

(2007) 11 MAD CK 0214

In the Madras High Court

Case No : A.S. No's. 472 to 482, 513 to 517, 518 to 527 and 660 to 675 of 2004 and 60 to 64, 75 to 95, 97 to 101, 131 to 146, 147 to 163, 166 to 197, 201 to 218, 219 to 229, 232 to 241, 243 to 258, 259 to 278, 279 to 304, 305 to 327, 328 to 342, 347 to 364, 370 to

The Special Tahsildhar, Land Acquisition, Unit-1

APPELLANT

Vs

Thaiveesraj and Others

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 33
Land Acquisition Act, 1894 — Section 18, 4(1), 53

Citation : (2008) 1 CTC 511 : (2008) 1 LW 1029 : (2008) 2 MLJ 1000

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : So. Paramasivam, Additional Govt. Pleader, for the Appellant; A. Rajendran, for Respondent Nos. 1 to 7 and M.K. Ramakrishnan, for the Respondent

Judgement

G. Rajasuria, J.—A.S. No. 97 of 2005 has been filed to get set aside the judgment and decree passed in L.A.O.P. No. 15 of 1997 dated

29.01.2003 by the learned Principal Subordinate Judge, Thanjavur and accordingly, other appeals have also been filed with the prayers

respectively. A.S(MD) Nos. 164 to 169 of 2007 have been filed for enhancement of compensation as the Sub Court rejected the prayer for

enhancement in toto.

2. The facts giving rise to the filing of these batch of appeals would run thus:

The publication of the notifications u/s 4(1) of the Land Acquisition Act were made as under:

Sl. No. A.S. Nos. R.C. No. Date of 4(1) Award No. & Dated Land Value Fixed by

Notification the Sub Judge, Thanjavur.

(Per Cent)

1. 97 to 101/05 5/1991 05.12.1991 5/1994 - 21.07.1994 Rs. 1,176/-
2. 243 to 258/05 20/1991 30.01.1992 17/1994 - 30.11.1994 Rs. 1,176/-
3. 131 to 146/05 12/1991 09.06.1992 3/1995 - 05.06.1995 Rs. 1,176/-
4. 370 to 383/05 54/1991 03.01.1992 19/1994 - 29.12.1994 Rs. 1,176/-
5. 460 & 461/05 180/1991 08.04.1992 13/1994 - 22.10.1994 Rs. 1,176/-
6. 219 to 229/05 84/1991 03.04.1992 18/1994 - 30.11.1994 Rs. 1,176/-
7. 259 to 278/05 64/1991 25.12.1991 14/1994 - 18.11.1994 Rs. 1,176/-
8. 279 to 304/05 44/1991 01.02.1992 7/1994 - 21.10.1994 Rs. 1,176/-
9. 305 to 327/05 35/1991 30.01.1992 13/1994 - 18.11.1994 Rs. 1,176/-
- 10 347 to 364/05 79/1991 25.12.1991 10/1994 - 04.11.1994 Rs. 1,176/-
- 11 166 to 197/05 65/1991 25.12.1991 5/1994 - 05.10.1994 Rs. 1,176/-
- 12 401 to 416/05 133/1991 10.04.1992 14/1994 - 22.10.1994 Rs. 1,176/-
- 13 417 to 431/05 134/1991 08.04.1992 20/1994 - 31.01.1995 Rs. 1,176/-
- 14 75 to 95/05 130/1991 06.04.1992 17/1994 - 16.12.1994 Rs. 1,176/-
- 15 513 to 517/04 135/1991 08.05.1992 22/1994 - 05.05.1995 Rs. 1,176/-
- 16 201 to 218/05 132/1991 02.04.1992 10/1994 - 03.10.1994 Rs. 1,176/-
- 17 518 to 527/04 75/1991 20.02.1992 21/1994 - 20.02.1995 Rs. 1,176/-
- 18 60 to 64/05 75/1991 20.02.1992 21/1994 - 20.02.1995 Rs. 1,176/-
- 19 660 to 675/04 76/1991 20.02.1992 8/1994 - 16.09.1994 Rs. 1,176/-
20. 472 to 482/04 92/1991 06.04.1992 12/1994 - 22.10.1994 Rs. 1,176/-
21. 432 to 459/05 122/1991 10.06.1992 1/1995 - 05.04.1995 Rs. 1,176/-
22. 147 to 163/05 42/1991 14.01.1992 13/1994 - 21.10.1994 Rs. 1,176/-
23. 232 to 241/05 138/1991 12.05.1992 16/1994 - 16.12.1994 Rs. 1,176/-
24. 328 to 342/05 53/1991 14.01.1992 9/1994 - 23.09.1994 Rs. 1,176/-

for acquiring a vast tract of a land for setting up Air Force Station at Thanjavur. Consequently, necessary steps were taken as per law for acquiring

the lands and ultimately, the relevant awards emerged.

3. Being aggrieved by and dissatisfied with, such passing of awards, quantifying

the compensation various references u/s 18 of the Land

Acquisition Act, have been made to the Principal Sub Judge, Thanjavur. Consequently, the Principal Sub Judge assessed the value of the land and

ultimately, enhanced the compensation to the tune of Rs. 1,176/- (Rupees One Thousand One Hundred and Seventy Six only) per cent from the

one assessed by the Land Acquisition Officer.

4. Consequently, the Land Acquisition Officer preferred several appeals before this Court and this Court vide judgments dated 23.03.2001, in

A.S. Nos. 519 and 520 of 1999 and in A.S. Nos. 416 to 418 of 1999, confirmed the judgment of the learned Sub Judge in assessing the value of

the land at Rs. 1,176/- per cent ultimately. The Government preferred Special Leave Petitions vide Nos. 24578-24579 of 2004 before the

Honourable Apex Court and in that the Honourable Apex Court passed order as under:

...Mr. N.N. Goswamy, learned Senior Counsel, appearing on behalf of the petitioner submitted before us that though he is not in a position to

challenge the statements contained in the impugned judgments of the High Court, which make it apparent that the judgments and orders were

passed on concession or by consent, there are large number of other cases of acquisition where the quantum awarded by the Reference Court has

been challenged before the High Court. Those matters are still pending before the High court and if the same principle of valuation is applied, the

petitioner will suffer great injustice. His contention is that the lands in respect of which cases are still pending before the High Court are situate far

away from the land in respect of which sale deed had been produced as Annexure A-9, as an exemplar as well as the lands subject matter of the

impugned judgments. The law is fairly well settled that the Court must value the land acquired having regard to its value applying the statutory

guidelines. Lands lying far away from the lands in respect of which sale deed is produced by way of evidence, cannot have the same value. The

value of such lands may be more or less depending upon their potentiality and location and having regard to other relevant considerations which the

court has to keep in mind under the provisions of the Land Acquisition Act.

We appreciate the submission urged on behalf of the petitioner and, therefore, we clarify that in all matters still pending before the High Court, it

will be open to the petitioner to challenge the Award of the Reference Court of such grounds as it may be advised, and without anything more, the impugned judgments in these special leave petitions will not be treated as a precedent.

5. These appeals pending before this Court were not the subject matter of the SLP before the Honourable Apex Court. The Government by way of precaution made representation before the Honourable Apex Court and got direction as aforesaid that what the High Court decided on the earlier cited judgments need not be followed as precedents for deciding the present appeals.

6. The learned Counsel for the respondents/land owners would submit that the present appeals cannot be treated as a separate group from that of the appeals decided as per the aforesaid cited judgments of the High Court and that there should not be any discrimination among the equals.

7. The perusal of the judgment of the Honourable Apex Court would demonstrate that it is not a mere decision of the Honourable Apex Court on facts concerning a different type of case, but specifically in relation to existing appeals now under consideration before this Court, such directions were issued to the effect that these appeals shall be dealt with independently de hors the judgments passed by this Court earlier as cited supra.

Hence, in such a case, this Court has to make an independent approach in these appeals.

8. Accordingly, heard both sides.

9. The Land Acquisition Officer preferred appeals on the following main grounds:

The lower Court committed an error in fixing the market value on Sq. ft basis, even though, the lands acquired are situated at Panchayat limit. The

land value should not be assessed on cent basis also. The lower Court relied on sample sale deeds relating to smaller extent of lands sold for

exorbitant price. There is nothing to show that the house plots sold under the sale deeds were relied on by the claimants. Those sale deeds were

not proved by examining the vendor and the vendee concerning those sale deeds. The Reference Court has not properly made deductions towards

development charges. The charge has not followed the belt system also. A mere reading of grounds of appeal would clearly demonstrate that the

Land Acquisition Officer never adverted to the fact that the property is situated in

a developing area.

10. At this juncture, I would like to highlight that the grounds of appeal are one sided as they are oblivious to the existing facts and situations which

prevailed at the time of the Land Acquisition in this case and the fact that the large mass of land was acquired en block for setting up Air Force

Station.

11. The gist and kernel of the earlier approach by this Court was to the effect that the Court took into account Ex.C.14, the sale deed dated

01.03.1991 executed by one Balusamy in favour of Dhanalakshmi, in R.S. No. 168/8 transferring an extent of 2,400 sq.ft as a plot for a sum of Rs.

10,800/- (Rupees Ten Thousand and Eight Hundred only). In other words as per Ex.C.14, the land to an extent of one cent was valued at Rs.

1,960/- and out of that 40% was deducted towards development charges and the land value was arrived at Rs. 1,176/- per cent and

consequently, the awards were passed with usual statutory entitlements.

12. The topo sketch relating to the entire land concerned marked in different colours, was relied on by both sides to highlight the location and other

features. In fact, Ex.C.14, which was taken as a basic document for assessing the value and passing the award, is situated in S. No. 168 just some

what nearer to the Thanjavur - Pudukkottai State Public Highway. The said Ex.C.14, is obviously dated 01.03.1991 whereas in the same year,

Section 4(1) notifications were made as aforesaid. As such, there is some force in the contention of the learned Government Pleader that Ex.C.14

might have been emerged for such smaller extent purely for the purpose of getting higher compensation.

13. Furthermore, I am of the view that Ex.C.14 is referred to a smaller extent referring as plot, but the area intended to be acquired is a vast piece

of agricultural land for Air Force Station at Thanjavur. Hence, in such a case, the normal rule is that when a sale deed referring to a similar extent of

plot is taken as sample one with regard to the vast agricultural land, some reduction should be made from that sample value. Since there is weighty

objections put forth on the Government side as against Ex.C.14, I am of the considered opinion that Ex.C.13, the sale deed dated 13.03.1989

which emerged almost two years anterior to such Section 4(1) notifications, could be relied on. Keeping these factors in mind, on scrutiny of

records, it is found that among the documents already marked, Ex.C.13 dated 13.03.1989 appears to be a document which would be beyond

controversy for the reason that it emerged almost two years anterior to Section 4(1) notifications. Hence, on the side of the Government, there

cannot be any objection to it as though it is a cooked up document for getting higher compensation.

14. Ex.C.13, relates to the sale of a plot of 2,400 sq.feet for a sum of Rs. 9,600/- so to say, at the rate of Rs. 4/- per sq.ft in the S. No. 168/1

which forms part of the vast land acquired and accordingly, if worked out as per Ex.C.13, the value per cent of land would come to Rs. 1,744/-

(Rupees One Thousand Seven Hundred and Forty Four only). As such two years had elapsed after the emergence of Ex.C.13 and then only,

Section 4(1) notifications emerged. It is therefore clear that during the year 1991, the value of the land in all probabilities might have got escalated.

A mere perusal of the sketch and the relevant available records speaks that it is a fast developing area. Considering the purpose of acquisition for

setting up the Air Force Station, having the entire land as the one block, there need not be any discrimination relating to the various portions of the

same one block of land. It is also evident and obvious that the land acquired had the potentiality of becoming plots as the sample sale deeds filed

on the side of the claimants itself would demonstrate the same. The fact also remains that Tamil University is already existing in the vicinity and the

National Highway namely Thanjavur - Pudukkottai road is cutting across the huge mass of land acquired by the Government under these land

acquisition proceedings.

15. The Sub Court in its common judgment relied on the earlier judgment of this Court dated 23.03.2001, in A.S. Nos. 519 and 520 of 1999, in

fixing the value at Rs. 1,17,000/- per acre in connection with the appeals filed by some land owners relating to the same area which happened to

be the subject matter of one and the same set of notification.

16. The Sub Court relied on Ex.C.3, the copy of the judgment of this Court dated 23.03.2001. De hors that, independently the Sub Court also

gave its finding that the land acquired is in a developing area as the State Highway is running across the said land; Tamil University is situated very

near to it and the Tamil Nadu Paddy Research Institute are all situated. This

Court in the judgment dated 23.03.2001, in A.S. Nos. 519 and 520 of 1999, at paragraph No. 7 held as under:

7. It is evident from a perusal of the records that Tamil University, Paddy Processing Research Centre, Thanjavur Textiles, Tantex, Kamala

Subramaniam Matriculation School and the present Air Force Station, apart from other residential areas are very nearer to the acquired lands

which situate in the main road referred to above. The said facts would lead to conclude that there is potentiality for the acquired lands from the

claimants, by the Government of Tamil Nadu. The market value has to be arrived at not only taking into consideration of the potentiality of the land

but also the purpose for which the said lands were acquired. As already pointed out, the piece of land sold under Ex.A.9 dated 01.03.1991 had

fetched Rs. 4.50 per square foot.

17. The Land Acquisition Officer also in the counter filed before the Sub Court would state that the aforesaid Institutions along with Matriculation

Schools and Industrial Workers Quarters are all situated about 2 - 3 Kms away from the land acquired and that the land acquired is situated 5

Kms from the Thanjavur Municipal area. Even assuming for argument sake, what the Land Acquisition Officer has stated is true, a distinction is

sought to be made by the Land Acquisition Officer relating to the land acquired from the developed area cannot be treated as adverse factors. The

land acquired is a vast tract of land and in such a case, the developed areas which are allegedly 2 - 3 Kms away from the land acquired, cannot be

taken as adverse factors. Thanjavur Municipality is situated with 5 Kms and that should be taken as a plus point in favour of the appellant and not

an adverse one.

18. The Sub Court as well as the High Court clearly and categorically pointed out that the sample deeds relied on by the Land Acquisition Officer

for assessing the market value are having no proximity to the land acquired and that the fixation of Rs. 220/- per cent was totally without any basis.

The alleged thirty sample sale deeds which emerged within three years anterior to Section 4(1) notifications, as per the findings of the Sub Court as

well as the High Court were not reflecting the true market value. Those thirty sale deeds as per the earlier findings were ignored. Even during

arguments before me, on the Government side, it has not been shown as to how

the value arrived at by the Land Acquisition Officer was in order and that too ignoring the sale deeds relied on by the claimants. As such, the increase in the value of land would have been more during the year 1991 from that of the year 1989 to which Ex.C.13 relates. Robust common sense warrants to take the value for smaller extent in the year 1989, as to yardstick for assessing larger extent in the year 1991 in the same vicinity. If in the year 1989, the yardstick must be lesser than what is contemplated in Ex.C.13 for assessing larger extent, but for choosing the yardstick in the year 1991, for larger extent, no lesser amount need be taken in view of increase in value of smaller extent. As such, accordingly if worked out, per cent it comes to the same value of Rs. 1,744/- for assessing the larger extent in the year 1991 during which Section 4(1) notifications were published.

19. Both sides are not in a position to point out that there are other sale deeds in the same vicinity which would reflect the true market value of the land before the publication of Section 4(1) notifications. Even though there is larger extent of land situated to the east of the said Public Highway, clinching documents are not available and documents relating to S. No. 168 situated to the west side of the road alone are available and among those documents, Ex.C.13 is chosen, whereas earlier Ex.C.14, was chosen by this Court while delivering judgments as aforesaid and that turned out to be no more precedent in view of the direction of the Honourable Apex Court as set out supra.

20. This Court is fully aware of the fact that normally sample sale deed should relate to a land in the same vicinity and near the place where the lands are acquired. Here, all the aforesaid notifications were published relating to one block of land for setting up Air Force Station and in such a case, taking into account the purposes of acquisition, i.e., only one purpose, one of the same type of valuation can be taken up and there need not be any discrimination. In fact, the land in S. No. 168 forms part of the aforesaid Section 4(1) notifications. Hence, in such a big mass of land, when the area covered under the sample sale deed Ex.C.13 has also been acquired as part of the larger area, then there cannot be any plausible objection.

21. In this connection, the learned Counsel for the claimants would cite the

decision of the Honourable Apex Court in K. Periasami Vs. Sub-

Tehsildar (Land Acquisition), and develop his argument to the effect that there should not be any discrimination in awarding the compensation

between two Benches of the same High Court. Such an argument cannot be countenanced in view of the order of the Honourable Apex Court in

SLP Nos. 24578-24579 of 2004, referred to supra.

22. The learned Counsel for the claimants could cite the decision of the Honourable Apex Court in Smt. Lila Ghosh (dead) through LR v. The

State of West Bengal reported in Supreme Court Judgments on Land Acquisition (1994-2004) Volume II page No. 2053. An excerpt from it,

would run thus:

5. We are of the opinion that this was not a fit case for application of the belting method. The acquisition was of land on which a film studio stood.

The acquisition was for the purposes of the film studio. It was a compact block of land which was acquired for a specific purposes. The land was

not acquired for development into small plots where the value of plots near the road would have a higher value whilst those further away from may

have a compact blocks is acquired the belting method would not be the correct method.

As such, it is clear that the aforesaid observations made by the Honourable Apex Court is squarely applicable to this case also.

23. The catena of decisions relating to the compensation in land acquisition cases would mandate that the sales relating to small pieces of lands, if

they are genuine and reliable and comparable to the land acquired, the same could be relied on. In this regard, the decision of the Honourable

Apex Court in Smt. Basavva and others Vs. Special Land Acquisition Officer and others, , could rightly be relied on as cited by the learned

Counsel for the claimants. An excerpt from it, would run thus:

3. Having given our consideration, the question that arises for consideration is whether the High Court has committed any error of law in fixing the

compensation at the rate of Rs. 56,000/- per acre? On the principle of deductions in the determination of the compensation, this Court in K.

Vasundara Devi Vs. Revenue Divisional Officer (LAO), has considered the entire case law and has held that the Court, in the first instance, has to

consider whether sales relating to smaller pieces of lands are genuine and

reliable and whether they are in respect of comparable lands. In the event the Court finds that such sales are genuine and reliable and the lands have comparable features, sufficient deduction should be made to arrive at the just and fair market value of large tracts of land. The time-lag for real development and the waiting period for development are also relevant consideration for determination of just and adequate compensation. Each case depends upon its own facts. For deduction of development charges, the nature of the development, conditions and nature of land, the land required to be set apart under the building rules for roads, sewerage, electricity, parks, water etc. and all other relevant circumstances involved are to be considered. In this case, the facts recorded by the High Court are that Ex.P.10 sale deed is dependable sale but it is in respect of a small plot of land situated at a distance of more than 1 Km. It is also found that the land in the area is not developed and there is no development in those lands though the lands are capable of being used for non-agricultural purpose. On those findings the High Court held that the market value under Ex.P.10 cannot form the sole basis but keeping in view the developments the lands are capable of fetching compensation at the rate of Rs. 56,000 after deducting 65%. For developmental charges, that deduction between 33-1/3 to 53% was held to be valid by this Court in several judgments. In Vasundara Devi case 63% deduction was upheld. In view of the fact that development of land would have taken years, the High Court has deducted another 12%. Obviously, the High Court kept in view the fact that the lands under Ex.P.10 were situated at far-flung places from the lands under acquisition and since the land takes long time for development it has given additional deduction of 12%, i.e. $53 + 12\% = 65\%$ in determination of the compensation. On the basis of the rationale referred to above, the principle adopted by the High Court cannot be said to be illegal. Thus considered, we hold that there is no justification for interference in the finding recorded by the High Court or to further increase the compensation.

24. Relating to the deduction is concerned, previously 40% was deducted towards the developmental charges. While the Court exercising the power to effect deduction towards development expenditure, it should take into account the purpose for which the land is being acquired and it has

become a trite proposition of law over which there is no controversy. For setting up the Air Force Station, the ground should be levelled and the

major part of the area should be cemented and various other amenities should be installed before putting that land into use as Air Force Station.

25. Hence, in this view of the matter, adhering to the decision of the Honourable Apex Court in Smt. Basavva and others Vs. Special Land

Acquisition Officer and others, , I am of the considered opinion that 53% should be deducted from the value of the land arrived at Rs. 1,744/- per

cent. As such, the following formula emerges:

The value of the

land acquired - Rs. 1,744.00 per cent

(-)

53% deduction towards

development charges - Rs. 924.32 per cent

The net value of the land

for awarding compensation - Rs. 819.68 per cent

26. Accordingly, the net value of the land for awarding compensation after deducting 53% towards developmental charges, is arrived at Rs.

819.68/- per cent which could be rounded to Rs. 820/- per cent (Rupees Eighty Hundred and Twenty only). Accordingly, if worked out, the net

value of the land per acre would come to Rs. 82,000/- (Rupees Eighty Two Thousand only).

27. The claimants are also entitled to statutory entitlements over which there is no dispute. For the enhanced amount in the award, the claimants are

entitled to get solatium as well as interest on the additional amount.

28. The learned Counsel for the claimants cited the decision of the Division Bench of this Court in Sub Collector, Padmanabhapuram v. R.S.

Raveendran reported in 2006-2-L.W.102 and an excerpt from it, would run thus:

10. It is also relevant to note that Section 53 of the Land Acquisition Act, 1894 makes it clear that the provisions of Code of Civil Procedure,

1908 are applicable to all proceedings initiated under the said Act (Land

Acquisition Act). In view of the same, it is not in dispute that Order 41, Rule 33 C.P.C. is applicable to the land acquisition proceedings. Inasmuch as the appeal is also continuation of the original proceedings, the said provisions are applicable to the appeals also and in view of the law laid down by the Apex Court as well as this Court in *Sunder v. Union of India*, interest is payable for the solatium amount, and in order to render substantial justice, we accept the request of the counsel for respondents/claimants and hold that the solatium amount also carries interest at the same rate as applicable to the enhanced compensation and additional amount.

29. As such, adhering to the aforesaid decision, the claimants are entitled to appropriate interest on the solatium as well as the additional amount awarded.

30. In respect of A.S. Nos. 164 to 169 of 2007, filed by the claimants, the same rationation adhered to the appeals filed by the Land Acquisition

Officer, is applicable and accordingly, the compensation amounts are assessed and the respondents therein shall pay proportionate costs to the

claimants in those appeals. The Government shall deposit the amount in the interest of both sides within a period of six months from this date.

Accordingly, all the appeals are disposed of by this common judgment. Consequently, connected Miscellaneous Petitions are closed.