
(2009) 11 MAD CK 0018

In the Madras High Court

Case No : Appeal Suit No's. 177, 178, 183, 184, 191, 192, 193, 196, 235, 604 to 628, 662 to 671, 674 to 693, 695 to 704, 707 to 716, 719 to 732, 740 to 749, 759 to 766, 773 to 800 834 to 847 of 2006, 3 to 34, 38 to 59, 65 to 70 of 2007, 331 to 371 of 2008 and M.P.

The Special Thasildar (LA), SIPCOT Unit	APPELLANT
Vs	
Prema, Chandrasekaran and The Managing Director, SIPCOT	RESPONDENT

Date of Decision : 30-11-2009

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (2010) 1 LW 24

Hon'ble Judges : T.S. Sivagnanam, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V. Ravi, Special Government Pleader, for the Appellant; G. Karthikeyan, for 1st Respondent in A.S. Nos. 331 to 340, 342 to 371 of 2008, 604 to 628, 662 to 671, 684 to 693, 695 to 703, 704 to 716, 719 to 732, 740 to 749, 773, 775 to 797, 799, 834 to 847 of 2006 and A.S. Nos. 3 to 34 of 2007, 39 to 55, 57, 58, 59 of 2007, 65 to 70 of 2007 and for Respondents 1 to 3 in A.S.N. 341 of 2008, V.K. Rajagopalan, for 1st Respondent in A.S. Nos. 177, 178, 183, 184 191, 192, 193 and 235 of 2006 and for Respondents 1 and 2 in A.S. No. 196 of 2006, S.R. Rajagopal, for 1st Respondent in A.S. No. 38/2007, Arun Subramaniam, for Respondents 1 and 2 in A.S. Nos. 759 to 766 of 2006 and first Respondent in A.S. No. 674 to 683 of 2006 and M. Devaraj, for SIPCOT in all Appeal Suits, for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—The Acquisition Officer, SIPCOT, Irrungattukottai Scheme, Sriperumpudur, is the Appellant. The respective

Respondents/claimants are all the owners of the lands which were acquired at the instance of the Appellant.

2. In this common judgment we cover all the appeals in which three judgments viz., the judgment in L.A.O.P. No. 1323 of 2002 with 208 cases

covered by judgment dated 7.10.2005 passed by Fast Track Court IV,

Poonamallee; judgment dated 30.10.2006 concerning 22 cases

commencing with L.A.O.P. No. 88 of 2005 passed by the Additional District and Sessions Judge (Fast Track Court V), Chengalpattu; and the

judgment dated 20.12.2007 passed by the Subordinate Judge, Kancheepuram, in L.A.O.P. No. 124 of 2007 etc. batch are under challenge.

3. As the lands were all contiguous lands and the acquisition proceedings were common in respect of the lands covered by the above three

judgments, we propose to pass this common judgment.

4. (i) As far as the judgment dated 7.10.2005 passed in L.A.O.P. No. 1323 of 2002 etc. batch, is concerned, while the Acquisition Officer fixed

the value at Rs. 300/- per cent, the Reference Court enhanced it to Rs. 3,500/- per cent with 30% solatium.

(ii) In the judgment dated 30.10.2006 passed in L.A.O.P. No. 88 of 2005 etc. batch, while the Acquisition Officer fixed the value at the same rate

viz. Rs. 300/- per cent, the Reference Court enhanced it to Rs. 4065/- with 30% solatium and other additional benefits.

(iii) In the judgment dated 20.12.2007 in L.A.O.P. No. 124 of 2007 etc. cases, while the Acquisition Officer fixed the value at Rs. 300/- per cent

as in other cases, the Reference Court enhanced it to Rs. 4900/- per cent with 30% solatium etc.

5. The following issues arise for consideration:

(1) What is the market value to be fixed for the purpose of working out the compensation?

(2) To what relief the claimants are entitled?

6. In all the three judgments, while rejecting the value of the data land, respective Reference Courts had taken the value of sale deed dated

9.9.1994 in respect of sale of dry land of one acre and 48 cents situated in Survey No. 105/50. It is relevant to note that the various lands

acquired at Irrungattukottai village are all situated in Survey Nos. 99 to 170 and Survey No. 105/15 was also one of the lands covered by the

acquisition.

7. Assailing the above judgments of the Reference Court, Mr. V. Ravi, learned Special Government Pleader (A.S) in his submission, contended

that the sale deed dated 9.9.1994 marked as Ex.C.2 in the judgment dated 7.10.2005, which has been uniformly followed by all the three

Reference Courts, ought not to have been accepted by the Court below. According to the learned Special Government Pleader, the purchase effected under the said Ex.C.2 should not have been accepted without any supporting evidence at the instance of the claimants to show that the said sale was genuine one. Learned Special Government Pleader also contended that Ex.RB-1 which pertains to the data land, related to the sale of 4.11 acres in Survey Nos. 122 and 123 which sale was executed on 6.2.1996 while the acquisition was on 27.9.1996 and therefore, the value mentioned in the said sale deed viz. Rs. 300/per cent alone should have been applied. Learned Special Government Pleader then contended that the value as mentioned in Ex.C.2 cannot be accepted since the said Ex.C.2 related to a land situated just abutting the National Highway as disclosed in Ex.R2 = RB4 sketch and therefore, the Court below ought not to have applied the value uniformly in respect of all the lands acquired as the lands were spread over an area of 1 to 4 K. Ms. as between the land covered by Ex.C.2 and the lands which are located far away to the acquired lands. Learned Special Government Pleader therefore, contended that even while relying upon Ex.C.2 the Courts below ought to have reduced the value taking into account the location of various tracts of lands which were far away from the National Highway.

8. The Special Government Pleader then contended that there was absolutely no evidence to show that there was any development in and around the acquired land, that the various exhibits covered by Exs.C.3 to C.22 which are stated to be housing plots cannot be taken to have shown or proved any development adjacent to the acquired lands at the time of acquisition. In other words, learned Special Government Pleader contended that merely because some lay out of housing plots made by different private parties by itself cannot be said to have added any development to the area in which acquired lands were situated, more particularly, when no houses have been constructed in the said plots. Learned Special Government Pleader therefore, contended that the Courts below ought to have granted maximum of 53% by way of development charges. In that context, learned Special Government Pleader pointed out that R.W.2 in his evidence has stated in detail as to how the acquired lands were developed later on after acquisition, by making a specific reference to R.W.3 where the details of such expenses occurred for the development of

the land.

9. As against the above submissions, Mr. G. Karthikeyan and Mr. V.K. Rajagopalan, learned Counsel appearing for the claimants in their

submissions stated that even as per the award it is mentioned that the acquired lands were best piece of lands available near Chennai and that most

of the lands acquired were allotted in favour of M/s. Hyundai Motors Limited for a very high value, that the Court below failed to give any

reasoning as to why various housing plots which were covered by documentary evidence were not taken into account to support the stand that the

area was already developed. Learned Counsel by referring to the deposition of R.W.1 -Tahsildar, contended that he himself admitted that out of

400 sale deeds which were taken into account by the Acquisition Officer, two-third of those sale deeds are housing sites. Learned Counsel

therefore, contended that when Ex.C.2 was two years prior to the acquisition viz. on 9.9.1994, the Court below was fully justified in having taken

the value of such sale for the purpose of determining the compensation. Learned Counsel however, contended that though they have not filed any

Cross-Objections, the development charges of 43 per cent deducted by the Court below in its order dated 7.10.2005 in L.A.O.P. No. 1323 of

2002 etc. batch, was on the higher side. Therefore, the percentage of development charges should be reduced to the normal rate of 33-1/3%.

Learned Counsel also contended that when the entirety of the land was sold to one single Company after acquisition, there is no question of

applying belt system of valuation for the purpose of compensation. It was also contended that a perusal of the acquired lands from different parties,

disclose that the acquisitions were all of smaller extent ranging from 300 sq.ft. to 1 acre. It is therefore contended that any further deduction by

way of development charges would cause prejudice to the claimants and therefore, the 43% deduction towards development charges applied in

the judgment dated 7.10.2005 calls for interference.

10. Learned Counsel for the claimants relied upon the decision reported in Bhimasha v. Land Acquisition Officer 2008 (10) S.C.C. 797; Atma

Singh (died) through LRs. and Others Vs. State of Haryana and Another, and Land Acquisition Officer and Revenue Divisional Officer V.

Ramanjulu 2005 (9) S.C.C. 594 in support of their submissions on reduction of

development charges. Learned Counsel for the claimants also

relied upon the decisions reported in Saibanna (dead) By LRs. v. Asst. Commr. and Land Acquisition Officer 2009 S.A.R. 935 and Revenue

Divisional Officer-cum-L.A.O. v. Shaik Azam Saheb Etc. 2009 S.A.R.(Civil) 308.

11. Reliance was placed upon the decision in Bhimasha v. Land Acquisition Officer 2008 (10) S.C.C.797 for the proposition that once the High

Court takes note of the fact of the case and the market value determined by it should have awarded higher compensation subject however, to the

payment of balance Court fee by the claimants.

12. As far as development charges are concerned in the first batch of cases decided in L.A.O.P. No. 1323 of 2002 etc. on the file of the

Additional District and Sessions Judge, Fast Track Court No. IV, Poonamallee, the Reference Court applied 43% towards development charges

and deducted it from the value of the land as per Ex.C.2. After deducting the development charges, the Reference Court fixed the land value at Rs.

3,500/- per cent. In the second batch of cases, the Reference Court deducted development charges at 40% of the value of the land under Ex.C.2

dated 9.9.1994. On that basis it worked out the cost of the land at Rs. 4,065/- per cent. In the third batch of cases, viz., judgment dated

20.12.2007 passed in L.A.O.P. No. 124 of 2007 etc., the Reference Court deducted 20% towards development charges. On that basis it arrived

the value of the land at Rs. 4,920/- and rounded it to Rs. 4,900/- per cent.

13. When we consider the submissions of learned Special Government Pleader as well as learned Counsel for the respective claimants, we find

that the consideration for fixing the value of the land by the Reference Court was restricted to the data land covered by Ex.RB1 dated 6.2.1996

and the claimants document covered by Ex.C.2 dated 9.9.1994. In so far as Ex.RB 1 is concerned, the said lands were situated in Survey Nos.

122 and 123, and the date of sale was on 6.2.1996. The extent of land sold was 4.11 acres. The total sale consideration was Rs. 1,23,300/-

which worked out to Rs. 300/- per cent. It is no doubt true that the said Ex.RB 1 was contemporaneous document which came into existence at

the same time when the acquisition came to be made viz. 27.9.1996. As far as Ex.C.2 is concerned, the said sale deed was dated 9.9.1994 and

the property was situated in Survey No. 105/15 and the extent of land conveyed

under the said document is 1 acre and 48 cents. The comparative consideration of the above referred two documents shows that Ex.C.2 is two years prior to the acquisition itself and the extent was not a small area. We have to keep in mind the acquisition was made by invoking emergency provisions of the Land Acquisition Act. We also perused Ex.C.2 and that was a sale by an individual in, favour of a Company. In fact, there is no indication in the said document that the sale was as between relations or the vendor and the purchaser were in any way connected with each other. There is also no allegations at the instance of the Land Acquisition Officer as to any clandestine deal in the execution of the said document or the transaction. In such circumstances, there is absolutely, no scope to hold that the said document was not genuine in order to exclude the same from consideration. As far as Ex.RB1 is concerned, even though the said document is of the relevant year 1996 itself, it was larger in extent. If genuine sale deed which came into existence two years prior to the acquisition, reveals the sale value at a sum of Rs. 6,150/- per cent, there is no reason to discard the same for the purpose of arriving at the value of the lands which came to be acquired. The only point which was argued against the said document was that the concerned Survey No. 105/15 was located just abutting the National Highway and therefore, the value of the land would have been on the higher side. On that score reliance placed upon the said document cannot be rejected. At best while taking the said value and apply the same in respect of acquisition of all other lands in that block is made, the Reference Court should have applied the principle of moderation by making a reason-able percentage of deduction in the value so that there can be no adverse interest either as against the land owners or the Acquisition Body. Such a moderation on the value of the land under Ex.C.2 will be necessitated, inasmuch as, the total acquisition in that block was 1829 acres. Therefore, when the land covered by Ex.C.2 was abutting the National Highway, the land situated at the far end of the same block which was subject matter of acquisition would not have fetched the very same price. The perusal of the judgment discloses that as between the land covered by Ex.C.2 and the far end of acquired lands, the distance was ranging from 1 to 4 Kilometres.

14. Taking note of the above facts into consideration, we are of the considered

view that reduction of 15% on the value of the land as per Ex.C.2 would meet the ends of justice.

15. On that basis when we worked out the value as stated earlier as per Ex.C.2, Rs. 6,150/- per cent, 15% of the said value works to Rs.

922.50. By deducting the said sum the value of the land can be safely fixed at Rs. 5,227.50. By fixing the land value at Rs. 5,227.50 we consider

the question relating to the allowable development charges. As per the judgment in the first set of cases dated 7.10.2005 in L.A.O.P. No. 1323 of

2002, the Reference Court took note of the fact that the acquisition was for the purpose of locating an industrial complex and that there was no

development in the said area except the fact that the lands were adjacent to a National Highway. In fact, learned Counsel for the Respondents

brought to our notice a copy of brochure published in the Website of SIPCOT dated 16.8.2007 which discloses that after the acquisition,

provisions have been made for water supply under the SIPCOT water supply scheme, provision of Sub-station inside the industrial park for power

supply, facilities for telephone connection from Sriperumpudur Exchange with other infrastructural facilities, such as roads, street lights, sewerage

system, Police Station etc. The location has been noted as 34 Kilometres from Chennai. Therefore, it is quite apparent that at the time of

acquisition the lands were all barren and every other development had to be effected by the Requisitioning Body after the acquisition. In fact

R.W.2 who is an officer of the Requisitioning Body in his evidence made a specific reference to Ex.RB 3 which is a statement containing expenses

incurred by the Requisitioning Body for effecting the development. Having regard to the said fact, there can be no two opinion that the lands had to

be developed right from the stretch in order to make the lands fit for being used as an industrial park.

16. When we examined the decisions relied upon by claimants themselves, the decision reported in 2009 S.A.R.(Civil), 935 supra, the Hon''ble

the Supreme Court while considering the issue relating to the development charges, has referred to an earlier decision of the Hon''ble the Supreme

Court in Kasturi and Others Vs. State of Haryana, wherein paragraph Nos. 8, 9 and 10 have been extracted which can be usefully referred to

herein and the same read as under:

8. This Court in *Kasturi and Others Vs. State of Haryana*, has extensively dealt with this aspect and observed in para 7 as under-

...It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally

1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations

depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to

develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or

hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but

that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the

area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for development purposes, must

show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his

land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting

the main road in the developed area, does not give the land the character of a developed area....

This Court in the said case also observed that there is a difference between a developed area and an area which is yet to be developed. The fact

that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a

building site or plot, particularly when vast tracts are required.

9. In substance, the ratio of the judgment in *Kasturi and Ors.* (supra) is that the deduction would depend on several factors, particularly the extent

of land in question, location of the said land and the proximity of the land from the municipal limits.

10. In the instant case, the land in question is within the municipal limits of Gulbarga city since 1965. The Taj Sultanpur village is located only at a

distance of 2-1/2 kms. from Gunj locality of Gulbarga City and, therefore, it is located within the close vicinity of Gulbarga City. The Taj Sultanpur

village is adjoining Shak Roza and Vakkalgera limits of Gullbarga city which are part and parcel of Gulbarga city for a long period. So the cost of

development is not likely to be very high. As laid down in K.S. Shivadevamma's case (supra) as a general rule that for laying the roads and other

amenities, 33-1/3% is required to be deducted.

17. In the first place, it will have to be stated that on the side of the claimants except stating that the lands were all abutting the National Highways,

no other submission was made relating to any other development. Mere reference to certain lay out formed in and around the acquired land by

itself, cannot be held to have developed the area for the purpose of assessing the development charges to be deducted. Admittedly, the acquired

lands are 34 kilometres away from the City of Madras. The lands were all barren at the time of acquisition. The evidence let in on the side of the

Requisitioning Body discloses that every other development came to be made after the acquisition, viz., laying of roads, street lights, water supply,

drainage facility, power supply, communication system, etc. Therefore, this is not a case where the normal Rule of deduction of 33-1/3% can be

applied. Having regard to the factors referred to above, we are convinced that the reduction of 43% as made by the Court below in the first set of

cases in the order dated 7.10.2005 in L.A.O.P. No. 1323 of 2002 etc. batch by the Additional District and Sessions Judge (Fast Track Court

No. IV), Poonamallee, is perfectly justified. Since we have found the said conclusion justified, on the same line of reasoning, development charges

fixed in the other set of orders namely, one covered by order dated 30.10.2006 in L.A.O.P. No. 88 of 2005 etc. batch by the Additional District

Judge, Fast Track Court V, Chengalpattu, and the third set of cases covered by the judgment dated 20.12.2007, by the learned Subordinate

Judge, Kancheepuram in L.A.O.P. No. 124 of 2007 were all to be uniformly fixed at the rate of 43% by way of development charges. Therefore,

when we apply the said percentage namely, 43% by way of development charges on the land value of Rs. 5,227.50 it works out to Rs. 2,247.80.

After deducting the said development charges, the value of the land works out to a sum of Rs. 2,979.70 which can be rounded up to sum of Rs.

3,000/- per cent.

18. As far as the decision reported in 2009 S.A.R 308 supra, is concerned in

paragraph 20, in the facts of the said case, the Honourable the

Supreme Court fixed the development charges at a lower rate. Therefore, that judgment can have no application to the facts of the cases on hand.

19. As far as the decision reported in 2005 (9) SCC 594 supra, is concerned the Hon"ble the Supreme Court held as under:

...Ordinarily, one-third deduction towards developmental charges would be made, but in these cases, having regard to the facts and circumstances,

particularly taking note of the fact that the lands are acquired for expansion of industrial estate, that too for the third phase, and also taking note of

the fact that the lands acquired are levelled lands adjoining to developed lands for Phase I and Phase II of industrial estate, we think it is just and

appropriate to deduct fifteen per cent towards developmental charges....

The very reasoning stated therein discloses that rate of 15% was arrived at by the Hon"ble the Supreme Court having regard to the nature of

development which was already existing. Therefore, the said decision cannot be relied upon, in the facts of the present case.

20. In the decision reported in 2008 (10) S.C.C.797 inasmuch as we have held that what is claimed by the claimants based on Ex.C.2 for fixing

the land value was correctly accepted by the Reference Court, the question of applying the principles set out in the said judgment does not arise. In

the said decision, the Hon"ble the Supreme Court has noted that the High Court having found that the market price of the land was higher than

what was claimed by the claimants themselves ought to have fixed the higher value for determining the compensation by allowing the claimant by

paying the difference in Court fees. Such is not the case on hand. Therefore, the said decision also does not apply.

21. Having regard to our above conclusion as held by us earlier, we fix the land value at Rs. 3,000/- per cent. With that modification on the land

value, we confirm the judgments in all other respects relating to the grant of solatium, interest etc. The Appellants are directed to calculate the

compensation payable as per this judgment and deposit the compensation to the credit of respective L.A.O. Ps. within three months from the date

of receipt of a copy of this judgment.

22. To sum up in the result, all the appeals are partly allowed as indicated below:

(a) the land value in all appeals are fixed at Rs. 3,000/- per cent with 30%

solatium.

(b) the claimants are entitled to an additional amount of 12% per annum, from the date of notification issued u/s 4(1) of the Land Acquisition Act,

till the date of Award of the Referring Officer, or taking possession of the land, whichever is earlier;

(c) the claimants are entitled to 9% interest for the first year from the date of taking possession of the land and 15% for every subsequent year, on

the amount calculated as market value till the date of deposit;

(d) Any excess amount deposited, after satisfying the above award, is permitted to be withdrawn by the Appellant in all the appeals.

(e) Learned Special Government Pleader (AS) and learned Counsel appearing for SIPCOT shall be entitled to separate fees for each of the

Appeals;

(f) there shall be no order as to costs.

(g) Consequently, connected pending miscellaneous petitions are closed.