(2015) 10 MAD CK 0257

In the Madras High Court

Case No : A.S. Nos. 678 and 775 of 2014

The Special Tahsildar (Land Acquisition-Chennai Metro Rail Ltd. Unit-2) — APPELLANT

Vs

L.R. Ravi Prasad and Others — RESPONDENT

Date of Decision : 29-10-2015

Acts Referred:
- Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5, Order 8 Rule 8
- Land Acquisition Act, 1894 — Section 17(1), 17(2), 18, 4(1), 54

Citation : (2015) 10 MAD CK 0257

Hon'ble Judges : V. Ramasubramanian and T. Mathivanan, JJ.

Bench : Division Bench

Advocate : P. Gunasekaran, AGP (AS), for the Appellant

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—Both these appeals are filed under Section 54 of the Land Acquisition Act, 1894, questioning the correctness of the award passed by the Land Acquisition Tribunal. While A.S. No. 678 of 2014 is by the Special Tahsildar, the other appeal is by the land owners. While the former is seeking a reduction of the compensation, the latter are seeking enhancement.

2. We have heard Mr. P. Gunasekaran, learned Additional Government Pleader appearing for the Special Tahsildar, Mr. Irwin Aaron, learned counsel appearing for the land owners and Mr. Jayesh B. Dolia, learned counsel appearing for the Chennai Metro Rail Limited, which is the Requisitioning Body.

3. The land of an extent of about 2.21.59 hectares located in S.F. Nos. 12/2, etc. in Koyambedu Village, Chennai Metro District, was sought to be acquired for the purpose of Chennai Metro Rail Corridor, Metro Rail Stations, etc. The administrative sanction for the acquisition by invoking the emergency provisions under Section 17(2) of the Land Acquisition Act, 1894, was granted under G.O. Ms. No. 19 dated 25.3.2009.

4. The Notification under Section 4(1) read with Section 17(1) was issued under G.O. Ms. No. 142 Planning, Development and Special Schemes dated 6.11.2009. The Notification was published on 12.11.2009 and 13.11.2009 in the Tamil Nadu Government Gazette, newspapers and in the locality.

5. Though the original proposal was to acquire about 2.21.59 hectares or 52,159 sq.meters, the acquisition was later confined only to an extent of about 1.50.39.5 hectares or 15,039.5 sq.meters. Therefore, the Declaration under Section 6 was issued only to the said effect.

6. After holding an enquiry, the Special Tahsildar passed an award bearing No. 2/2011 dated 22.7.2011, fixing the compensation payable at Rs. 3,125/- per sq.ft. Aggrieved by the quantum of compensation so fixed, the land owners sought a reference under Section 18 . By a judgment dated 30.4.2014 passed in L.A.O.P. No. 32 of 2012, the Sixth Assistant Judge, City Civil Court, Chennai, which is the Tribunal under the Act, enhanced the compensation from Rs. 3,125/- per sq.ft. to Rs. 5,000/- per sq.ft. Contending that the enhancement is illegal, the Special Tahsildar has come up with one appeal. But, claiming that the enhancement was grossly inadequate, the land owners have come up with the other appeal.

7. A look at the award of the Land Acquisition Officer would show that a total of about 2,512 sale transactions were found to have taken place during the period from 1.1.2007 to 13.11.2009. Out of these 2,512 data sales, nearly 1,487 transactions were rejected by the Land Acquisition Officer on the ground that the properties covered by those sale deeds included both house sites and the buildings constructed thereon. About 224 transactions were rejected by the Land Acquisition Officer on the ground that they related to sale of mortgaged properties. About 167 transactions were rejected on the ground that they were settlement documents. Three documents were rejected on the ground that they related to partitions. About 482 transactions were rejected on the ground that the sales thereunder were undivided shares of lands.

8. Eventually, the Tribunal took into account the sale transactions indicated in S. Nos. 1131, 1132, 1133, 1217, 1282 and 1305. In the sale deeds found at these serial numbers except the last one in S. No. 1305, the market value of the land was reflected to be Rs. 4,000/- per sq.ft. But, in the sale deed found at S. No. 1305, the land of an extent of about 4,356 sq.ft., had been sold for Rs. 1,36,12,500/-. This worked out to Rs. 3,125/- sq.ft. Therefore, the Land Acquisition Officer went by the market rate of the land as reflected in the sale deed at S. No. 1305.

9. Before the Tribunal, the first appellant in A.S. No. 775 of 2014 examined himself as C.W.1. The Special Tahsildar was examined as R.W.1. An officer of the Chennai Metro Rail Limited was examined as R.W.2. On behalf of the claimants about 18 documents were filed and they were marked as Ex. C.1 to Ex. C.18. On behalf of the Special Tahsildar and the Requisitioning Body, seven documents

were marked as Ex. R.1 to Ex. R.7.

10. In the claim statement, the land owners made a specific plea that several rounds of negotiations took place between them and the Requisitioning Body and that the Requisitioning Body agreed to fix the compensation at Rs. 6,150/- per sq.ft.

11. In order to prove this, the land owners marked Ex. C4 to Ex. C.14, which happened to be the correspondence between the parties. But unfortunately, the Tribunal refused to look into these documents, as seen from the last line of paragraph 8 of the award of the Tribunal. The Tribunal refused to consider these documents on the sole ground that the land owners had in any way come up with a claim for a higher compensation at Rs. 8,000/- per sq.ft and that therefore, the question as to whether the Requisitioning Body agreed to fix the compensation at Rs. 6,150/- per sq.ft., paled into insignificance.

12. After refusing to look into Ex. C.4 to Ex. C.14, the Tribunal took note of a sale deed dated 15.7.2008 filed as Ex. C.15. An objection was raised by the Requisitioning Body on the ground that the land covered by Ex. C.15 was abutting Poonamallee High Road and that therefore, it cannot be taken into account. R.W.1 (Special Tahsildar) admitted in the deposition that the acquired land was situate near Poonamallee High Road. But, in view of the admission made by the land owners that the acquired land was situate half a kilometer away from the land covered by Ex. C.15 and also in view of the fact that the village map was not produced, the Tribunal rejected even Ex. C.15. However, the Tribunal took note of the guideline valuation report marked as Ex. C.18. As per this report sent by the office of the Sub-Registrar, the guideline value of land was Rs. 8,000/- per sq.ft.

13. However, on the basis of the decision of this Court in Ramkumar Giri Vs. The Chief Controlling Revenue Authority cum Inspector General, The Deputy Collector (Stamps), Joint Sub-Registrar I and District Registrar Administration, , the Tribunal came to the conclusion that the guideline value cannot be the sole determining factor.

14. After having rejected all the documents relied upon by the Special Tahsildar as well as the documents produced by the land owners, the Tribunal found itself in a peculiar position, as to how to find out the market value. Therefore, in paragraph 15, the Tribunal took note of the potentiality of the land, its nearness to shopping complexes, cinema theatres, etc., and fixed an arbitrary amount of Rs. 5,000/- per sq.ft.

15. As could be seen from the above discussion, the Tribunal has arrived at the market value of the land, in an arbitrary manner without any basis. Therefore, it is our endeavour to find out as to what would be the proper market value.

16. It is true that the guideline valuation prepared by the State Government for the purpose of prevention of under-valuation of documents, cannot form the sole

basis for determining the market value. This position is settled by the judgment of the Full Bench of this Court in Sakthi and Co. Vs. Shree Desigachary, .

17. As always been held by the Supreme Court, the market value of the property is the price that a willing purchaser would pay to a willing seller of a property, having due regard to the existing conditions. The Court should sit in the arm chair of a prudent willing purchaser and see whether he would be willing to offer the same price. Unfortunately, both the Land Acquisition Officer and the Tribunal have omitted to take note of the intrinsic evidence available in the case itself.

18. As we have indicated earlier, the land owners filed correspondence between them and the Requisitioning Body as Ex. C.4 to Ex. C.14. These documents gave a clue about the willingness of the Requisitioning Body to pay Rs. 6,150/- per sq.ft. This can be seen from the following discussion :

19. Ex. C.4 is a letter dated 23.10.2008 calling upon the land owners to participate in a meeting to be held on 10.11.2008. Ex. C.5 is the letter dated 16.11.2009 sent by the land owners by registered post. In the said letter, the land owners indicated that the proposed acquisition would divide their property into two portions, leaving one portion without any access. In response to the said letter, the Requisitioning Body sent a reply under Ex. C.6 dated 16.12.2009 agreeing to provide necessary access below the elevated viaduct between two piers/portals to reach the severed properties.

20. By a letter dated 18.3.2010 marked as Ex. C.12, the Requisitioning Body requested the land owners to attend a final meeting of negotiation on 25.3.2010. After attending the said meeting, the land owners sent a letter of acceptance dated 9.6.2010 under Ex. C.13. The contents of Ex. C.13 read as follows :

"We have agreed to part with our land in T.S. No. 1/6 of Block No. 33 of Koyambedu Village for Rs. 6,150/- per sq.ft., on 25.3.2010 for CMRL as per the extent furnished in the D.D. Now, we understand as per the revised sketch furnished by the GC, the extent of the land is 1.09.34.0 hec and we are ready to part with our land to CMRL at the rate of Rs. 6,150/- per sq.ft. as per the revised extent i.e. 1.09.34.0 hec."

21. There was no reply to Ex. C.13 dated 9.6.2010. The fact that the final round of negotiations was held on 25.3.2010 is not in dispute.

22. In the letter of objections submitted on 9.5.2011 filed as Ex. C.16, the land owners made a specific plea that in the negotiations, the Requisitioning Body agreed to pay Rs. 6,150/- per sq.ft. In the statement of claim filed before the Land Acquisition Tribunal, the land owners made a specific plea in paragraphs 4 and 5. Though the Requisitioning Body filed a counter to the statement of claim, they did not refute these allegations. In fact, the Requisitioning Body was very evasive in their counter, as could be seen from some extracts of the counter filed by the Requisitioning Body.

23. In paragraph 5 of their counter, the Requisitioning Body took the following

stand :

"Thus, the land acquisition through private negotiation and through Land Acquisition Act, 1894 are two different mutually exclusive procedure and under this case, the private negotiations were initially attempted by Chennai Metro Rail Limited and later on dropped due to difficulties encountered during the process. Whereas the land acquisition under Land Acquisition Act, 1894 is entirely different and activities taken under private negotiation do not have any relevance over the activities under Land Acquisition Act, 1894."

24. In paragraph 7, the Requisitioning Body took the following stand :

"The second respondent states that the relationship between the claimants and this respondent during the private negotiation was that of the ''willing seller'' and ''prospective buyer''. Since the private negotiations were abandoned, the said relationship between the parties came to an end. Further, there was no agreement arrived at during the discussions or executed consequent on the preliminary discussion. There is no subsisting contract between the claimant and this respondent in respect of the price of the land spelt out during the private negotiations. The private negotiation is therefore non-est in law."

25. Again, in paragraph 8 of the counter, the Requisitioning Body took the following stand :

"Moreover, the negotiation made earlier was not between the Government or Collector and the claimant before or during acquisition and therefore, under law, Land Acquisition Officer can''t take note of the negotiations held privately out of the purview of Government or Collector and that the Government was a third party and not in the picture. This apart, this respondent can''t compel the Land Acquisition Officer to take note of the private negotiations between claimant and Chennai Metro Rail Limited."

26. Therefore, it is clear that the specific averment made by the claimant in their statement of claim that the Requisitioning Body agreed to a price of Rs. 6,150/- per sq.ft., in the negotiations held on 25.3.2010, went unchallenged. It is needless to state that the elementary principles of law of pleadings enunciated under Order VIII of the Code of Civil Procedure would only apply to the present proceedings. If what was specifically pleaded in paragraphs 4 and 5 of the statement of claim is not disputed specifically, but an evasive reply is given to the same, the principles behind Order VIII Rule 5 would automatically apply. Therefore, even if the Court cannot go by the guideline value, as reflected in Ex. C.18, the Court could not have ignored Ex. C.4 to Ex. C.14. We are of the considered view that the enhancement of compensation to Rs. 6,150/- per sq.ft., would be fair and proper.

27. Hence, the appeal of the Special Tahsildar is dismissed. The appeal of the land owners is allowed enhancing the compensation to Rs. 6,150/- per sq.ft. The land owners will be entitled to interest, solatium, etc., on this amount. The land

owners will also be entitled to costs in both appeals.

