(1970) 01 MAD CK 0029

In the Madras High Court

Case No : Appeal No. 493 of 1964 etc.

V. Egappa Goundar and Others — APPELLANT

Vs

The Special Tahsildar (Land Acquisition), Ashok Leyland and Blue Mountain Estate and Others — RESPONDENT

Date of Decision : 21-01-1970

Acts Referred:
Land Acquisition Act, 1894 — Section 18, 23, 25(2), 4(1), 53

Citation : (1971) ILR (Mad) 283

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

Bench : Division Bench

Advocate : S.S. Bhardwaj, T.G. Aravamuthan, K. Chandramouli and M.V. Krishnan, for the Appellant; G. Ramaswami, Additional Government Pleader and T.N.C. Rangarajan, for the Respondent

Judgement

Ramanujam, J.—An extent of 14 acres and 80 cents of land in Kathivakkam village, Saidapet talus, Chingleput district was acquired for providing residential accommodation for workers and for expansion of factory and godowns, etc, for Ashok Leyland Limited, Ennore in pursuance of notifications u/s 4(1) of the Land Acquisition Act, dated 26th October 1960, 16th November 1960 and 5th April 1961. The Land Acquisition Officer dealt with the lands acquired under 6 awards, exhibits B-2 to B-7. The awards under exhibits B-2 and B-7 dealt with the lands abutting the Kathivakkam road and the Land Acquisition Officer awarded compensation at the rate ranging from Rs. 30 to Rs. 50 per cent. The awards covered under exhibits B-3, B-4 and B-6 as also B-7 dealt with lands in the interior situate on the western side of the road-abutting lands covered by the awards in exhibits B-2 and B-7 and the Land Acquisition Officer fixed the value at Rs. 10 per cent for those lands. Award under exhibit B-5 dealt with the lands on the eastern side of the railway line running from Madras to Bezawada and the Land Acquisition Officer fixed the value of these lands at Rs. 30 per cent. The claimants in respect of lands abutting the Kathivakkam Road as well as those in the interior put forward claims for compensation at the rate ranging from Rs. 100

to Rs. 1,000 per cent and the claimants owning the lands on the east of the railway line have put forward a claim at the rate of Rs. 100 per cent before the Land Acquisition Officer. Not satisfied with the amounts awarded by the Land Acquisition Officer as compensation for the lands acquired, all the claimants sought references to the Court below u/s 18 of the Land Acquisition Act. The Court below fixed the market value of the lands covered by the awards B-2 and B-7 which are abutting Kathivakkam Road at Rs. 75 per cent and for the lands lying on the east of the railway line covered by the award B-5 at Rs. 50 per cent. The lower Court however, valued the lands covered by the awards under exhibits B-3, B-4 and B-6 which did not abut the Kathivakkam Road but lie in the interior under two categories adopting the belting system. It took the lands immediately on the west of the road abutting lands covered by exhibits B-2 and B-7 and awarded compensation for that category at Rs. 50 per cent while it valued the lands in the farther west and nearer to the Buckingham canal at Rs. 35 per cent. The state has filed all the above appeals, except Appeal Suit No. 493 of 1964; challenging the enhanced valuation fixed by the lower Court and the Respondents in Appeal Suit Nos. 550. 551, 554, 555, 556, 557, 559 and 560 to 566 of 1965 have filed memorandum of cross objections seeking a further enhancement of the compensation at rates ranging from Rs. 50 to 200 per cent.

2. Appeal Suit No. 493 of 1964 is an independent appeal filed by the claimant in C.R.O.P. No. 95 of 1962 on the file of the lower Court wherein he questions the decision of the lower Court restricting his compensation at Rs. 50 per cent though it has fixed the compensation for the lands acquired from him at the rate of Rs. 75 per cent on the ground that the claimant has restricted his claim to Rs. 50 per cent.

3. The Land Acquisition Officer fixed compensation of Rs. 50 per cent for the road abutting lands relying on the sales under exhibits B-8 and B-9, dated 17th February 1958 and 9th May 1959 respectively. He considered exhibits B-8 and B-9 which are sale deeds in respect of some of the lands acquired and which abut the main road. The price fetched under exhibits B-8 and B-9 was at the rate of Rs. 48 and Rs. 27 per cent respectively. The Land Acquisition Officer took the price fetched under exhibit B-8 as the basis for this valuation. The Court below, on the other hand, relied on exhibit A 4 as the basis for fixing the market value of the road abutting lands. It considered the land in survey No. 45/1 covered by exhibit A-4 as being situate in an advantageous position opposite to the Ashok Leyland Factory and the price fetched under exhibit A-4 cannot be granted to all the road abutting lands and on that basis reduced the market value of the lands to Rs. 75 per cent while it awarded compensation for surrey No. 45/1 alone at the rate of Rs. 100 per sent which is the rate at which the property was purchased by the claimant under exhibit A-4, dated 7th September 1960.

4. The learned Government Pleader seeks to justify the valuation made by the Land Acquisition Officer in these appeals. He submits that the lower Court was not justified in relying on exhibit A-4 for fixing the market value of the road

abutting lands and that the lower Court should have confirmed the valuation adopted by the Land Acquisition Officer. It is pointed out that there was a preliminary enquiry of 1960, when the officials visited the spot and made, local enquiries, that this has given rise to speculation in the value of the lands in the locality, and that exhibit A-4 came into existence after such a preliminary enquiry preceding the notification u/s 4(1) of the Land Acquisition Act, when the speculation has started. We are not however willing to eschew the sale under exhibit A-4 from consideration in ascertaining the market value of the lands acquired as urged by the learned Government Header. It is true that there has been an inspection of the lands sought to be acquired and a preliminary enquiry by the officials in August and September 1960, and that the owners of the land became aware of the contemplated acquisition, even then. The awards in these cases make a reference to the local inspection in the beginning of 1960 and preliminary enquiry in August and September 1960 and the claim of the claimants for Rs. 100 per cent even at that stage. Though the notifications u/s 4(1) of the Land Acquisition Act were published on 26th October 1960, 16th November 1960, and 5th April 1961, as a result the preliminary enquiry in the village for the purpose of the proposed acquisition on behalf of the company, the proposals for acquisition were well known to the owners of the lands in the area even before the date of the notification. It also transpires that some of the claimants were contacted and their statements obtained during the preliminary enquiry in June 1960 long before the first notification, dated 26th October 1960 u/s 4(1) as is evident from exhibits B-13 and B-14. The contention of the learned Government Pleader that during the interval between the time when the Government''s intention to acquire this block of land became known to the public and the date of the actual publication of the Section 4(1) notification, prices have shown an increase and that as such no weight should be given to the sales recorded during the said interval. According to him the sale under exhibit A-4, dated 7th September 1960 covering survey No. 45/1 which is a part of the acquired property came into existence during such interval and that the sale under exhibit A-4 was for an extraordinary high value which has been prompted by the proposed acquisition of a large extent of land in the locality which was imminent. It is further pointed out that the lands in the area acquired were sold in February 1958 under exhibit B-8 at the rate of Rs. 47.86 per cent and that the same lands have been sold under exhibit A-4 for Rs. 100 per cent in 1960 which shows the phenomenal rise in the price of the lands in the locality in view of this speculation arising out of the impending acquisition.

5. As pointed out by the Court below, sales subsequent to the date of knowledge of the acquisition cannot be condemned and left out of account unless it is proved that the said sales for abnormal prices had been created only with a view to boost prices and to get higher compensation in the acquisition proceedings for other lands in the locality. Unless the State is able to show that the sale under exhibit A-4 has been motivated without intending it to be real, the said sale cannot be ignored for the purpose of ascertaining the market value of the lands

acquired. In this case the sale under exhibit A-4 has not been attacked as not being genuine but it is attacked only on the ground that it came into existence as a result of speculation in prices in view of the impending acquisition. The Judicial Committee has expressed in The Secretary of State for Foreign Affairs v. Charlesworth, Pilling and Co. 28 I.A. 121, 141 that:

There is another general consideration of great importance. The sections of the Land Acquisition Act have been stated, which provide that land is to be taken at its market value on a given day, and that the Court is not, on the one hand, to give more because the object for which it is taken is likely to increase its value, nor, on the other hand, to give less because the game object is likely to increase the value of the owner''s remaining land. That appears to their Lordships to exclude for both parties speculations on the effects which the railway may produce on prices, except to the extent to which it is shown that such speculations had actually entered into the market price of this sort of land by November 2, 1896.

In that case the lands of the Plaintiffs in the island of Mombasa were taken for a railway by the British Government u/s 6 of the Indian Land Acquisition Act, 1894 which was made applicable to that area by Order in Council. While fixing the compensation for the lands acquired it was held by the Privy Council that the Plaintiffs were entitled under the Act to the market value thereof on the valuation date including such actual speculative advance therein as had already taken plat consequence of the railway scheme; but excluding any future speculative advance from the like cause.

6. In The Government of Bombay Vs. Merwan Moondigar Aga, the question arose as to whether the price fetched during the period when there was tremendous speculation of land prices in Bombay in 1919 and 1920 can be taken into account for ascertaining the market value of the land acquired in pursuance of a notification, dated 2nd February 1920, It was contended for the State that the market value in Section 23 of the Land Acquisition Act meant intrinsic value and such intrinsic value would exclude all transactions of speculative nature. Mulla J. observed while answering that contention that it was a notorious fact, that a huge wave of speculation in land passed over Bombay in 1919 and 1920 starting in the beginning of 1919 end reaching the high water mark in February 1920, that it maintained itself at that level until about August 1920, whereafter it began to subside, and that in such circumstances the claimant was entitled to the benefits of the rise as he could hare obtained that benefit had he then sold the property in the market. The learned Judge took the view that in assessing the market value of the land under the Land Acquisition Act, the element of rise in the price of land occasioned by speculation is to be taken into consideration and that, on principle, if an owner of land could sell has land in the market at a given time for Rs. 10 per square yard, it would be inequitable and unjust that because the land is compulsorily acquired under the provisions of the Land Acquisition Act. he should get less than Rs. 10 per square yard. The learned

Judge was also inclined to think that the mere fact that a parcel of land is bought by a speculator in land with the object of reselling it at a profit is no ground for disregarding the sale in compensation cases under the Land Acquisition Act.

7. In Dhusabhai Polabhai and Others Vs. Special Land Acquisition Officer, Ahmedabad, while dealing with a similar contention that the transaction of speculative nature in the locality should not be taken into account to find out the market value of the land acquired based on the opinion of the Land Acquisition Officer in that case that:

Speculation in land in this particular area with knowledge of impending acquisition was rampant and that, therefore, the land values in the various transactions during this period of 6 or 7 months had to be accepted, for purposes of determining the market value with a great deal of caution, if it is to be discarded altogether. The Division Bench expressed that if a person desired to acquire land or settle down in a place which is full of promise for development the desire could not he condemned as a mere speculative desire. There is nothing unreal or undesirable about it for, if the knowledge that the acquisition by the Government is imminent raises the tone of the market and gives impetus to the market, a new market rate would be created and the transactions would be governed by that rate and that it would be too dangerous a proposition to lay down and too unfair to comment on human impulses to generalise and stagmatise every transaction of sale entered into after the market had risen as a speculative transaction or demonstration of a profiteering tendency of a human kind. With due respect, we agree with the views expressed in the decisions cited above.

8. In this case also even though the impending acquisition which was known to the people in the locality raised the tone of the market and a new market was created, it cannot be said that no genuine or real purchase could take place in view of the creation of an increased market rate. In view of what we have stated above it is not possible for us to ignore the sale under exhibit A-4 which dealt with a portion of the) property acquired, for ascertaining the market value of the lands acquired in this acquisition. It is also not possible to base our valuation on exhibits B-8 and B-9 as was done by the Land Acquisition Officer for, the said sales ware practically about two years before the date of acquisition and it is in evidence that there was a sharp rise in prices from 1958 till the data as notifications u/s 4(1) in these cases.

* * *

9. It is the claimants'' contention that notwithstanding their statement asking for a compensation at least Rs. 50 per cent, they are entitled to a higher compensation if the Court takes the view that a higher compensation is payable for the lands, that merely because they have made a minimum demand it does not mean that their lands are worth that much alone, and that the bar u/s 25(2) preventing the Court from granting a higher compensation than the amount

claimed by the claimants before the Land Acquisition Officer will not apply to the facts of this case. According to them they had claimed Rs. 100 per cent before the Land Acquisition Officer but only in their application for reference and in their statements before the Court they had said that at least the rate of Rs. 50 per cent should be given for their lands. It is contended that the claim for at least Rs. 50 per cent in their application for reference u/s 18 and in their statements filed before the Court cannot be considered as a restricted claim as they had only given a minimum rate for valuation of their lands and that they are not bound to give any valuation in their application for reference u/s 18 and in their statements before the Court. Merely because they mentioned the minimum amount they required for their lands in some statements which are not obligatory will not bar them from getting the compensation at the rate fixed by the Court in respect of the lands in question. They referred to the decision in In Re: Raja Jagaveera Rama Muthu Kumara Venkateswara Ettappa Naicker Ayyan Avergal, Zamindar of Ettayapuram, and urged that the Court is bound to grant the full amount of compensation due for the lauds acquired even though the claimants have mentioned & lesser rate in their applications for reference u/s 18. In that, case the claimants bad claimed a particular rate of compensation for their lands in their application for reference u/s 18. Subsequently the claimants filed an application before the reference Court for amending their application for reference seeking a higher rate of valuation. The Court below having refused such an amendment the claimants came to the High Court by way of revision. In revision, this Court expressed the view that even without an amendment of the rate mentioned in the application for reference u/s 18, the Court is bound to award the full compensation which it fixes for the lands under acquisition and which was subject-matter of reference before the Court. The Court took the view that it was not obligatory on the part of the claimants to claim any particular rate in the application for reference and even if the claimants claim at a particular rate in their application for reference, the Court''s power to fix the valuation is not limited to that rate.

10. We are of the view that the said decision may not be applicable to the facts of these cases. There the claimants claimed at a particular rate in their application for reference which was a proceeding before the Collector and even without such a valuation the Collector bound to make a reference once the claimant objects to the valuation made by the Collector. But in these cases the concerned claimants have filed statements before the Court after reference having been made, that they want at least Rs. 50 per cent as compensation for the lands acquired and the Court granted the minimum amount claimed by them. In such a case as this, it is difficult to say that the claimants are aggrieved, against the decision of the Court below. Having asked for a minimum compensation of Rs. 50 per cent and the same having been granted by the Court below they cannot be said to have been aggrieved by the decision of the Court. It is not possible for them to say that the Court is wrong in granting Rs. 50 per cent which they claimed in their statements before the Court. It is well settled

that the burden of proof is generally on the claimants-objectors to substantiate their objection as to compensation and that in proceedings u/s 18 it is the objectors who have to lead evidence to show that the compensation awarded was not fair and adequate. The concerned claimants in these cases by claiming a compensation or at least Rs. 50 per cent should be deemed to have confined their relief before the lower Court to that particular amount. Section 53 of the and Acquisition Act provides that the provisions of CPC are applicable to proceedings before the Court of reference and so when a reference u/s 18 is made on the ground of valuation, the proceedings take the colour of the suit, the claimants figuring as Plaintiffs in the action and the Government or the acquiring officer as the Defendant. If the claimant has filed a, statement before the Court claiming a compensation at a particular late, the Court is to take into account such claim made by the claimants and award compensation on that basis. Unless the claimant chooses to amend the valuation which he has given in his statement before the Court, it is not possible for the Court to grant a higher compensation than the amount claimed by the claimant, m his statement before the Court which is to be treated us a plaint. The case in Zamindar of Ettayapuram In re (1943) 1 M.L.J. 378 is clearly distinguishable as it dealt with the claimant''s statement of valuation in the application for reference u/s 18 which is a proceeding before the Collector and 39 there wag no claim by the claimants before the Court at a particular valuation as in these cases. We are not inclined to accept the claimants'' contention that, notwithstanding, their restricted claim before the Court they are entitled to get the market value for the lands as fixed by the Court for, if such a contention is accepted, it will mean that even where the claimants inform the Court that they are satisfied with a particular Bum for the lands acquired from them and the Court grants such sum claimed as compensation, they will be entitled to claim nonetheless a higher compensation if the Court fixes a particular value for the other lands involved in the acquisition and that they can ignore their pleadings and the reliefs claimed therein in the event of the Court accepting a higher valuation claimed by other claimants. In the circumstances the contentions of the Appellant in Appeal Suit No. 493 of 1964 and of the cross-objectors in Appeal Suit No. 557 if 1964 claiming at the rate of Rs. 75 per cent for lands east of the railway line notwithstanding their restricted claim at Rs. 50 per cent before the Court below have to fail.

11. Regarding the rest of the lands, that is survey numbers 160, 175, 178, 182, 193, 184, 185/3, 185/4, 186/1, 188/1, 207, 210 and 214 to 218, which are comprised in Appeal Suit Nos. 550 to 552, 554, 556, 560,. 561, 564 and 565 of 1965, the lower Court classified them as a separate category and awarded compensation at the rate of Rs. 35 per cent. It is found that the lands are situate far interior, low-lying and close to the Buckingham canal with no direct access to the road except through other''s lands. The Land Acquisition Officer granted Rs. 10 per cent for all these lands treating them as purely agricultural lands, but the Court below, taking into account their potentiality as-house-sites and adopting the method of belting system, has fixed the valuation at the rate of Rs. 35 per

cent. As already noticed it took the sale under Exhibit A-4 as the basis for fixing the value for the road-abutting lands and reducing it stage by stage. The learned Government Pleader contends that the lower Court has not considered one relevant document which has been tiled m the case to show the market value of the lands in the interior, that the lands in survey Nos. 214 and 160 have been sold under exhibit 13-10, dated 5th July 1959 at the rate of Rs. 7 per cent, that the Land Acquisition Officer based his valuation on this sale and that the sale deed had not been shown to have been undervalued.

12. In the result Appeal Suit No. 493 of 1964 is partly allowed with proportionate costs, Appeal Suit Nos. 550 to 566 of 1965 are dismissed and the cross-objections in Appeal Suit Nos. 559, 563 of 1965 are allowed in part and cross objection in Appeal Suit No. 566 of 1965 are allowed. There will, however, be no order as to costs. The excess compensation awarded by us will be paid with the usual solatium of 15 per cent. The cross-objections in other appeals are dismissed without costs.

Ramaprasada Rao J.

13. I entirely agree with the conclusions arrived at by my learned brother. I would however like to add a few lines on the interesting question which has arisen in this case regarding the feasibility of acceptance of prices of properties, in the sector of acquisition prevailing as a result of prior knowledge of the impending acquisition. My learned brother has considered the judicial precedents touching this aspect in full and I do not want to retrace the ratio therein once again.

14. If, in a given case, the owners of lands situate in the area of acquisition do come to know, or obtain a fair knowledge, of the possibility of their lands being acquired for a public purpose, then such a special potential developmental activity would certainly have an impact on the market value of such lands. This leaves us to the question as to what is market value. The term market value has not been defined find the legislature has left it to Courts to interest the same. The analytical and accepted explanation of the term A is what a willing vendor, not obliged to sell, might be expected to obtain in the market from a willing purchaser. There is, therefore, an objective rather than a subjective standard in it. Both the vendor and the purchaser should be prompted by commercial principles. The actual condition of the land together with its existing advantages, immediate possibilities and prospective capabilities go into the mechanics of computation. It is also clear that any benefit which might accrue by reason of the compulsory acquisition has to be overlooked. But the impact of a developed neighbourhood or the prospect of it in and around the sector of acquisition turns such potential of the land, to account. Even so, the possible desire of an expanding and needy neighbour who can purchase the property ought not to be lightly disregarded. However, such future utility which an owner of land can take advantage of, ought not to be conjectural, but should always lean towards reasonable reality based on business calculations. The doctrine of potential value

being based on conjecture is likely so be overdone and overstressed by an over anxious and aspiring owner. So checkmates as are necessary have to be found to avoid a totally imaginary and ill-founded claim based on speculative potential value. The theory of potential value to the owner undoubtedly projects something more than the market value as is popularly understood. If the acquired land is in the midst of a developed area or an industrial area, its impact on the same ought not to be lightly ignored. It is not only such a situation about general potential value of the land but also the particular potential value thereof gained in the locality by reason of the knowledge of the impending acquisition that have a bearing on the market value of the subsequently acquired lands. This is because the value of the land to the owner, in such circumstances, must be the basis for compensation. As has been often said, the question is not what the persons who take the land will gain by taking it, but what the person form whom it is taken will lose by having it taken from him. The intendment of the Act is that the acquired property has to be valued rebus sic standbys. Just as it is on the date of the notification u/s 4(1) of the Act. The Land Acquisition Officer himself, says:

Though the notification u/s 4(1) of the Land Acquisition Act in this case was published in the Fort St. George Gazette on 16th November 1960 enquiry in the village for the purpose of proposed acquisition on behalf of the Company was made in the beginning of 1960 and so was well known to the owners of lands in the area even before this date and the first notification in respect of another block of similar lands was published as early as 26tn October 1960. In spite of all precautions taken to publish the notification u/s 4(1) with the greatest promptitude, there is usually a certain interval between the time when the intention to acquire a block of land first became known and the date of actual publication of the notification. A part from this, it is common ground that the surrounding area in this locality has been notified, accepted and developed as a big industrial area. Exhibit A-12 is a plan showing the location of industries at Tiruvottiyur High Road and at Ennore Kathiawalkam village. This sketch clearly proves that the neighbourhood of the acquired lands was a fully developed and developing industrial area. Thus the surrounding was throbbing with activity with large and growing industrial enterprises. Every one in the locality was thus aware of such developmental activities and potential in the proximity as a whole and in their lands in particular. The acquired lands are very near the factory of the promoters. It is but natural that land-owners in the area legitimately expected, by reason of their nearness to expanding industry, an unearned increase in the land value in the locality. Such a potential inhered in the land is an element which enters into the computation of compensation. Such an expectation cannot (sic) be equalized to speculation. It is referable to the genuine and bona fide desire of every land-owner in the region such desire and expectation has to turned to account as it obviously touches upon the market value of the land in the sector based on such special adaptabilities. If such an impress of circumstances is furthered by positive information that the lands are required for one of the progressive industries in the surrounding area, then it undoubtedly raises the market price of the lands in the sector and creates as it were a new market and a new market rate. Sales based on such a hopeful but genuine market, are not prompted by mere speculation or lack of bona fides. They cannot be summarily characterized as freek sales, but, on the other hand, they reflect consistent bargains. No stigma is attached to such a sale in a new market which emerges a new increased market rate for the lands in the region. The developmental projects around and the impending need of one of the pioneers of such industrial development in the locality which are made known to the public, are considerations, which might progressively improve the market rate of the lands within the area. It market rate is what a willing vendor could get from a willing purchaser, we see no reason to discord such a permissive influence which, though superficially bordering on speculation, is but the result of the impetus given to the market price of the lands in the region by the known and conspicuous industrial advancement in the surrounding and in the neighbourhood. I therefore agree with my learned brother that exhibit A-4 has to be referred to and relied upon. The excess compensation as fixed by my learned brother is just and it shall be worked out in the manner stated by him in his judgment.