

(1968) 12 MAD CK 0024

In the Madras High Court

Case No : Appeal No's. 386, 387, 389, 391, 393, 407 and 408 of 1962

The State of Madras

APPELLANT

Vs

Alameluthayammal and Others

RESPONDENT

Date of Decision : 16-12-1968

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 25, 53

Citation : AIR 1970 Mad 184 : (1970) ILR (Mad) 137 : (1969) 82 LW 661

Hon'ble Judges : Srinivasan, J;Sadasivam, J

Bench : Division Bench

Advocate : Addl. Govt. Pleader, for the Appellant; V.P. Raman, N.R. Chandran, S.R. Srinivasan, V.C. Palaniswami and C. Chinnaswami, for the Respondent

Judgement

Sadasivam, J.—The State of Madras represented by the Special Tahsildar and Land Acquisition Officer, Town Planning Scheme,

Coimbatore, has preferred these appeals against the common order passed by the learned First Additional Subordinate Judge, Coimbatore, on

C.C. Nos. 141 to 147. of 1960, on references made u/s 18 of the Land Acquisition Act (hereinafter referred to as "the Act") by the Special

Tahsildar and Land Acquisition Officer, Town Planning Scheme, Coimbatore. The lands concerned in these cases form one continuous block and

they are situate in an important, busy and well-developed residential locality in Power House Road and the object of the acquisition, was to widen

the existing 75-feet broad road into a 100-feet road. There were buildings only in the lands concerned in Appeals Nos. 391 and 386 of 1962, The

tenant who had put up a construction on the land concerned in Appeal No. 886 of 1962 has received compensation for the superstructure. The

claim of the owner of that land has rightly been considered only on the same

footing as the claim of the owners of the other lands on which there were no buildings.

2. The Land Acquisition Officer has treated the sites acquired as building sites for the purpose of valuation. The Notification u/s 4(1) of the Act

was made on 25-8-1959. The Land Acquisition Officer relied on two sale deeds, a registration copy of one of which alone has been marked as

Exhibit B-3 in this case and valued the lands as on the date of the notification at 72 p. per square foot on the strength of the said sale deeds, The

learned First Additional Subordinate Judge has, on a consideration of the oral and documentary evidence in the case, fixed the value of the land as

on the date of the said notification at Rs. 1,000 per cent or Rs. 2.30 per square foot. He has considered this aspect of the case in detail in

paragraphs 11 to 14 of his common order and we see no sufficient ground to differ from him on the question of the valuation of the land.

3. The registration copy of the sale deed marked as Ex. B-3 in the case and the other sale deed relied on by the Land Acquisition Officer relate to

portions of land in T.S. No, 1268 situate at a distance of a furlong from the acquired sites and the notification in this case was made much later on

25-8-1959. Thus, the sale price mentioned in Ex, B-3 in respect of a land at a distance of a furlong and at 8 very much earlier period cannot afford

a real guidance to value the acquired sites as on the date of the notification. On 14-3-1959, that is much earlier to the notification in this case, an

Award 1 of 1959 was passed by the Special Tahsildar, Coimbatore, a copy of which has been marked as Ex. A-1. The award relates to the

acquisition of T.S. Nos, 1143 and 1144 situate in No. 3 Street, Gandhipuram, T.S. Nos. 1143 and 1144 are much nearer to the acquired sites

than T.S, No. 1268. It is dear from Ex. A-1 that the sites have been acquired at the rate of Rs. 1.34p. per sq. ft. The valuation adopted in Ex. A-1

is based on a sale deed in respect of a land in T.S. No. 1066 dated 28-8-1958, that is, nearly a year prior to the notification u/s 4(1) of the Act in

this case.

4. The claimants rely on 3 sale deeds, Exs. A-2 to A-4. Exhibit A-3 dated 9-11-1957 is a sale deed in respect of an extent of 1 1/2 cents of land

in T.S.No, 1125 which is almost adjacent to the land concerned in Appeal No. 386 of 1962 and it abuts the Power House Road. The sale price

of Rs. 1,000 in that document works out to Rs. 666.66 per cent, R.W. 1 Stanis Soun-dararaja Udayar, Special Tahsildar and Land Acquisition

Officer, admitted that the market price of the sites in the locality was more in 1959 and 1960 than in 1957 and 1958. Exhibits A-2 and A-4 are

registration copies of sale deeds executed on 9-3-1960 and 10-2-1960 in respect of 516 and 7 cents of lands in T.S. Nos. 1259 and 1124

respectively, for Rs. 7,500 each. The value of one cent of land works out to Rs. 1,363-62 according to Ex. A-2 and Rs. 1,071.43 according to

Ex. A-4. It is true the sale deeds are a few months after the date of the notification u/s 4(1) of the Act, but prior to the notification under S, 6 of the

Act made in 1960. Even the sale transactions subsequent to the notification u/s 4(1) of the Act are relevant and they cannot be ignored, It is true

that if the subsequent transactions are not bona fide and they have been brought about for the purpose of the acquisition proceedings, they will

have no value, But no such attack has been made against the originals of Exs. A-2 and A-4, It is also true that if by reason of the notification u/s

4(1) of the Act, the value of the lands in the neighbourhood has increased, it should be taken into account in considering the value adopted in the

subsequent transactions.

It should be noted that the acquisition of an extent of 9,452 sq. ft. for the purpose of widening the Power House Road in one part it cannot affect

the value of the sites in the neighbourhood. The sale deeds under the originals of Exs. A-2 and A-4 have come into existence within a few months

of the notification u/s 4(1) of the Act. The land sold under the original of Ex. A-2 abuts the Power House Road and is just opposite to the sites

acquired in this case. The land sold under the original of Ex. A-4 is about 100 yards from the site concerned in Appeal No. 391 of 1962. It is true

there is a Building with basement in the property sold under Exhibit A-2. P.W. 1, Manappa Mudaliar, the vendee under Ex. A-2, has given

evidence that the building is only on a small portion of the site and the basement is not worth anything. The learned First Additional Subordinate

Judge has observed that even if the value of the basement is fixed at the maximum amount of Rs. 1,000, the value of the land alone would work out

to Rs. 1,000 per cent. There was a shed on the land sold under the original of Exhibit A-4. P.W. 2, Nanjappa Gounder, the claimant in Appeal

No. 391 of 1962, has stated that it is only a Mangalore-tiled shed on poles and the value of the same would not exceed Rs. 500. Thus, excluding the value of the shed, the value of the land works out to Rs. 1,000 per cent. The learned First Additional Subordinate Judge has rightly found on the evidence adduced in this case that the value of the acquired sites as on the date of the notification u/s 4(1) of the Act was Rupees 1,000 per cent.

5. We have already referred to the fact that only in Appeals Nos. 386 and 391 of 1962, the valuation of buildings has to be considered. The value of site is the only question raised in the other appeals with the qualification that in Appeal No, 393 of 1962, there is a further question about the valuation of a coconut tree. The learned First Additional Subordinate Judge has in paragraph 29 of his judgment made an elaborate calculation of the net income from the coconut tree for a period of 20 years and fixed the value of the coconut tree at Rs. 252.40. The learned Government Pleader referred to the decision in *Shunmuga Velayuda Mudaliar and Others Vs. Collector of Tanjore*, where it has been pointed out that if a coconut tree is to be valued on the basis of its yield, the period for computation of value should be taken as only ten years. The more important contention urged by the learned Government Pleader is that once a site has been valued as a house site, the coconut tree should not have been valued again on the basis of its being a yielding tree. This contention is well founded as such mode of valuation will really result in duplication of values. If the land had been valued as an agricultural land, it is reasonable to ascertain the capitalised income of the fruit-bearing trees, But if the site is valued as a house site, the tree could not be valued on the basis that it is a fruit-yielding tree and at best, the value of the tree as timber or fuel alone could be taken into account. In the decision above cited, it has been held that the land acquired under the Act should not be valued as a building site and at the same time valued upon the footing of the produce of 1/2 fruit of the tree remaining there.

In *Collector of Thana Vs. Chaturbhuj Radha Krishna and Others*, it has been held that if the Court puts a fictitious value on the property, on account of its so-called potentiality for building purposes, then that is an inclusive rate and nothing can be allowed in addition for the trees. In

Thareesamma and Others Vs. The Deputy Collector and Others, , the contention of Mr. C. V. Ananthakrishna Aiyar for the appellants (claimants)

that they were entitled to the value of the trees on the land on the footing that they were fruit-bearing trees was rejected as untenable because the

basis of the claim was that the lands were valued as building sites and the claimants could not also have the advantage which they would be entitled

to only if the lands had been dealt with as agricultural lands. It is pointed out in the decision that what has been awarded to the claimants is an

inclusive price and that they cannot be heard to say that the trees should be separately assessed as fruit-bearing trees, The learned First Additional

Subordinate Judge has erred in valuing the coconut tree as a fruit-bearing tree by computing the income for 20 years and awarding compensation

of Rs. 252.40 in respect of the same. The learned Government Pleader has no objection to the value of the tree fixed by the Land Acquisition

Officer at Rs. 45, Therefore, the order of the learned First Additional Subordinate Judge fixing compensation for the coconut tree at Rs. 252.40 is

set aside; that part of the award made by the Land Acquisition Officer fixing the value of the tree at Rs. 45 is restored. For the foregoing reasons.

Appeal No. 393 of 1962 is allowed in respect of the difference in valuation as regards the coconut tree, but is otherwise dismissed. The appellant

and the respondent in the appeal are entitled to costs in proportion to their success.

6. The other appeals, Appeals Nos. 387, 389, 407 and 408 of 1962 in which the question of valuation of the land is the only question involved,

are dismissed with costs in A.S. No. 389 of .1962.

7. Appeal No. 391 of 1962 is against the award in O.P. No, 196 of 1960 relating to compensation case No, 141 of 1960. The buildings on the

acquired site which were demolished consisted of a laundry, a cycle shed and mutton stall which were leased on a monthly rent of Rs. 15, 20 and

10, respectively. There is the evidence of P.W. 2, Nanjappa and the evidence of P.W. 5, Gopinath, who is a tenant of the fourth room south of the

three rooms which were demolished by reason of the acquisition. In fact, the claimant has asked for compensation for the damage to the wall of the

room occupied by P.W. 5 Gopinath. The tax receipts, Exs. A-8 and A-7, have also been produced and the half-yearly tax of Rs. 47.39 supports

the claim of P.W. 2, that he was getting rent of Rs. 45 per month, In fact, there is no contra evidence in this case. The learned First Additional

Subordinate Judge has taken the market value of the site with the building at 25 years annual net income on the ground that the guilt-edged

securities fetch 4 per cent per annum on the date of the notification 25-8-1959. On this basis he arrived at the value of Rs. 10,005.50 and adding a

sum of Rs, 500 as compensation for the damages to the wall of the fourth room and the demolition of the latrine (partly used for the three rooms

that were demolished and partly used for the other portion of the building of the claimant P.W. 2, Nanjappa which have not been acquired), he

found that P.W. 2 was entitled to Rupees 10,505.50.

8. It is not possible to rely on the evidence of R.W. 2, Mathai, Minor Irrigation Officer, to find out the value of the building on the basis of the cost

of construction of such buildings. It is true R.W. 2 Mathai stated that the buildings are katcha and not pucca buildings. But in cross-examination he

has stated that he does not recollect the rate per cubic foot. In fact, the learned Government Pleader did not attempt to rely on the evidence of

R.W. 2,

9. Even in respect of the value of the building in Appeal No. 386 of 1962, the evidence of P.W. 3, Raju, the husband of the claimant in O.P. No,

202 of 1960, is that one room was let at Rs. 20 per month and two rooms at Rs. 15 each and a bunk at Rs. 10 and thus the buildings were

fetching Rs. 60 per month. P. W. 7, Raju a tenant in respect of one of the five rooms has also been examined to corroborate the evidence of P.W.

3. The learned First Additional Subordinate Judge has found that the value of the land acquired in T.S. No, 1006/1 will be Rs. 12,016 and he has

separately valued the land in T.S. No. 1007/1 as a vacant site. The evidence of R.W. 2 is that the buildings were of brick and lime mortar and

plastered with cement mortar. We need not repeat the comments made by us with regard to the evidence of R.W, 2.

10. In both O.P. Nos. 196 and 202 of 1960 against which Appeals Nos. 391 and 386 of 1962 have been filed the decrees are not in conformity

with the order of the learned First Additional Subordinate Judge. In the decrees the amount which the claimants are entitled to get have been

wrongly mentioned as the "enhanced" amounts to which they are entitled in

addition to the amount awarded by the Land Acquisition Officer. The decree should have been drafted in accordance with the order.

11. The main substantial question argued in both these appeals, Appeals Nos. 586 and 391 of 1962, is whether the claimants in these appeals are

entitled to the amounts awarded as compensation which are in excess of the amounts claimed by them in the counter-statement filed by them in the

lower Court in the reference u/s 18 of the Act. Thus, in paragraph 2 of the counter-statement filed by the claimant in C.C. No. 147 of 1960 in

O.P. No, 202 of 1980 on the file of the lower Court, she has stated that the site acquired from her was worth at least Rs. 1,000 per cent. It is

clearly stated in that paragraph that capitalising the value at 20 years" purchase, the loss to the claimant was Rs. 14,400. But the claimant has

specifically stated that she has confined her claim to the modest amount of Rs. 5,000. In para. 9 of the counter-statement the claimant has prayed

that the Court may fix the price of the site acquired at Rupees 1,000 per cent and grant Rs. 5,000 towards compensation for the loss of income

from the buildings. Thus, she has claimed only Rs, 13,944.40. As against the amount of Rs. 4,313.14, awarded by the Land Acquisition Officer,

she wanted an enhanced amount of Rs. 9,631.26. But the learned First Additional Subordinate Judge has awarded enhanced amount of Rupees

10,296.22, according to the order, and it has been wrongly mentioned in the decree as Rs. 14,609.36, The contention of the learned Government

Pleader is that the Court had no jurisdiction to grant anything more than the amount of Rs. 9,631.26 claimed by Alameluthayammal, the respondent

in App. 386 of 1962.

12. Similarly in App. 391 of 1962, the claimant Nanjappa Goundan has mentioned in Para. 6 of the counter statement that the value of the

acquired site cannot be less than Rs. 1000 per cent and further stated that though he would be entitled to a sum of Rs. 18,000 for the buildings on

the basis of 25 years" annual net income, he is content to receive Rs. 4500 in all for the buildings. Including the value of the latrine he has claimed

that he is entitled to Rs. 5000 for the buildings, apart from Rs. 1000 for the construction of the wall for the room not included in the acquisition

proceedings. In the last paragraph he has stated that he is entitled to compensation at Rs. 1000 per cent for the site, Rs. 5000 for the loss of the

buildings and Rs. 1000 for the other inconveniences referred to above. Thus including the 15 per cent solatium he has claimed Rs. 8973. 0 P. and

deducting Rs. 1674-95 awarded by the Land Acquisition Officer, he has claimed by way of enhancement Rs. 7298-25. But the learned First

Additional Subordinate Judge has awarded enhanced compensation of Rs. 10505-50. The contention of the learned Government Pleader is that

the Court had no jurisdiction to grant anything more than the sum of Rs. 7298-25, claimed by Nanjappa Gounder.

13. Thus the important question for consideration in these two appeals 386 and 391 of 1962 is, whether the Court has jurisdiction in a reference

u/s 18 of the Act, to award compensation in excess of the amount prayed for by the claimant, Section 9 of the Act provides for notice to be given

by the Collector to persons known or believed to be interested in the property sought to be acquired calling upon them to state the nature of their

respective interests in the land and the amount and particulars of their claims to compensation for such interests. u/s 18 of the Act, any person

interested, who has not accepted the award of the Land Acquisition Officer may by a written application require that the matter be referred by the

Collector for the determination of the Court. Section 25 of the Act is the relevant section for determining the jurisdiction of the Court with regard to

the amount of compensation and it runs as follows:

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 to him by the

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

Thus, under Sub-clause (1) of Section 25 of the Act, the Court has no jurisdiction to award anything more than what has been claimed pursuant to

any notification given u/s 9 of the Act. Sub-clause (2) of Section 25 of the Act provides for cases where the applicant has refused to make such a

claim, or has omitted without sufficient reason to make such claim. In such cases, the amount awarded by the Court shall in no case exceed the

amount awarded by the Collector. But no objection was taken to the reference u/s 18 of the Act on the above ground. The Land Acquisition

Judge will be incompetent to award a sum exceeding the amount awarded by the Land Acquisition Officer where the claimant did not state the

specific amount of compensation for his property in pursuance of the notification u/s 9 of the Act, Clause (3) of Section 25 of the Act gives power

to the Court to award compensation of a sum not less than the amount awarded by the Collector in cases of omission by the claimant to make

such claim, when it is satisfied that there was sufficient reason for such failure. This clause gives power to the Court in suitable cases to relieve the

party from the stringent provisions contained in sub-clause (2) of Section 25 of the Act. Section 53 of the Act provides that save in so far as they

may be inconsistent with anything contained in the Act, the provisions of the CPC shall apply to all proceedings before the Court under the Act.

The Court hearing a reference u/s 18 of the Act has power to allow an amendment of the pleadings in a reference. But the jurisdiction to allow

such amendment cannot extend to increasing the claim to a figure beyond that which was claimed before the Collector, as it would be against the

provisions of Section 25(1) of the Act. The appellants did not take any objection to the reference u/s 18 of the Act and the learned Government

Pleader took exception only to the grant of compensation in excess of the amounts claimed in the counter statement of the claimants,

14. Having regard to the above principles, we are unable to accept the contention of the learned Advocate for the claimants, unsupported by any

authority, that the Court has jurisdiction to award an amount of ½ compensation determined on a consideration of the relevant provisions of the

Act, irrespective of the fact that the claim is for a lesser amount. Even in a suit the plaintiff cannot get a decree for more than the amount claimed by

him unless he gets the plaint amended. The provisions of the CPC have been made applicable to the Act in so far as they are not inconsistent with

anything contained in the Act. The Court has, therefore, no jurisdiction to award anything more than what was claimed as compensation in the

several cases.

15. For the foregoing reasons, we uphold the objection of the learned Government Pleader that the enhancement prayed for by the claimants in

App. Nos. 386 and 391 of 1962, should be confined to the amounts claimed by them in their counter statements in the lower Court and we order

accordingly. Thus the said appeals are allowed to this extent, namely, that the enhancement allowed by the Court shall be reduced to the amounts

claimed in the counter statements, but they are dismissed in other respects, The parties in these appeals will be entitled to costs in proportion to

their success.