved the declaration u/s 6 of the Act and the same was published in the Gazette on 30.4.1985. The same was also published in the newspapers on 3.5.1985. The substance of the declaration had been published in the locality on 3.5.1985 and an Erratum to the declaration had also been published in the Gazette on 3.7.1985 and in the locality on 17.7.1985. A sum of Rs. 11,638.15 was awarded to the claimant for Survey No. 157/2A of an extent of 1.05.0 hectares. Likewise, a sum of Rs. 2.50,419.10 was awarded as compensation for an extent of 2.45.5 hectares of land in Survey Nos. 158/A, 158/1B and 159/4 at the rate of Rs. 7,410 per hectare for Survey Nos. 158/1A and 158/1B and at Rs. 20,632 per hectare for Survey No. 159/4 and a sum of Rs. 9,476.75 was awarded as compensation for an extent of 0.85.5 hectare in

Survey No. 158/1C, besides solatium and interest, from the date of Section 4(1) notification to the date of taking possession of the lands.

3. The claimant has objected to the rate fixed for the lands as low and requested the Special Tahsildar, Land Acquisition, to refer the matter to court for enhanced compensation. He has received the compensation awarded under protest. As requested by the claimant a reference u/s 18 of the Act was made to the Sub Court, Srivilliputhur. As the area notified for acquisition was extensive and as writ petitions were pending in this Court in respect of certain survey numbers, the Special Tahsildar, Land Acquisition, split up the same into eight units as could be seen from his award dated 29.4.1987. The claimant''s lands have been considered for compensation under Unit No. 8 along with the lands belonging to a few others.

4. The award enquiry was conducted by the Special Tahsildar on 22.4.1987 at the Taluk Office, Virudhunagar. The claimant was present at the time of enquiry. It is also seen from the award that the acquisition proceedings had been initiated under the emergency provisions u/s 17(1) of the Act and pending passing of the award u/s 11 of the Act, 80% estimated compensation payable for the lands under acquisition was already ordered to be paid under the proceedings of the Special Tahsildar, Land Acquisition, dated 22.4.1987 and possession was taken on the same date. The remaining 20% compensation payable for the lands was ordered to be paid under the award proceedings dated 29.4.1987.

5. The Special Tahsildar, Land Acquisition, while considering the valuation aspect of the lands observed in his award that the lands in question are situated in compact blocks and they are contiguous. Hence, he has taken the sales which took place in the village during the period from 30.3.1982 to 23.4.1985 for. consideration for fixing the value of the lands under acquisition. It is seen from his award that there have been 1,272 sales, details of which have been furnished in the award itself. It is stated that the Special Tahsildar inspected the lands under acquisition and also the lands sold in the vicinity. There have been 1,263 sales of ordinary dry lands, out of which 669 sales have taken place in the Survey Numbers which are situated at a distance of more than four furlongs and since the lands covered by those sales are situate at a distance of four furlongs, they have not been considered for arriving at the valuation and have been discarded. According to the Special Tahsildar, those lands are situated interior and no water facilities or road facilities are available in the area. Even the sale of land with an extent of 50 cents or so has been made by certain vendees with considerably higher rate with the intention of splitting them and selling them at a higher rate as house sites. Thus, the sale of small plots of lands took place in the area was not relied upon by the Special Tahsildar to fix the value of the lands under acquisition. Therefore, he has discarded 556 sales on the ground that they are small plots of lands. The Special Tahsildar has also discarded item No. 334, which is an extent of 31.67 cents in Survey No. 49/1B, which has been sold by one Jayabalan for Rs. 1,600 as per document No. 273 dated 8.2.1983. It works

out to Rs. 5,052 per acre. Likewise, he has discarded the lands in Item Nos. 418, 594, 806, 997 and 1185 since all these lands are of small extents of plots which, according to him, have been purchased at a higher rate with the intention of splitting it into small plots and selling at higher rates.

6. The Special Tahsildar, Land Acquisition, has considered seven items of lands, which are as follows:

Item No.

Document No.

S. No.

Extent

Sale amount

Rate per acre

(32) 89

1525/19-7-82

31/3

0.99.90

2,997

3,000

(33) 232

2258/3-11-82

31/2

0.49.68

1,496

3,011

(34) 267

2552/10-12-82

36

0.99.12

2,974

3,000

(35) 421

622/16-3-83

50/5

0.62.94

1,920

3,003

(36) 685

1113/5-5-84

21/2

1.00.00

3,000

3,000

(37) 686

1114/5-5-84

21/2

0.10

300

3,000

(38) 688

1171/11-5-84

38/4

1.42

4,260

3,000

7. Under the above documents, except Serial No. 37, all the lands are larger in extent, which have been sold at the rate of Rs. 3,000 per acre, and the land covered by Serial No. 37 in Survey No. 21/2 is situated in the centre of the lands under acquisition notified under G.O.Ms. No. 477, Revenue, dated 20.5.1985 and G.O.Ms. No. 620, Revenue, dated 19.4.1985. The said sale took place on 5.5.1984 when the proposal for the formation of new Kamarajar District was announced. Therefore, the Special Tahsildar has adopted the said value as fair and reasonable to fix the value of the lands under acquisition. It is thus seen that the Special Tahsildar has taken into account a small plot of land of an extent of 10 cents in Survey No. 21/2 sold under Document No. 1114 dated 5.5.1984 for

fixing the market value of the lands under acquisition. The land owners appeared before the Special Tahsildar for award enquiry and objected to the fixation of the land value and requested that a reference be sent to the Sub Court, Srivilliputhur, u/s 18 of the Act in order to get higher compensation. That is how the matter came before the Sub Court, Srivilliputhur.

8. Before the Sub Court, Srivilliputhur, two documents marked as Exs.A-1 and A-2 were filed on the side of the claimant and Exs.B-1 to B-5 were marked on the side of the State. No oral evidence was let in by either side. The learned Subordinate Judge, on a detailed consideration of the entire materials placed and the documents marked before him, fixed the market value of the lands under acquisition at Rs. 1,500 per cent and also awarded compensation for the trees and other things. For fixing the market value at Rs. 1,500 per cent, the learned Subordinate Judge has taken into consideration two documents marked as Exs.A-1 and A-2. Under Ex.A-1, one cent of land was sold at Rs. 1,814 on 25.7.1984 and under Ex.A-2, per cent of land was sold at Rs. 1,600 by document dated 8.8.1984. On the side of the State, Ex.B-2 Statement of Registration of Statistics has been relied on to show that one cent of land was sold at Rs. 85. The learned Subordinate Judge, taking into consideration of the documents filed on either side and after analysing the same, fixed the market value at Rs. 1,500 per cent. Challenging the said order, the State has preferred the above three appeals.

9. We have heard Mr. V. Dhanapathi, learned Additional Government Pleader for the State and Mr. A. Sivaji for the respondent/claimant.

10. It is contended on behalf of the State that the court below ought not to have awarded compensation on the basis of Exs.A-1 and A-2, which are only small piece of lands and that the court below ought to have taken the value mentioned in Exs.B-4 and B-5. It is also stated that the lands under Exs.A-1 and A-2 are situate in a far off place and there are no added advantages available to the said lands and that the non-consideration of the data sale deeds, which are very near to the acquired lands, is fatal and hence the compensation awarded by the court below is liable to be set aside. As an alternative plea, it is contended that in any event, the compensation awarded at Rs. 1,500 per cent is highly excessive.

11. We have carefully considered the pleadings, the award and the documents relied on by both sides. The learned Subordinate Judge, in our opinion, has carefully considered and analysed the documents marked before him and has rightly fixed the market value per cent at Rs. 1,500 even though one cent of land has been sold at Rs. 1,814 under Ex.A-1 and at Rs. 1,600 under Ex.A-2. He has given cogent and convincing reasons for fixing the market value at Rs. 1,500 per cent and the advantages available to the lands under Exs.A-1 and A-2 compared to the advantages available to the lands sold under Exs.B-4 and B-5.

12. Mr. A. Sivaji, learned Counsel for the claimant has also invited our attention to the documents and contended that the adoption of value by the Special

Tahsildar is ridiculously low and that the Special Tahsildar has discarded more than 669 sales since they are situate at a distance of more than four furlongs and discarded 556 sales since they are small extent of lands measuring 15 cents and below which have been sold during the period under consideration.

13. We are unable to appreciate the contention of the learned Additional Government Pleader that the learned Subordinate Judge ought not to have taken into account the sale consideration mentioned in the sale of lands as small plots. It is seen from Ex.B-2, which runs to 102 pages, that in 90% of the cases, the lands were sold only as small plots and in a few cases, higher extent of lands were sold. We are of the view that whether large extent or small extent of land is sold in the vicinity, there is nothing wrong on the part of the learned Subordinate Judge to take into account the small plots of land and the value mentioned therein. We are unable to comprehend as to why the Special Tahsildar has discarded all the 1,225 sales. In our view, the Special Tahsildar has erred in not taking into consideration at least some of the sale deeds.

14. It is pointed out by the learned Counsel for the claimant that Survey No. 21/2 (Document No. 1113, dated 5.5.1984 is situate far away from the acquired land and therefore, the value mentioned therein cannot at all be adopted. Our attention was also drawn to the sketch filed before the court below. We have also perused the sketch and noticed that the said land is situate far away from the acquired land. Our attention was then drawn to several other sales mentioned in Ex.B-2. It is seen from Serial No. 718 in Ex.B-2 that the land in Survey No. 11/4 of an extent of 3.34 hectares has been sold at the rate of Rs. 8,353 per acre. This land has been sold on 7.6.1984. Likewise, it is seen from Serial Nos. 860, 863, 864 and 870 that the lands in Survey No. 23/3A have been sold for Rs. 1,00,000 per acre, an extent of 0.04.96 hectare in Survey No. 53/3 has been sold at the rate of Rs. 1,81,450 per acre an extent of 0.04.96 hectare in Survey No. 55/3 has been sold at the rate of Rs. 1,81,450 per acre and an extent of 0.05.95 hectare in Survey No. 53/1 has been sold at the rate of Rs. 1,81,512 per acre. As per Serial No. 911 in Ex.B-2, it is seen that an extent of 0.05 cents in Survey No. 60/1 has been sold at the rate of Rs. 1,60,000 per acre. These lands have been sold as house sites under the documents mentioned in Ex.B-2. In our opinion, the determination of compensation by the Special Tahsildar for the lands in question at the rate of Rs. 7,41.0 per hectare is grievously low and baseless.

15. It is seen from the sketch that the by-pass road NH 7 passes through the lands in question and on the east there is a railway line and another railway line is on the west. In our opinion, the classification of the lands in question on the basis adopted by the Special Tahsildar for the determination of compensation is erroneous and opposed to the settled principles of law. Admittedly and as could be seen from the sketch, the acquired lands are situate very close to Virudhunagar Municipal town and just adjoining NH 7. The Special Tahsildar has ignored the very material fact that all the surrounding lands have been sold as house sites and sites for industrial and commercial purposes and that the

surrounding lands, which are originally classified as dry land in revenue records, have been sold as house sites and residential and non-residential buildings have been put up therein even prior to the date of Section 4(1) Notification. It is also seen from the records that there is an expeller oil mill and match factories constructed on the surrounding lands. When the suit land is a potential building site and was having the potentialities of being used as house sites, both for residential and non-residential purposes, we are unable to comprehend as to why the Special Tahsildar has ignored to consider this vital aspect of the locational advantage of the acquired land.

16. Admittedly, Virudhunagar town is fastly developing and expanding and as a matter of fact, very many residential, industrial and office buildings had been constructed further south of the acquired lands. The registration sales statistics taken up by the Special Tahsildar for valuation clearly show that all the sales in the vicinity of the suit land have been sold only as sites for building purposes. It is also pertinent to notice that the very purpose of acquisition of land is for construction of Government offices and residential quarters, which, in our opinion, clearly establish that the area in and around the suit land have been fastly developing as residential and commercial areas. It is also seen from Ex.B-2 that almost all the lands in the said area have been sold in small parcels, which would also go to show that there is heavy demand for the land in the area in question for building purposes and the acquired lands have all the potentiality of being sold as building sites. Therefore, the Special Tahsildar ought to have classified the suit land as building site and ought to have awarded compensation on that basis, which has now been done by the learned Subordinate Judge. The learned Subordinate Judge has taken into account all the relevant aspects of the matter and rightly arrived at the conclusion as could be seen from his order.

17. The reasons given by the Special Tahsildar for discarding data sale items are also unsustainable and baseless. We fail to see as to how the Special Tahsildar could say in his award that these sales are not real and genuine and do not represent the true market value. It is seen from Ex.B-2 that there are a number of documents which will establish that even prior to Section 4(1) Notification, the prevailing market rate in the area in question was Rs. 2,000 per cent. Since the suit lands are similar in all respects to the lands covered under the data sale items, and even though an extent of one cent was sold at Rs. 1,814 and Rs. 1,600 respectively under Exs.A-1 and A-2, the learned Subordinate Judge has adopted a rightful attitude in fixing the compensation via media at Rs. 1,500 per cent. We do not see any infirmity or illegality in the order passed by the learned Subordinate Judge in fixing the compensation at Rs. 1,500 per cent, which in our opinion, is justifiable and reasonable.

18. General principles for determining compensation have been set out in Sections 23 and 24 of the Act. The compensation payable to the owner of the land is the market value which is determined by reference to the price which a seller might reasonably expect to obtain from a willing purchaser, but as this may

not be possible to ascertain with any amount of precision, the authority charged with the duty to award compensation is bound to make an estimate judged by an objective standard. It is also seen from catena of decisions of this Court and also of the Apex Court that the land acquired, therefore, has to be valued not only with reference to its condition at the time of the declaration u/s 4 of the Act but its potential value also must be taken into account. The sale deeds of the lands situated in the vicinity and the comparable benefits and advantages which they have, furnish a (sic) ready method of computing the market value even though some methods are prescribed under Sections 23 and 24 of the Act, these methods, however, do not preclude us from taking any other special circumstances into consideration the requirement being always to arrive at as near as possible an estimate of the market value.

19. Admittedly, there is swift building activities and consequent developments are on the move in the lands near or round about the acquired lands, which are situate in the heart of Virudhunagar town. Therefore, the building and development potentiality of the requisitioned and subsequently acquired lands in question would also increase and there would be a consequent rise in the market price thereof in spite of the fact that they remain unbuilt or undeveloped because of continued requisition. Therefore in our opinion, the learned Subordinate Judge has looked into the best evidence and genuine sales effected on or about the time of the notification for acquisition. It is true that in fixing compensation the valuation fetched for smaller plot of lands cannot be applied to lands covering a very large area. But, as pointed out earlier and as could be seen from Ex.B-2 wherein registration sales statistics are furnished, all the sales in the vicinity of the land in question have been sold as sites for building purposes and 90% of the sales are less than 50 cents. We are of the view that all potentialities of the lands acquired have to be taken into account as part of the value of the lands, more particularly all advantages that the lands possess, present or future, in the hands of the owner, may reasonably be taken into consideration while fixing the compensation to be awarded. The owner, as rightly contended by Mr. A. Sivaji would be well within his rights to have to the price assessed in reference to those advantages which would give the land the maximum value. We agree with the contention of Mr. A. Sivaji that it is not only the existing benefits derived from the land by the owner that have to be taken into consideration but even the possible benefits in the future also have to be gone into and considered while fixing the compensation for the lands acquired. In our view, where a piece of land sought to be acquired is situate by the road side in a town or village, which is fast and steadily growing, such land has to be valued with reference to the use it should have been put in future by its owner. As pointed out earlier, the land is situated on the National Highways NH 7. In our opinion, the court below after considering all the circumstances as discussed in its order, has arrived at a fair estimate with reference to the surrounding circumstances and documentary evidence and awarded the compensation on that basis. Therefore, we confirm the amount of compensation awarded by the learned Subordinate Judge in all

respects. There are no merits in the appeals.

20. For the foregoing reasons, all the three appeals are dismissed. However, there will be no order as to costs.

