

(2010) 08 MAD CK 0262

In the Madras High Court

Case No : Appeal Suit No's. 429 to 442, 545 to 547, 553 to 562, 565 to 573 and 720 to 729 of 2008

The Special Tahsildar (Land Acquisition) SIPCOT-2 and The
Project Officer, SIPCOT

APPELLANT

Vs

M. Sowdammal

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

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

Citation : (2010) 08 MAD CK 0262

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : V. Ravi, Spl.GP AS for 1st Appellant/Government and M. Devaraj, for 2nd Appellant/SIPCOT, for the Appellant; V. Raghavachari in A.S. Nos. 429 to 442, 545 to 547, 559, 565, 566, 721 and 726 of 2008 and R. Bharath Kumar in A.S. 553 to 558, 728 and 729 of 2008, for the Respondent

Judgement

K. Chandru, J.—Heard Mr. V. Ravi, learned Special Government Pleader (AS) for the first appellant/Government, Mr. M. Devaraj, learned Standing Counsel for the second appellant/SIPCOT, Mr. V. Ragavachari and Mr. R. Bharath Kumar, learned Counsel appearing for some claimants.

2. These appeals arise out of the acquisition made in respect of formation of SIPCOT at Hosur, Phase II. The lands of the claimants were situated in Moranapalli Village. The acquiring authority issued a Notification u/s 4(1) of the Land Acquisition Act dated 6.9.1995. After following due procedure, the awards were passed in respect of the appeals on hand in Award Nos. 1/1997, 2/1997 and 3/1997. The acquiring authority fixed the compensation at the rate of Rs. 2,48,630.20 per Hectare, which is approximately Rs. 1 Lakh per Acre.

3. The respondents/claimants objected to the lower rate of compensation. On the claimants' objection to the lower rate of compensation, the matters were referred for determination of market value by the jurisdictional Reference Court,

which in the present case is the Sub Court, Hosur.

4. The Reference Court registered the references as various LAOPs starting from LAOP No. 46 of 1997. The Reference Court grouped the various LAOPs in different batches. In respect of LAOP No. 46 of 1997, it was heard along with five other LAOPs and a common judgment was delivered on 13.6.2007. Likewise, in LAOP No. 90 of 1997 and batch cases (in respect of 17 LAOPs) another judgment was pronounced on the very same day, namely 13.6.2007. On the same day, in LAOP Nos. 103 to 105 of 1997, another judgment was pronounced. Thereafter, in respect of 20 LAOPs starting from 57 of 1997, judgment was pronounced on 13.8.2007. In that case, the Reference Court took the benefit of its earlier three judgments, which were marked as Exs. C.15, C.16 and C.17. Therefore, it is proper that the matters are first dealt with appeals arising out of LAOP No. 46 of 1997 and other cases as agreed to by the parties before this Court. Printed copies of pleadings were circulated.

5. The following table will show the various LAOPs and their corresponding Appeal Suits.

-----	Sl.	No.	APPEAL	No.	L.A.O.P.	No.
-----	1	429/2008	90/1997	2	430/2008	
93/1997	3	431/2008	94/1997	4	432/2008	95/1997
434/2008	97/1997	7	435/2008	98/1997	8	436/2008
46/1997	10	438/2008	106/1997	11	439/2008	107/1997
108/1997	13	441/2008	109/1997	14	442/2008	110/1997
103/1997	16	546/2008	104/1997	17	547/2008	105/1997
68/1997	19	554/2008	69/1997	20	555/2008	70/1997
22	557/2008	72/1997	23	558/2008	73/1997	24
560/2008	75/1997	26	561/2008	76/1997	27	562/2008
101/1997	29	566/2008	102/1997	30	567/2008	115/1997
116/1997	32	569/2008	117/1997	33	570/2008	118/1997
119/1997	35	572/2008	120/1997	36	573/2008	121/1997
57/1997	38	721/2008	58/1997	39	722/2008	59/1997
41	724/2008	61/1997	42	725/2008	62/1997	43
727/2008	65/1997	45	728/2008	66/1997	46	729/2008

6. In the first batch of judgments starting from LAOP No. 46 of 1997, before the Reference Court on behalf of the claimants, one S. Gowdareddy, (he respondent in A.S. No. 440 of 2008) was examined as C.W.1. On the side of the claimants, 8 documents were filed and marked as Ex.C.1 to C.8. On the side of the acquiring authority, one R. Munusamy was examined as R.W.1. On their side, 4 documents were filed and marked as Ex.R.1 to R.4. Ex.R.1 is the topo sketch of the village. Ex.R.2 is the statistical data collected at the time of the acquisition. It is seen from the records that before the acquiring authority for the period from 22.9.1992 to 21.9.1995, i.e., which was a period of three years preceding Section 4(1) Notification, 1091 sale transactions took place at the Sub

Registrar's office at Hosur. The authority rejected 907 sale documents on the ground that they were sold as house sites and on the basis of the square feet rate. Similarly, 28 other transactions, which took place in the area within the SIPCOT complex were also rejected on the ground that they are not true indicator of the market rate. Five documents were rejected by stating that they are "Nanja" lands, whereas the lands acquired were "Punja" lands. Majority of the documents were rejected, on other grounds, namely, some documents were undervalued, etc, the authority took note of the document in Serial No. 308, which according to them is the land situated at the centre of the acquired lands and covered by a Sale Deed No. 3901 dated 21.9.1993. In that case, in respect of Survey No. 151/3, 0.91 Acre land was sold at the rate of Rs. 91,600/-. Therefore, per Acre rate worked out to Rs. 1,00,660/-, even though the land was not of the same quality and Tharam, comparable to the lands, which were acquired in the same village. Therefore, the market rate of the acquired land came to be fixed at Rs. 1,00,660/- per acre or at the rate of Rs. 2,48,630.20 per Hectare.

7. Before the Reference Court, the claimants have filed their own documents. The claim of the claimants was that the land value is Rs. 15 Lakhs per Acre and therefore they should have been paid Rs. 15,000/- per Cent. The documents relied on by them, namely Ex.C.1 to C.8 were all various sale deeds, which admittedly came into being before the Section 4(1) Notification was issued and were more closer to the Section 4(1) Notification unlike the data land relied on by the acquiring authority. In his oral evidence, wherein R.W.1 admitted that he did not even visit the lands in question and he was not sure whether the data land was comparable to the lands acquired. The Reference Court relied on the two documents, namely Ex.C.7 Sale Deed dated 20.12.1994 and Ex.C.8 Sale Deed dated 29.12.1994. Thereafter, the Reference Court, relying upon Ex.C.8, Sale Deed dated 29.12.1994 had arrived at the market rate on the finding that it was more comparable to the lands acquired.

8. On the basis of the contention raised by the acquiring authority, the court gave 40% deduction towards development charges. This was on the plea that they will have to develop the land by forming approach road, electricity supply and providing drainage channels. Though, it was contended that 65% deduction should be given, the court below after referring to certain legal precedents and on the claim made by the authority fixed 40% deduction towards development charges. It recorded a factual finding that the land in Ex.C.8 and the acquired land are of the same quality and tharam and it is more closer to the acquired land and a comparable land. It is under these circumstances, the Reference Court fixed the market rate at Rs. 4,77,600/- per Acre and also awarded the other statutory dues regarding solatium, additional compensation and interest. Similar judgment was pronounced in respect of the other LAOPs on the same day. As set out above, in LAOP No. 57 of 1997 and batch cases (in respect of 20 LAOPs) by a common judgment dated 13.8.2007, the same rate was fixed. In ordering the said compensation, the court below also took note of its earlier

judgments, which were marked as Exhibits.

9. The contention raised by Mr. V. Ravi, learned Special Government Pleader (AS) was three-fold. The learned Special Government Pleader took pains to explain that the authorities have undertaken the exercise of considering the sale transaction in respect of 1091 sale transactions which took place in the preceding three years and hence the Reference Court cannot dislodge the statistical data provided by the acquiring authority covered by Ex.R.2. The Reference Court was not correct in stating that it was their burden to disprove the documents filed by the claimants. He also referred to a passage, where the court below made a statement that Ex.C.7 and Ex.C.8 cannot be omitted, unless the acquiring authority proves by evidence that they were got up documents for the purpose of this case. This finding recorded by the Reference Court cannot be torn out of context. While appreciating the documentary evidence placed before it, such comment was made by the Reference Court. The Reference Court never shifted the burden on the State to justify the compensation.

10. However, it must be noted that the Supreme Court vide its judgment in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, , after laying out certain guidelines for fixing the market rate of compensation, in paragraphs 4 (1) and 4(3) had observed as follows:

4. 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.

(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.

11. The Supreme Court had also made clear that a reference is not an appeal. Equally the burden lies on the authorities to justify before the Reference Court the compensation awarded by them and convince the court by producing necessary data. Merely relying upon the statistical data cannot make the Reference Court to arrive at a just compensation by finding out the market rate. In the present case, the claimants have proved to the satisfaction of the Reference Court by producing necessary documents, which are relevant to the issue on hand and convinced the court about enhancing the compensation to which they are entitled to.

12. The learned Special Government Pleader also submitted that the court below was not justified in awarding 40% development charges and it ought to have provided 65%. In this context, it is necessary to refer to the judgment of the Supreme Court *Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others*, . In that case, the Supreme Court held that for the

purpose of determining development charges, the purpose for which the lands acquired also will be a relevant factor and in some cases, there may not be any necessary to award deduction towards development charges.

13. The Supreme Court again in *Kanta Devi and Others Vs. State of Haryana and Another*, had also held that the normal rate of deduction can be 1/3. If there is any other requirement, that has to be proved to the satisfaction of the court. In the present case, the Reference Court considered the claims of both parties and fixed the deduction towards development charges at the rate of 40%. Though Mr. V. Ragavachari, learned Counsel for the claimants contended that 40% is on a higher side, in the absence of appeals by the land owners, this Court is not inclined to go behind the percentage fixed by the Reference Court. It is suffice to state that 40% deduction is more than the requirement.

14. The next submission made by the learned Special Government Pleader was that when the acquisition is for a common purpose, this Court cannot go on the basis of tharam or quality of soil. It was erroneous for it to determine the market rate. Though there is no quarrel with the proposition advanced by the learned Special Government Pleader, in the present case the acquisition is undoubtedly for formation of SIPCOT (Phase II), since Phase-I was already under operation and the entire lands were to be used only for industrial purpose. In the present case, the Court took note of the market rate, which is revealed by Ex.C.8 and adopted an uniform rate in respect of all the lands. It must be noted that the Supreme Court in the latest judgment in *Special Land Acquisition Officer Vs. Karigowda and Others*, had held the Reference Court is also empowered to take note the value of the lands in adjoining villages and cannot go into a minute determination on such issues. The purpose of such acquisition and the unity of development can be a relevant factor. In this context, the following passages found in para 75 to 77 can be usefully reproduced:

75. It is a settled principle of law that lands of adjacent villages can be made the basis for determining the fair market value of the acquired land. This principle of law is qualified by clear dictum of this Court itself that whenever direct evidence i.e. Instance of the same villages are available, then it is most desirable that the court should consider that evidence. But where such evidence is not available court can safely rely upon the sales statistics of adjoining lands provided the instances are comparable and the potentiality and location of the land is somewhat similar. The evidence tendered in relation to the land of the adjacent villages would be a relevant piece of evidence for such determination. Once it is shown that situation and potential of the land in two different villages are the same then they could be awarded similar compensation or such other compensation as would be just and fair.

76. The cases of acquisition are not unknown to our legal system where lands of a number of villages are acquired for the same public purpose or different schemes but on the commonality of purpose and unite development. The parties are expected to place documentary evidence on record that price of the land of

adjoining village has an increasing trend and the court may adopt such a price as the same is not impermissible. Where there is commonality of purpose and common development, compensation based on statistical data of adjacent villages was held to be proper. Usefully, reference can be made to the judgments of this Court in *Kanwar Singh v. Union of India* and *Union of India v. Bal Ram*.

77. In this regard we may also make a reference to the judgment of this Court in *Kanwar Singh v. Union of India* where sale instances of the adjacent villages were taken into consideration for the purpose of determining the fair market value of the land in question and their comparability, potential and acquisition for the same purpose was hardly in dispute. It was not only permissible but even more practical for the courts to take into consideration the sale statistics of the adjacent villages for determining the fair market value of the acquired land.

(Emphasis added).

15. The last submission made by the learned Special Government Pleader was that Ex.C.7 and C.8 are sale of small plots of the lands and that should not have been made the basis for determination of market value. It is not as if that the exemplar of sale of small plots of lands can never be considered for determination of market value. This position of law has been clarified by the Supreme Court in *Rishi Pal Singh and Others Vs. Meerut Development Authority and Another*, wherein the Supreme Court has held that if there is acquisition of large tracts of land in the absence of other reliable data, exemplars of small plots can be considered for determination of market value. In such cases, exemplars of sale of small plots of land can be considered after making adequate discount. In this case, the acquiring authority though had the data on 1091 sale transactions for the reasons best known to them, they ignored many of the relevant data in arriving at the compensation by giving trivial reasons. The Court below was forced to accept the evidence of the claimants and accepted Ex.C.8 as the true indicator of the market value of the land, which was acquired. The Court below rejected the exemplar of the data land produced by the acquiring authority on the ground that it is not comparable and that it was located at the distant place, whereas Ex.C.8 is more closer to the acquired land.

16. Under the circumstances, this Court is not inclined to entertain the well considered judgments dated 13.6.2007 in three batches and the last judgment dated 13.8.2007, wherein its own earlier award was taken note of. Hence, all the Appeal Suits stand dismissed. In view of the peculiar circumstances of the case, the parties are allowed to bear their own costs. It is also made clear that though a common judgment is rendered in respect of all the appeals, the learned Special Government Pleader (A.S.) and the learned Standing Counsel for SIPCOT are entitled to get separate set of fees in respect of each appeal.

17. Mr. Raghavachari, learned Counsel for the respondents states that in A.S. No. 429 of 2008 filed against LAOP No. 90 of 1997, the respondent/claimant M. Sowdammal died even before the award passed by the Reference Court. As this

Court had only confirmed the finding of the court below, it is suffice that the appeal was also dismissed on merits. It is for the legal representatives of the respondent M. Sowdammal to work out their rights by executing the judgment of the Reference Court.