

(2010) 09 MAD CK 0217

Madras High Court

Case No: A.S. No. 66 of 2004

The Special Tahsildar, Land
Acquisition

APPELLANT

Vs

Lakshmi Kanthammal and The
Defence Estate Officer

RESPONDENT

Date of Decision: Sept. 30, 2010

Acts Referred:

- Land Acquisition Act, 1894 - Section 18, 4, 4(1)
- Legal Practitioners (Fees) Rules, 1973 - Rule 12, 14, 19, 3(2)

Hon'ble Judges: M. Venugopal, J

Bench: Single Bench

Advocate: V. Ravi, Special Government Pleader AS, for the Appellant; No Appearance, for the Respondent

Final Decision: Dismissed

Judgement

M. Venugopal, J.

The Appellant/Referring Officer has filed the present Appeal as against the Award dated 25.02.1999 in L.A.O.P. No. 355 of 1991 passed by the Learned Subordinate Judge, Ranipet.

2. The Government have acquired an extent of land measuring 3.38.00 Hectares situated in the village of Perumuchi in the Taluk of Arakkonam in the Registration, Sub District of Arakkonam in the District of North Arcot and registered in the name of (or) occupied by the persons mentioned in the Award dated 10.05.1988 in Award No. 11 of 1988 passed by the Land Acquisition Officer including the land of the First Respondent/Claimant measuring 0.06.0 Hectares in S. No. 172/6.

3. The Land Acquisition Officer has awarded a total compensation of Rs. 1,97,210/- in respect of the true area of land acquired viz., 3.38.0 Hectares. The Land Acquisition Officer in respect of the acquired land of the First Respondent/Claimant viz., 0.06.0

Hectares in S. No. 172/6 has awarded a total compensation of Rs. 3,499.95p.

4. The First Respondent/Claimant has been dissatisfied with the value of the compensation determined by the Land Acquisition Officer as mentioned supra and because of his objection, the Land Acquisition Officer has referred the matter as per Section 18 of the Land Acquisition Act, 1894 to the Tribunal viz., the Learned Subordinate Judge, Ranipet.

5. Before the trial Court, on behalf of the First Respondent/Claimant, Witness C.W.1 has been examined and Ex.C1 has been marked. On the side of the Appellant and the Second Respondent, Witness R.W.1 has been examined and Exs.R1 to R6 have been marked.

6. The trial court on an appreciation of oral and documentary evidence available on record has fixed the value of compensation in respect of the acquired land at Rs. 510/- per Cent and it has also granted other statutory benefits required under the Act.

7. Being dissatisfied with the Award dated 25.2.1999 in L.A.O.P. No. 355 of 1991 passed by the trial Court, the Appellant has preferred the present Appeal before this Court.

8. The point that arises for consideration in this Appeal is,

Whether the Award passed by the trial Court in L.A.O.P. No. 355 of 1991 dated 25.02.1999 in fixing the compensation at Rs. 510/- per Cent in respect of the acquired land is correct?

CONTENTIONS, DISCUSSIONS AND FINDINGS ON POINT:

9. According to the Learned Special Government Pleader(AS) appearing for the Appellant/Referring Officer, the trial court has committed an error in increasing the market value excessively and exorbitantly from Rs. 160/-, Rs. 170/- to Rs. 510/- per Cent in respect of the wet land and in respect of the dry land, it has determined the compensation at Rs. 450/- per Cent in violation of the procedure prescribed under the Act.

10. It is the further contention of the Learned Special Government Pleader that the trial court has not appreciated the location, Tharam, etc., of the acquired land on the date of notification and in any event, the compensation determined by the trial court is an arbitrary, unreasonable and excessive one and therefore, prays for allowing the Appeal in furtherance of substantial cause of justice.

11. Court Notice to the Respondents 1 and 2 have been served on 14.05.2004 and no one has appeared for them either in person or through counsel at the time of hearing of the matter.

12. The Learned Special Government Pleader appearing for the Appellant brings it to the notice of this Court that the subject matter involved in the present Appeal A.S.66 of 2004 before this Court is covered by the Judgment and Decree of this Court dated 18.07.2008 in A.S. No. 193 of 2001 and submits that this Court has upheld the compensation of Rs. 510/- per Cent determined by the trial court.

13. In fixing the market value of the acquired land, the relevant date is, the date of notification as per Section 4 of the Land Acquisition Act, as held in Jagath Singh v. Haryana State (1996) LAC 60 (P&H).

14. Added further, in Tamil Nadu Electricity Board v. R. Kandhaswamy (2003) 2 LACC 396 (Madras), it is observed that " ...the crucial date for fixing the market value of the acquired land is on the date of publication of Section 4(1) notification."

15. It cannot be gain said that there are numerous methods of valuation like a) opinion of Expert b) price paid within a reasonable time in bonafide transactions of purchase of the land acquired or the lands adjacent to the lands acquired and possessing similar advantages c) a number of years of purchase of the actual or immediately prospective profits of the land acquired. Apart from the above, whether the land is nearby or close to a developed or developing colonies, road etc., can also be taken note of by a Court of law.

16. Admittedly, a market value of a land ought not to be fixed by a Court of law on the basis of imagination. It is true that while arriving at a market value of the land, it cannot be calculated with arithmetical accuracy. A certain amount of conjecture is inevitable but a Court of law should not go far beyond in this direction.

17. The acid test is that sitting in the arm chair of willing vendor would offer to a willing purchaser, considering all prevailing relevant conditions of the normal market, fertility of land, location, suitability of purpose for which it has been purchased, its existing potentialities and likely used to which in the same condition would offer to pay the price as on date of notification.

18. This Court aptly codes the decision of the Hon^{ble} Supreme Court Special Land Acquisition Officer U.K. Project v. Mahaboob and Anr. (2009) 4 M.L.J. 137 (S.C.) wherein it is laid down as follows:

Even though the land is taken purportedly in accordance with law by resorting to acquisition proceedings, the Collector is supposed to offer fair compensation by taking all relevant circumstances relating to market value into account but the land acquisition officers seldom make reasonable offers and they tend to err on the safer side and invariably assess very low compensation.

19. In this connection, it is pertinent for this Court to make a significant mention that a Claimant/Owner of a land must not be put to loss by means of valuation of the land acquired. Equally, it is to be borne in mind that a public exchequer should not be put to undue burden by exorbitant or excessive valuation. Suffice it for this

Court to point out that a Court of law has to strike a balance between the two interests.

20. At this juncture, this Court pertinently points out that this Court in the Judgment in A.S. No. 193 of 2001 on 18.07.2008 in paragraph Nos. 7 and 8 has among other things observed as follows:

...7. At the outset itself, the Learned Additional Government Pleader (AS) would submit that already this Court vide Judgment dated 13.08.2007 passed in A.S. No. 881 of 2006 and etc., batch, disposed of similar matters fixing the compensation at Rs. 750/- per Cent.

8. Perused the Judgment dated 13.08.2007 and it reveals that already in similar matters the Division Bench of this Court assessed the value per Cent in a sum of Rs. 750/-. Here, the Reference Court assessed the compensation only in a sum of Rs. 510/-, which warrants no interference. I am, therefore, of the considered opinion that there is no merit in the Appeal and accordingly, the Appeal is dismissed. No costs.

21. As far as the present case is concerned, the First Respondent/Claimant admittedly has not filed any Cross Appeal or independent Appeal claiming enhanced compensation, than the one awarded by the trial court viz., Rs. 510/- per Cent.

22. Be that as it may, in view of the fact that the subject matter of the present case is covered by the Judgment and Decree of this Court in A.S.193 of 2001 dated 18.07.2008 wherein the market value of the acquired land has been determined at Rs. 510/- per Cent, as held by the trial court and since the said Judgment squarely applies to the facts of the present case, this Court determines the market value in respect of the acquired land in S. No. 172/6 in Perumuchi Village measuring 0.60.0 cents at Rs. 510/- per Cent and the Award of the trial court in L.A.O.P. No. 355 of 1991 dated 25.02.1999 does not require any interference in the hands of this Court and resultantly, the Appeal fails.

23. It is brought to the notice of this Court that the Appellant has already deposited 50% of the Award amount with accrued interests and costs to the credit of L.A.O.P.355 of 1991 on the file of the Learned Subordinate Judge, Ranipet. Hence, the Appellant and the Second Respondent/Requisition Body are directed to deposit the balance amount due to the First Respondent/Claimant to the credit of L.A.O.P.355 of 1991 on the file of the Subordinate Judge, Ranipet within a period of 8 weeks from the date of receipt of a copy of the Judgment. On such deposit being made, it is open to the First Respondent/Claimant to file necessary payment out application as per Rule 166 of the Civil Rules of Practice before the trial court and to withdraw the money in the manner known to law.

24. It is useful for this Court to refer to Rule 12 of the Legal Practitioners' Fees Rules, 1973 which runs as follows:

R.12. (1) In the High Court in appeals from original or appellate decrees in suits for money, effects or other personal property, or for land or other immovable property of any description, fees are payable on the same scales under Rule 3(2)(b).

Provided that when the appeal is compromised, settled withdrawn or dismissed for default (a) before the appeal gets into the ready board, the fee shall be one-fourth of the fee prescribed under Rule 3(2) (b) and (c) after the appeal stands on the ready board the fee shall be one-half of the fee prescribed under Rule 3(2)(b) subject to this, in all the above cases, the minima prescribed in Rule 14 shall apply:

(Provided further that when the appeal is from an award or from any part of an award of a Court in a land acquisition case, as between the collector and the claimant or claimants the maximum fee shall be Rs. 2,000.00.)

(2) When the amount or value of the claim in the appeal exceeds Rs. 2,000 an additional fee calculated at one-third of the fee allowable under Clause (1) shall be payable to junior Practitioner engaged with a senior Practitioner:

Provided that the junior was on record at least from the last of the dates fixed for the appearance of the respondent.

Provided further that in any case, where a juniors' fee is payable under this rule or under Rule 19, the Court shall have a discretion to fix that fee at half the seniors' fee instead of one-third.

(3) The fees for the junior legal practitioner for settling of documents for translation and or printing in first appeals shall be a minimum of Rs. 25 and a maximum of Rs. 50 subject to the discretion of the taxing officer.

25. Before parting the case, this Court determines the fees of the Learned Special Government Pleader (AS) as per Rule 12 of the Legal Practitioners' Fees Rules, 1973, on the basis of facts and attendant circumstances of the present case.

26. In the result, the Appeal is dismissed leaving the parties to bear their own costs. The Award passed by the trial court in L.A.O.P. No. 355 of 1991 dated 25.02.1999 is affirmed for the reasons assigned in this Appeal.