(1970) 03 MAD CK 0009

In the Madras High Court

Case No : Appeal No. 228 of 1966

The State of Madras APPELLANT

Vs

Mohamed Mustafa RESPONDENT

Date of Decision : 25-03-1970

Acts Referred:
Land Acquisition Act, 1894 — Section 4(1)

Citation : AIR 1971 Mad 213 : (1971) ILR (Mad) 465

Hon'ble Judges : Ramaprasada Rao, J;Ramanujam, J

Bench : Division Bench

Judgement

1. In this appeal which is against the judgment and decree of the learned Fourth Assistant Judge of the City Civil Court, Madras, the question

relates to the sufficiency of compensation granted to the respondent as and towards the market value of the lands acquired under the provisions of

the Land Acquisition Act (Act 1 of 1894). By a notification u/s 4(1) of the Act, dated March 7, 1962, an extent of 7 Grounds 75 sq. ft. in S. No.

34/3 in the village of Puliyur near Kodambakkam, was acquired for the construction of a sewage pumping station. The Land Acquisition Officer,

after due notice to parties, granted a compensation at the rate of Rs. 4,587/- per ground. He also awarded a compensation at the rate of Rs. 5/-

per tree and there were 39 such trees. In addition thereto, a claim was made before the Land Acquisition Officer on the ground that the unacquired

portion of land has been injuriously affected by reason of the acquisition of the acquired land which is a roadside land. The case of the respondent

before the Land Acquisition Officer was that the roadside lands were acquired and the balance of his holding has been left out practically as

hinderland and it has access only through a passage 56 feet in width and about

200 feet in length, which passage leads on to the interior lands. The

Land Acquisition Officer negatived the claim for such injurious affection. On a reference under S. 18 of the Land Acquisition Act, the Court

confirmed the award of the Land Acquisition Officer in so far as it related to the market value of the acquired land.

The Court, however, increased the compensation by Rs. 2/- per tree and granted damages under the head of injurious affection, to the tune of Rs.

3,000/-. Whilst granting such damages, the Court also awarded solatium thereon at 15 per cent, evidently under the view that solatium has to be

given even in cases where the interested person is granted compensation as and towards damages for injurious affection. The State is the appellant

before us and it questions the grant of the solatium in the manner stated above, but has also added in the Memorandum of Grounds of Appeal, an

objection to the grant of the additional compensation for trees. The respondent has filed Cross-Objections and he claims that the Court failed to

appreciate the real market value of the acquired land and that it ought to have granted a compensation at the rate of Rs. 5,000/- per ground.

2. We may at the outset reject the appeal in so far as it relates to the additional grant made by the Court below for Palmyrah trees as it is not even

seriously pressed and there is no evidence to disturb the finding.

3. The next and the most formidable objection raised by the appellant is that the grant of 15 per cent solatium as an annex to the damages awarded

to the interested person under the head ""injurious affection"" is opposed to law. Under the Land Acquisition Act, the Court, while determining the

amount of compensation to be awarded for lands acquired under the Act, shall take into consideration the market value of the land at the date of

the publication of the notification under S. 4 and in addition thereto, the Court shall in every case award a sum of Rs. 15/- per centum on such

market value in consideration of the compulsory nature of the acquisition. The word ""market-value"" appears in clause (i) of sub-section (1) of S.

23. It again reappears in sub-section (2) of S. 23. In sub-section (2) of S. 23, the solatium, as it is commonly called, is awardable on such market

value. The word '''such''' in sub-section (2) of S. 23 has to be given its full weight as it has a special signification. It has reference to the market

value determined by the Court under cl. (i) of sub-section (1) of S. 23. The other clauses appearing in sub-section (1) of S. 23 relate to various

heads totally unconnected with the market value of the land. For example cl. (iv) of sub-section (1) of S. 23 provides the head of damage which an

interested person may sustain at the time of the acquisition and by reason thereof resulting in his other property moveable or immovable, being

injuriously affected.

The Section and Cls. Nos. (iii) and (vi) specifically speak of and provide for, damage resulting from and consequential upon compulsory

acquisition. Even cl. (v) is an item which is very much akin to damage, for it provides for the payment of such reasonable expenses to the interested

person if he is compelled to change his residence or place of business in consequence of the acquisition. Here again, there is no question of any

market value of the land being assessed or touched upon. It therefore follows that it is only in the first clause in sub-section (1) of S. 23, that the

words ""market value of the land'''' appear, and it is to this phrase is interlaced the solatium which is expressly provided for in sub-section (2) of S.

23. It therefore follows that if any damage is awarded by Court under the head of injurious affection within the meaning of cl. (iv) of sub-section (1)

of S. 23, then such amount or such damage granted has no relation to the market value of the land and the solatium which is awardable only as a

necessary annexure to market value cannot be awarded and annexed to such damage as well. This is what the lower Court has done in the instant

case. The learned counsel for the respondent, however, invited our attention to two decisions, one of the Bombay High Court and the other of our

Court, and contends that such grant of solatium is sustainable.

In Vakratunda Chintaman Deo Vs. Special Land Acquisition Officer, , the Court was concerned with the evaluation of certain benefits which arose

from the land, but which belonged to the interested person. While doing so, they emphatically observed that the compensation so reckoned as a

substitute for the benefits acquired, tantamounts to the determination of the market value of the property. In that view, solatium also was granted.

That is not the case here. The ratio in State of Madras Vs. Balaji Chettiar and Others, has no application at all, because there the Court was

primarily concerned with the vires of Act XXXVII of 1950, whereunder the grant of solatium was abolished. Incidentally, the question which arose before the Division Bench in that case was whether the market value within the meaning of S. 23(1) was integrated with the solatium awardable

under S. 23(2). Their Lordships expressed the view that the two are separable. But, the ratio in that case, however does not touch upon the issue

before us as to whether the solatium has to be necessarily granted in a case where damages for injurious affection under cl. (iv) of S. 23(1) are

granted and whether such a grant is a necessary attribute even in the case of grant of damages. We have already expressed the view that in cases

where damages qua damages are awarded, the question of the interested person gaining solatium as if it is a statutory right, does not at all arise. It

is only in cases where the Court determines the market value of the land or the benefits or rights arising thereunder, which in fact is only a substitute

for the reckoning of market value of the land, then and in only such circumstances solatium gets integrated with it and can be granted under S.

23(2).

4. The appeal, therefore, has to be allowed in part.

5. As regards the memorandum of cross-objections, the learned counsel for the objector states that the Court below ought to have relied upon Ex.

C-1 and granted an increased compensation and ought not to have mechanically confirmed the compensation awarded by the Land Acquisition

Officer. In this case, only two sale deeds were noticed and they were only pressed before us by either side in support of their respective

contentions. Whereas the learned Government Pleader would rely upon Ex. R-16, the cross-objector would place considerable reliance on Ex. C-

1. Both are sale deeds relating to sales of developed lands abutting Choolaimedu Road, which in turn abuts the acquired land as well. Under Ex.

C-1, a small extent of about half a ground of land was sold, and the ultimate price fetched thereunder was Rs. 7,777/- per ground. Under Ex. R-

16, an extent of 1-5/8 grounds of land was sold at the rate of Rs. 4, 923/- per ground. Ex. R-16 relates to a sale which took place about three

months before the date of the notification whereas Ex. C-1 relates to a sale, a few days after the notification under S. 4(1). It is no doubt well

settled that a post-notification sale ought not to be lightly brushed aside, particularly when the time factor is negligible. It is this aspect that is

pressed into service by the learned counsel for the respondent. But, the land sold under Ex. C-1 abuts not only the Choolaimedu Road, but also

another road to its east, viz, the Ganga Amman Koil Street. It is a corner plot. Further, the extent conveyed under Ex. C-1 was only about 1200

sq. ft. All these factors taken into consideration, do not prompt us to place sole reliance on Ex. C-1, as it cannot be said to be comparable data for

fixation of the just compensation in the instant case. The land covered by Ex. R-16 is a land which abuts Choolaimedu Road and is in a developed

locality nearer the acquired land and it fetched a price of Rs. 4,923/-.

It may be noticed that the respondent himself has limited his claim in this appeal to Rs. 5000/- per ground. The Court below, after accepting the

oral evidence let in before it, had to deduct a sum of Rs. 336/- per ground as and towards the expenses or charges which are to be incurred for

purposes of raising the acquired lands, which were admitted by the respondent''s witnesses to be lower in level than the road-side land. The

contention of the learned counsel for the respondent is that there is no clinching evidence regarding such low level of the acquired land. We do not

agree. R. W. 1, who was examined on the side of the respondent, himself admitted that the acquired land is in a lower level than the Choolaimedu

Road. In contrast thereto, the land covered by Ex. R-16 is said to be on a level with the Choolaimedu Road. This being the factual position, the

deduction of Rs. 336/- per ground from the totality of the price secured under Ex. R-16, appears to us to be reasonable. The market value as

determined by the Court below at Rs. 4,587/- per ground represents the fair market value per ground of the land acquired. The cross-objections,

therefore, fail and they are dismissed.

6. In the result, the appeal is allowed in part and the cross-objections are dismissed. But, there will be no order as to costs in either.

7. Appeal partly allowed.