

(2000) 09 MAD CK 0024

In the Madras High Court

Case No : A.S. No's. 927 to 938 of 1994

The Special Tahsildar (Land Acquisition) Krishna Water
Supply Project Scheme, Tiruvallur

APPELLANT

Vs

G. Natesan and 13 others

RESPONDENT

Date of Decision : 18-09-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23, 25, 4(1)

Citation : (2000) 4 CTC 440 : (2001) 1 LW 478

Hon'ble Judges : K. Gnanaprakasam, J; A.S. Venkatachalamoorthy, J

Bench : Division Bench

Advocate : Mr. T.R. Rajagopalan, A.A.G. and Mr. Ravi, Additional Government
Pleader, for the Appellant; Mr. G. Karthikeyan, for the Respondent

Judgement

Judgement pronounced by A.S. Venkatachalamoorthy, J.—These appeals have been filed against the orders passed in the original petitions

by the Reference Court namely Sub-Court, Tiruvallur. In all these appeals the State is the appellant.

2. For the purpose of implementing Krishna Water Scheme, the State of Tamil Nadu had to acquire lands including the lands that are the subject

matter in all these appeals. These lands are comprised in various survey Numbers namely 273/1., 2,3,4,5,11,12,13,15,17,18 in Movur Village,

Tiruvallur Taluk, Tiruvallur District. The respondents in these appeals are the land owners. The notification u/s 4(1) of the Land Acquisition Act,

1894 was published on 24.4.91. After calling for the objections and complying with the formalities the land acquisition officer acquired the lands.

Before the land acquisition officer, the respondents landowners claimed compensation at the rate of Rs.300 per cent. The land acquisition officer

after holding the enquiry passed an award on 26.2.92 fixing the value of the lands at Rs.100 per cent which is equal to Rs.247 per are. Not being

satisfied with the said award of compensation, the respondents land owners sought reference to a Civil Court u/s 18 of the Land Acquisition Act.

Before the Land Acquisition Court, the respondents/claimants claimed compensation at the rate of Rs.5,000 per cent. The Reference Court fixed the compensation payable to the respondents at Rs.3,000 per cent. The Reference Court infact, relied on the sale deed which has been marked as

Ex.P4 dated 2.5.91.

3. Being aggrieved by such enhancement, the State of Tamil Nadu, represented by the Special Tahsildar, Land Acquisition, Krishna Water Supply

Project Scheme, Tiruvallur has filed these appeals.

4. The learned Additional Government Pleader appearing on behalf of the State made three-fold submissions, namely

(i) The Reference Court has not considered the other documents placed before it by the parties and has fixed the value of the land acquired on the

basis of the sale transaction under Ex.P4 which is a post 4(1) notification sale.

(ii) The Reference Court ought not to have relied on the said sale deed Ex.P4 inasmuch as none connected with the said documents was examined

before the Reference Court.

(iii) While, before the Land Acquisition Officer, respondents/claimants claimed only Rs.300 per cent, before the Reference Court made enhanced

claim, namely at the rate of Rs.5,000 per cent which is not permissible in law. But, however, the Reference Court entertained the claim and has

fixed the compensation at Rs.3,000 per cent.

5. The learned counsel appearing for the respondents/claimants would inter-alia contend that the Reference Court relied on Ex.P4 since the land

that was the subject matter in the said document is similar to the lands that are the subject matter in these appeals so also similarly situated. There is

no bar for taking into consideration under the Act the post notification sales while fixing the value of the land. With regard to the second point the

learned counsel for the claimants submitted that the respondents infact claimed compensation at the rate of Rs.5,000 per cent even before the Land

Acquisition Officer. Alternatively, the counsel also submitted that even assuming that the respondents/claimants made a claim of Rs.300 per cent

only before the land acquisition officer, in view of the clear provision namely Section 25 as amended by Act 68 of 1984 there is no bar for making such a claim.

6. In the facts and circumstances of the case and on the basis of the contentions putforth by the respective parties three questions arise for consideration.

1. Whether the Reference Court was right in placing reliance on Ex.P4 when no one connected with said transaction was examined?

2. Whether the post notification sales can be considered for the purpose of fixing the value of the land?

3. Whether it is open to the landowners to make enhanced claim of compensation before the Reference Court i.e., more than what was claimed before the land acquisition officer?

7. As far as the first question is concerned, the legal position, as on date as laid down by the Supreme Court is well settled which is to the effect

that a document like the one in question namely the sale deed Ex.p4 cannot be looked into unless someone connected with the said transaction is

examined before the Court. For the purpose of completeness we mention hereunder the various rulings of the Apex Court.

(1) Manipur Tea Co. Pvt. Ltd. Vs. Collector of Hailakandi, ; (2) Ratan Kumar Tandon v. State of U.P., 1997 (2) SCC 161; (3) Meharban and

others etc. etc. Vs. State of U.P. and others, ; (4) Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., ; (5)

State of J&K v. Mohammad Mateen, Wani, 1986 (6) SCC 233

As none connected with the said transaction, Ex.P4 was examined before the Reference Court, we are inclined to remit the matter back to the

Reference Court to give an opportunity to the landowners to examine witness/ witnesses. In doing so, we follow the ruling of the Supreme Court

reported in U.P. State Road Transport Corporation, Aligarh Vs. State of U.P. and others, .

8. We are inclined to remit the matter back for yet another reason, namely, that the Reference Court has not considered the three sale deeds filed

by the respondents landowners namely Ex.P1, dated 9.5.88, Ex.P2, dt.5.8.88 and Ex.P3 dt.13.3.89. It has to be noted that all these transactions

were prior to the 4(1) notification.

9. Section 23 of the Land Acquisition Act, 1894 deals with the matters to be considered in determining compensation. According to the said provision, the market value of the land at the date of publication of the notification u/s 4(1) shall be taken into consideration. The sale of land on or about the issue of notification is said to be the best piece of evidence of determining the market value of the acquired land. If transactions of sale of lands on or a few days before the said notification is not available contemporaneous transactions in respect of lands which had similar advantages and disadvantages would be a good piece of evidence for determining the market value of the acquired land. The Courts will take into consideration the pre-notification transactions for the purpose of fixing the market value. If that kind of evidence is not available, the Court can then look into and consider the post notification transactions as that can guide the Court in fixing the market value of the acquired lands under certain conditions.

10. In this regard, we are inclined to refer to the three rulings of the Apex Court. In the decision reported in Administrator General of West Bengal Vs. Collector, Varanasi, the Apex Court observed as under:

Subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. But this principle can be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction.

In the ruling reported in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, the Apex Court laid down as to what are the factors to be borne in mind while the value of the land is determined u/s 23 of the Land Acquisition Act.

4(8) Only genuine instances have to be taken into account (Sometimes instances are rigged up in anticipation of Acquisition of Land).

4(9) Even post-notification instances can be taken into account (1) if they are

very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

In *Karan Singh and others etc. Vs. Union of India*, the Supreme Court ruled thus:

5. Before we advert to the argument raised on behalf of the appellants, it has to be borne in mind while deciding these appeals, this Court is not

required to reappraise the evidences which were considered by the courts below. But what concerns us is whether correct or legal principles were

applied in arriving at the market value of the acquired land in awarding compensation to the claimants. When a land is compulsorily acquired, what

is basically required to be done for awarding compensation is to arrive at the market value of the land on the date of the notification u/s 4 of the

Act. The market value of a piece of land for determining compensation u/s 23 of the Act would be the price at which the vendor and the vendee

(buyer and seller) are willing to sell or purchase the land. The consideration in terms of price received for land under bona fide transaction on the

date of notification issued u/s 4 of the Act or a few days before or after the issue of notification u/s 4 of the Act generally shows the market value

of the acquired land the market value of the acquired land has to be assessed in terms of those transactions. The sale of land on or about the issue

of notification u/s 4 of the Act is stated to be the best piece of evidence for determining the market value of the acquired land. Often evidence on

transaction of sale of land on or a few days before the notification u/s 4 is not available. In the absence of such evidence contemporaneous

transactions in respect of lands which had similar advantages and disadvantages would be a good piece of evidence for determining the market

value of the acquired land. In case the same is not also available, the other transaction of land having similar advantages nearer to the date of

notification u/s 4 of the Act would guide in determination of the market value of acquired land. In the present case, in the absence of evidence of

any transaction or sale of land on the date of issue of notification u/s 4 of the Act, the Court would be justified in relying upon the transaction of

sale of land having similar advantages nearer to the notification issued u/s 4 of the Act which can be taken as a guide for determining the market

value of the acquired land and compensation to be awarded to the claimants.

Thus the transaction of sale of land after the issue of notification u/s 4 of the Act can guide the Court in fixing the market value of the acquired lands under certain conditions.

In the case of Administrator General of West Bengal Vs. Collector, Varanasi, it was held thus: (SCC p.158, para 13)

Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining

whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is

shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such

subsequent transaction, the transaction could also be relied upon to ascertain the market value." (Italics supplied)

6. It is, therefore, no longer in doubt that in the absence of any evidence of any transaction or sale of land on the date of issue of notification u/s 4

of the Act, under certain conditions the post-notification transactions of sales of land can be considered/relied upon in determining the market value

of the acquired land. One of the conditions being that it must be shown before the Court by reliable evidence that there was no appreciation of the

value of land during the period of issue of notification u/s 4 of the Act and the date of transaction of sale which is sought to be relied upon for the

purposes of fixing the market value of the acquired land. It has also to be borne in mind that if the claimant relies on any post- notification

transaction, the burden is upon him to show that the price of the land remained static and there was no upward rise in the price of the land during

the period of issue of notification u/s 4 of the Act and the date of transaction of sale.

The following can be summed up from the rulings of the Supreme Court referred supra.

(i) The market value of the land has to be arrived at and for which purpose any transaction or sale of land as on the date of notification u/s 4(1)

shall be taken into consideration.

(ii) In the absence of evidence of any transaction or sale of land, then the landowner can request the Court to fix the value of the land based on the

sale transactions of similar lands and similarly situated eventhough they are post-

notification transactions.

(iii) Such post-notification instances can be looked into if they are very proximate, genuine and acquisition itself has not motivated the purchaser to pay a higher price.

(iv) It is for the landowner to prove that there was no appreciation of the value of the land during the period of issue of notification u/s 4(1) of the

Act and the date of the transaction of sale that is sought to be relied upon for the purpose of fixing the market value of the acquired land. Or, in

other words, the burden is upon the claimant to show that the price of the land remained static and there was no upward rise in the price of the

land during the period of issue of notification u/s 4(1) and the date of such post-notification sale/sales.

(v) The Courts should be cautious while accepting post-notification sales as there is possibility/likelihood that such transactions might have been

done in order to benefit the land owner/claimant to make an excess claim.

11. The next question that arises for consideration is as to whether a claimant can make a revised claim of compensation that is over and above

what was made before the land acquisition officer.

12. Section 25 of the Land Acquisition Act as it stood prior to the Act 48 of 1984 reads thus:

25. Rules as to amount of compensation (1) When the applicant has made a claim to compensation, pursuant to any notice given u/s 9, the amount

awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim,

the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by him by the

Court shall not be less than, and may exceed, the amount awarded by the Collector.

Section 25 was amended by Act 68 of 1984 (Central Act) and the section reads thus:

Section 25. Amount of compensation by Court not to be lower than the amount

awarded by the Collector:- The Amount Of Compensation

Awarded By The Court Shall Not Be Less Than The Amount Awarded By The Collector u/s 11.

Subsequent to this, the State of Tamil Nadu introduced an amendment, namely the Land Acquisition (Tamil Nadu Amendment) Act, 1996 (Act 26

of 1997) and according to which Section 25 of the principal Act, the following shall be substituted.

25. Amount of compensation awarded by Court. The amount of compensation awarded by the Court shall not be less than the amount awarded

by the Collector u/s 11 and shall not be more than the amount claimed by the person interested.

From the abovesaid provision the following would emerge.

(i) Prior to the Act 68 of 1984 u/s 25(i) of the Act, the Court, only if sufficient reasons were made out, had power and jurisdiction to award an

amount exceeding the claim made by the land owner before the land acquisition officer in response to the notice given u/s 9 of the Land Acquisition

Act.

(ii) But, however, as per Section 25 as amended by the amendment Act 68 of 1984 (Central) the amendment Act 26 of 1997 (State) there are no

such restrictions. The said Section does not either by implication or expressly restrict the compensation amount that could be claimed by a

claimant. The only limitation of the power of the Court in awarding compensation is that the Court cannot award the compensation lesser than the

one awarded by the land acquisition officer. This would necessarily only imply that the Court can award higher compensation than what was

awarded by the land acquisition officer but ofcourse that cannot exceed what was claimed before the Court as per Tamil Nadu Amendment Act

26 of 1997. It has to be also noticed from the words employed in the Section that the Section does not make a link between the claim made

before the land acquisition officer and the claim made before the Court. The resultant position would be that the claimant will be free to claim any

amount before the Court as compensation and this liberty to make such a claim in Court remains totally unaffected by any claim made before the

land acquisition officer even if there was a great disparity between the two claims namely the one made before the land acquisition officer and the

one made before the Court. Of course, the position before the Amendment Act 68 of 1984 was that the claimant had to support his stand of

having not made a claim or having made a lower claim pointing out acceptable reasons when alone the Court had power and jurisdiction to fix

compensation more than what was claimed before the land acquisition officer. Or, in other words, only if the Court comes to the conclusion that

the reasons adduced were good and acceptable he would be permitted to make good the claim for compensation put forward for consideration by

the Court over and above what was claimed before the Land Acquisition Officer but not otherwise. In view of this, we have no hesitation to hold

that even if the land owner in response to the notice u/s 9 made a lesser claim before the land acquisition officer, once the matter is referred to a

Civil Court, the landowner can make higher claim than what he made before the land acquisition officer.

13. The above said conclusion arrived by this Court is also get strengthened for two more reasons and for which purpose we may straightaway

refer to two rulings of the Supreme Court. The first ruling is one decided in Bhag Singh and Others Vs. Union Territory of Chandigarh through the

land acquisition collector, Chandigarh, . Briefly the facts are, certain lands were acquired by the State for the purpose of establishment of

cantonment within the revenue estate of Bhatinda. The Land Acquisition Collector made an award. Being aggrieved, the appellants in that case as

well as other claimants sought reference u/s 18 of the Act and the matter was referred to the Additional District Judge, Bhatinda. The land owners

were not satisfied even by the award of the Reference Court and they filed appeal before the High Court. The High Court further enhanced the

compensation. The appellants in that case when compared to other land owners who also filed appeals before High Court paid less Court fee

obviously claiming lesser than what was claimed by the other landowners. The High Court allowed the appeal and fixed higher compensation, but,

however, restricted the benefit of enhanced compensation only to those claimants who made payment of proper Court fee but not to those

appellants who paid less court- fee though according to the view taken by the High Court the appellants were also entitled to enhanced amount of

compensation for acquisition of the land. In those circumstances, the appellants in that appeal moved the Apex Court. In that context, the Apex

Court observed thus:

3. We are of the view that when the learned single Judge and the Division Bench took the view that the claimants whose land was acquired by the State of Punjab under the notifications issued under Sections 4 and 6 of the Act, were entitled to enhanced compensation and the case of the appellants stood on the same footing, the appellants should have been given an opportunity of paying up the deficit court-fee so that, like other claimants, they could also get enhanced compensation at the same rate as the others. The learned single Judge and the Division Bench should not have, in our opinion, adopted a technical approach and denied the benefit of enhanced compensation to the appellants merely because they had not initially paid the proper amount of court-fee. It must be remembered that this was not a dispute between two private citizens where it would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would be tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice, with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act,

1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received, or recovered without protest or where the State Government would otherwise be irretrievably prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned single Judge should have allowed the appellants to pay up the deficit court-fee and awarded to them compensation at the higher rate or rates determined by them. (Italics supplied)

14. The next ruling that can be referred to is *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, . In that case, the Apex Court ruled while determining the market value of the land certain factors to be borne in mind. In fact, in paragraph 4 of the said judgment the Apex Court observed,

The following factors must be etched on the mental screen:

(1) A reference u/s 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied

upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the

Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation

cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve

or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an

appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material

produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price

offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(Italics supplied)

From the above rulings it is clear that

- (1) the State is bound to pay fair and just compensation;
- (2) it should not raise technical objections;
- (3) the Reference Court is not a Court of appeal and the Reference Court has to treat it only as an original proceeding before it and determine the market value afresh on the basis of the materials produced before it.

15. The learned Additional Government Pleader appearing for the State would place reliance on the two rulings and contend that the claimants/landowners cannot under law make an excess claim over and above what he made before the land acquisition officer pursuant to the notice u/s 9 of the Act.

The first ruling is one reported in Ujjain Vikas Pradhikaran Vs. Tarachand and another etc., . We may straightaway mention that the said ruling would not apply to the facts and circumstances of these cases. In that case, the Supreme Court considered and decided the issue in respect of an acquisition in which the notification u/s 4(1) was prior to 1984.

16. The learned Additional Government Pleader also relied on a ruling of the Supreme Court in a batch of Civil Appeal Nos. 12603 of 1996 etc. filed against the common judgment of a Division Bench of this Court in A.S.Nos.537 of 1984 etc. dated 26.7.89 and submitted that the said ruling is in favour of the appellant State. Here again, the ruling would not apply to these cases, since in those cases 4(1) notification was in the year 1975 that is long prior to the Act 68 of 1984.

17. A Full Bench of Karnataka High Court in Smt. Roopa Reddy Vs. Prabhakar Reddy, infact had taken a view similar to one we have now taken. Quoting the exact words would be more appropriate.

Thus bearing in mind the circumstance of lands being taken away without the consent and much against the wish of the landowner, the humanising factor in the law has thought it fit to remove all hurdles and humps in the way of the claimant getting a compensation which is deemed just and

adequate. While the law of course expects him to make good the claim made before Court by producing ample evidence, it has nonetheless

thought fit to remove all barriers that may prevent or preclude him from claiming the market value of the land. Thus we find S. 25 as it now stands

totally liberates the claimant from all restraints that held him in check earlier from making a claim before Court for the first time even where he had

not made any claim before the Collector and even if he had made some claim the Section in its new orientation gives him full liberty to hike his

claim before Court without furnishing any reasons or affording an explanation for making a lower claim before the Collector.....

.....

Suffice for our purpose to emphasize the Court's dicta holding the reference made to a Court under S. 18 of the Act to be an original proceeding

requiring the Court to determine the market value of the property on the basis of the material produced before it treating the claimant as the

dominus litis occupying the position of the plaintiff. These are also aspects referred to and highlighted in the referral order made by the Bench. It is

enough to point out that in the light of the foregoing dicta of the Supreme Court, without more, the claimant can now make bold to claim a

compensation which is different and much more than what he had claimed before the L.A.O., besides he can also make a claim even if he had

claimed nothing towards compensation before the L.A.O. As S. 25 of the Act now stands a claimant can boldly approach the Court and ask for

whatever compensation he desires to seek provided he is able to substantiate it by adducing adequate evidence.

18. In the result, we hold that the claimants/landowners notwithstanding the fact that they made a lesser claim before the Land Acquisition Officer

in response to the notice u/s 9 of the Land Acquisition Act can make a higher claim before the Reference Court for the first time.

19. In the result, the appeals are remitted back to the Reference Court to consider the matter afresh in the light of the observations/findings made

by this Court as above. Both the parties will be at liberty to let in oral and documentary evidence in support of their respective claims.