(2009) 07 MAD CK 0063

In the Madras High Court

Case No : A.S. No''s. 968, 975, 982 and 1038 to 1040 of 2003 and CMP No''s. 15367, 15368 and 17595 to 17599 of 2003

The Superintending Engineer, Periyar Electricity Distribution, Tamil Nadu Electricity Board and Revenue Divisional Officer — APPELLANT

Vs

Thangamuthu (died) and Others — RESPONDENT

Date of Decision : 30-07-2009

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

Citation : (2009) 07 MAD CK 0063

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : N. Muthusamy, in AS. 968, 975 and 982/03 and V. Ravi, Spl.G.P. in AS. 1038 to 1040/03, for the Appellant; N. Muthusamy, R2 in 1038 to 1040/03, V. Ravi, Spl.G.P. R2 in AS. 968, 975 and 982/03 and K.S. Jaya Ganesan, for 1st respondent in AS. 968, 975 and 982/03 and AS. 1038 to 1040/03, for the Respondent

Judgement

P.P.S. Janarthana Raja, J.—These appeals are filed against the judgment and decree dated 20.03.2003 passed in L.A.O.P. Nos. 12, 13

and 14 of 2002 respectively on the file of the Additional District Judge, Fast Track Court No. I, Erode.

2. In these cases, the issue involved is common, challenging the award passed by the Reference Court, hence, they are taken up together and

disposed of by a common judgment.

3. The land of the first respondent in all appeals/claimants over an extent of 1.85.5 hectares of punja land in survey No. 135/2 of Suriyampalayam

''A'' Village of Erode Taluk was acquired by the State for public purpose namely for establishment of 110/22 K.V. Sub Station by the Tamil Nadu

Electricity Board. The said land was equally belonged to three claimants. Notification u/s 4(1) of the Land Acquisition Act was notified in the

Government Gazette dated 29.01.1992. The Land Acquisition Officer, based on the data land, determined the value of the land under acquisition

at Rs. 85,000/- per acre. It works out to Rs. 2,09,950/- per hectare; Rs. 1.95 per sq.ft and Rs. 850/- per cent. Details regarding the

compensation are as follows:

Sl. Survey Name of the Amount Awarded Total 30% 12% Grand Remarks

No No. & land owner ----------- -------- solatium interest total

extent Land value Tree

value

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1 135/2 Thiruvalargal 1,29,819/- 22/- 1,29,841/- 38,952/- 36,925/- 2,05,718/- --

1/3 Shanmugam

share S/o Palani

of Gounder

1.85.5

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2 135/2 Porappanasamy 1,29,819/- 22/- 1,29,841/- 38,952/- 36,925/- 2,05,718/- --

1/3 S/o late

share Sathasiva

of gounder

1.85.5

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3 135/2 Thangamuthu 1,29,819/- 21/- 1,29,840/- 38,953/- 36,925/- 2,05,718/- --

1/3 S/o Palani

share gounder

of

1.85.5

Total 3,89,457/- 65/- 3,89,522/- 1,16,857/- 1,10,775/- 6,17,154/- --

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Aggrieved by the same, the claimants filed reference u/s 18 of the Land Acquisition Act. The Reference Court enhanced the compensation from

Rs. 1.95 to Rs. 16/- per sq.ft. Aggrieved by that order, the Tamil Nadu Electricity Board has filed the A.S. Nos. 965, 975 and 982 of 2003 and

the State has filed A.S. Nos. 1038 to 1040 of 2003.

3. Both the learned Counsel appearing for the appellants contended that the acquired land is dry land and therefore, the compensation awarded by

the Reference Court is excessive, exorbitant, without any basis and justification and the Land Acquisition Officer has correctly determined the

value of the acquired land on the basis of the data land at Rs. 1,95 per sq.ft. He further submitted that the Reference Court ought to have deducted

some percentage towards development charges and largeness of the extent. Therefore, the award passed by the Reference Court is contrary to the

decisions and has also relied on the judgment of the Supreme Court in the case of Land Acquisition Officer, Kammarapally Village (A.P.) v.

Nookala Rajamallu and Ors. reported in AIR 2004 Sc 1031 and seeks to set aside the same.

4.The learned Counsel appearing for the claimants/respondents submitted that the acquired land is surrounded by commercial lands and has high

potentiality for development and therefore, the Reference Court is correct in awarding compensation at Rs. 16/- per sq.ft. and same has to be

confirmed.

5. We heard the arguments of the learned Counsel appearing on either side and perused the materials on record.

6. Before the Reference Court, on the side of the respondents/claimants CWs.1

to 4 were examined and Exs.A1 is marked. On the side of the

appellants, Rws.1 and 2 were examined and no document was marked. Ex.A1 is the copy of the sale deed dated 13.09.1991. CW1 is one

Porappannasamy, claimant in LAOP. No. 14 of 2002. CW2 is one Thangamuthu, claimant in LAOP No. 12 of 2002. CW3 is one Shanmugam,

claimant in LAOP No. 13 of 2002. CW4 is one Kannusamy. RW1 is one Suganthi, who is the Revenue Divisional Officer. RW2 is one Bharathi.

CW1 has deposed that the appellant/Tamil Nadu Electricity Board has acquired the land of the claimant and his relatives to the extent of 1.85.5

hectares for the purpose of establishment of Sub Station, which was situated Sithod-Rayarpalayam Road. He further deposed that the acquired

property is well developed one and situated very near to milk society and judicial employees colony. CW2 has deposed that the acquired land will

fetch Rs. 100/- per sq.ft. and hence, sought to fix Rs. 50/- per sq.ft. CW3 also reiterated the evidence of CW2. CW4-one Kannusamy, who is

working as Carpenter, has deposed in his evidence that one Kumaran purchased the land from one Ramasamy on 13.09.1991 for a sum of Rs.

51,712/- to the extent of 3132 sq.ft, which works out to Rs. 16/- per sq.ft. The said sale deed was marked as Ex.A1. CW4 is the attesting

witness to the said document. From the evidence of claimants, it is clear that acquired lands are very close to various colonies and NH-47 and

nearer to Sithod, which is situated 2k.ms away from Erode. Erode is fast growing city. The acquired land is situated near to Sithod-Rayarpalayam

Road. Rayarpalayam is situated 8 k.m.s awary from Erode. The Land Acquisition Officer has collected 30 sale deeds, the transactions of which

have taken place just three years before the notification u/s 4(1) of the Act dated 29.01.1992. Out of 30 sale transactions, the Land Acquisition

officer has discarded 29 sales and taken note of a sale dated 17.08.1990 in serial No. 14 in Survey No. 78/5 over an extent of 2 acres situated at

Suryampalayam village, which was sold for Rs. 1,70,000/-. It works out to Rs. 85,000/- per acre (or) Rs. 2,09,950/- per hectare. On the basis of

the same, the Land Acquisition Officer has fixed the value of the acquired land of three claimants to the tune of Rs. 2,05,718/- each. The

transaction relating to the data land relied on by the Land Acquisition Officer is two years before the date of adjudication. Hence, relying on the same, the value fixed by the Land Acquisition Officer is wrong and not in accordance with law. Ex.C1-sale relied on on by the claimants is situated

in the same village to the extent of 3132 sq.ft for a sum of Rs. 51,712/-. For the valuation of stamp purpose, the amount of Rs. 58,822 was shown

and it works out to Rs. 18.20 per sq.ft. But sale consideration shown in the document is taken into consideration, it works out to Rs. 16/- per

sq.ft. a On the basis of the same, the Reference Court has fixed the value of the acquired land at Rs. 16/- per sq.ft. No serious dispute was raised

by the learned Counsel appearing for the appellant.

7. The only grievance of the learned Counsel appearing for the appellants is that the Reference Court has not granted any deduction towards

development charges and also the largeness of the land and relied on the decision of the Apex Court in the case of Land Acquisition Officer,

Kammarapally Village (A.P.) v. Nookala Rajamallu and Ors. reported in AIR 2004 Sc 1031, wherein, the Supreme Court in paragraphs 11 and

13 has held as follows:

11. The evidence on record shows that the acquired lands were agricultural lands. Obviously, their valuation would differ to a considerable extent

from the land used for house sites. In such a case, necessary deductions for the extent of land acquired for the formation of roads and other civic

amenities, expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines and the interest on the outlays for the

period of deferment of the realisation of the price, the profits on the venture, etc. are to be made. (See Administrator General of W.B. v. Collector,

Varanasi.) In Brig. Sahib Singh Kalha v. Amritsar Improvement Trust the deduction for such development was taken as 53%....

13. On applying the principles of law as set out in various decisions referred to above to the facts of the case, we feel that deduction at the rate of

53% from the value indicated in Ext. B/4 would bring the rate per square yard to be around Rs. 40/-. The rate is accordingly fixed. The claimants

shall be entitled to compensation at the rate of Rs. 40/- per sq yard along with statutory entitlements including interest on solatium. The appeals are

allowed to the aforesaid extent. Costs made easy.

8. The Supreme Court, in the case of Revenue Divisional Officer-Cum-L.A.O. Vs. Shaik Azam Saheb etc. etc.,

, in paragraphs 11 and 12, has held as follows:

11. Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors, the first

being the nature and quality of the land, i.e. whether agricultural land or homestead land. Apart from nature and quality of land in the event the

agricultural lands are acquired the other factors relevant therefore are also required to be considered, namely, as to whether they are irrigated or

non-irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road of highway, the evenness of land, its

position in different seasons particularly in rainy reason, existence of any building or structure as also the development in and around the area. A

host of other factors will also have a bearing on determining the valuation of land.

12. The mode and manner in which determination of such valuation are to be carried out would also depend upon the facts and circumstances of

each case, namely, whether any deed of sale executed in respect of similarly situated land near about the date of issuance of notification u/s 4(1) of

the Act is available, or in absence of any such exemplars whether the claim can be determined on yield basis or in case of an orchard on the basis

of the number of fruit bearing trees and the yield therefrom.

9. Even in the case of Kasturi and Others Vs. State of Haryana,

, the Supreme Court has held that in respect of agricultural land or undeveloped land, which has a potential value for housing or commercial

purposes, difference between 53% to 33% should be deducted towards the cost of development out of the amount calculated with reference to

market value of developed land. It is also held that the extent of deduction depends upon the nature, location and extent of expenditure involved

for development of the land so as to make the plots for residential or commercial purposes and the area required for laying out roads and other

civic amenities.

10. It has been held by the number of judgments that if large area of land is subject matter of acquisition, the rate of small plots of land sold could

not be the basis for fixing the rate. It is not an absolute proposition. When there is no other material available for determination of the

compensation, it is open to the Land Acquisition Officer or the Reference Court to compare the price paid for small plot of land. In such case, necessary deductions or adjustments have to be made to determine the price. Therefore, Reference may be made to the decisions of the Supreme

Court in the case of Prithvi Raj Taneja (Dead) by Lrs. Vs. The State of Madhya Pradesh and Another,

and Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another,

11. In the present case, the land was acquired only for construction of Sub Station, which is an even land. Therefore, it would not require much

expenditure towards development charges. After considering the principles enunciated by the Apex Court in the decisions cited supra and the facts

of the present case, we are of the view that it would be reasonable and appropriate to give deduction of 40% towards development charges and

largeness of the land under acquisition. If 40% is deducted from Rs. 16/-, the value of the acquired land works out to Rs. 9.60 per sq.ft., which

was rounded to Rs. 10/- per sq.ft. Accordingly, we modify the award amount from Rs. 16/- to Rs. 10/- per sq.ft. All other statutory benefits

awarded by the Reference Court are confirmed. With this modification, the appeal is disposed of. There is no order as to costs. Consequently,

connected Civil Miscellaneous Petitions are closed.