

(2007) 03 MAD CK 0041

Madras High Court (Madurai Bench)

Case No: A.S. No. 845 of 1997

The Special Tahsildar, [A.D.W.],
Tiruchendur

APPELLANT

Vs

A. Subbiah

RESPONDENT

Date of Decision: March 30, 2007

Hon'ble Judges: R. Banumathi, J; F.M. Ibrahim Kalifulla, J

Bench: Division Bench

Advocate: K.M. Vijayakumar, Additional Government Pleader, for the Appellant; K. Srinivasan, for the Respondent

Judgement

R. Banumathi, J.

Aggrieved by the Judgment of Sub Court, Tuticorin, enhancing the market value of acquired land to Rs. 7,333/- per cent, as against the market value of Rs. 1,333/-, fixed by the Acquisition Officer, Special Tahsildar [A.D.W.], Tiruchendur, Special Tahsildar, [A.D.W.], Tiruchendur has filed this appeal. Brief facts are as follows :

1.1.To provide house sites to Adi Dravidar Families of Thoppur h/o Keela Tiruchendur, land to an extent of 3.27 acres [1.32.5 hectares] in S. No. 127/5 of Keela Tiruchendur was sought to be acquired. The land belonged to Pattadars one Irudayaraj and joint Pattadar Sankari. Both Pattadars have executed Power of Attorney in favour of Subbiah, the claimant. Notice was sent under Sec.4(2)of the Tamil Nadu Harijan Welfare Schemes Land Acquisition Act, 1978 [Tamil Nadu Act 31/1978] [for short, "the Act"]. Form II Notification under Sec.4(1) of the Act was issued for acquisition of 1.32.5 Hectares in S. No. 127/5 part [S.NO.127/5A] and it was approved by the District Collector, Tuticorin. Thereafter, 4(1) Notification was published in the District Gazette on 05.08.1996.

1.2. The Acquisition Officer collected as much as 52 Sale Deeds during the period of one year from 05.08.1995 to 04.08.1996. Sale Deed dated 08.03.1996 relating to S. No. 121/1B [2.10 acres] and S. No. 1125/3A4 [0.25 acres] was considered to be similar in all aspects to the land under acquisition and Acquisition Officer

accordingly, fixed value of the acquired land at Rs. 1,333.35 per cent. Value of 1.32.5 Hectares of land was fixed at Rs. 4,36,912/-. 15% solatium was awarded, i.e. Rs. 65,537/-. Total compensation amount as per award is Rs. 5,02,449/-.

1.3 Aggrieved by the award, claimant filed appeal before the Sub Court, Tuticorin. According to the Claimant, the acquired land lies very near to the main road and within the extension area of Tiruchendur Panchayat Union. It was the case of the claimant that Data Sale Deed of S. No. 121 is very far away from the agricultural land. Claimant produced two Sale Deeds for comparison viz., Ex.C-2 -Sale Deed [dated 28.09.1995] relating to S. No. 127/5, in which the sale amount was Rs. 20,100/- i.e. Rs. 4,020/- per cent and Ex.C-3 [28.08.1995], Sale Deed relating to S. No. 131 in which five cents of land were sold for a sum of Rs. 22,000/-. Sub Court proceeded on the basis that Ex.C-3 should be taken as the basis therefore. Taking Ex.C-3 as basis, Appellate Court fixed the market value at Rs. 7,333/- per cent. The learned Subordinate Judge took the view that Data Sale Deed dated 08.03.1996 cannot be placed reliance upon, as S. No. 121 is far away from the acquired land and it must have been purchased by the Government for a very low price.

2. Challenging the fixation of market value on the basis of Ex.C-3, at Rs. 7,333/-per cent, learned Additional Government Pleader submitted that Ex.C-3 being Sale Deed for a small extent of three cents, cannot form the basis for comparison. Placing reliance upon 2006 (2) CTC 733 = 2006-2-L.W.561 [The Special Tahsildar [Land Acquisition], Adi Dravidar Welfare, Tirupathur Vs. Valliammal and others], the learned Counsel further submitted that price fetched for small piece of land cannot be applied to the acquired lands, covering a large extent and as per the decision of the Supreme Court, the Sub Court ought to have deducted at least 1 /3rd of land towards largeness of area and developmental charges. It was further submitted that rate of solatium and rate of interest awarded by the Tribunal is illegal and not in accordance with Sec.7 and Sec.12 of the Act.

3. Appearing for the claimant, learned Counsel Mr. K. Srinivasan, has submitted that the data land taken in S. No. 121 is far away from the acquired land and the same cannot at all be taken as a comparable Sale Deed and the Appellate Court rightly placed reliance upon Ex.C-2. Drawing our attention to Ex.C-1-Plan, the learned Counsel further submitted that S. No. 131 is a developed area, which is in the same vicinity as the acquired land and the Sub Court has rightly taken Ex.C-2 as the basis. Learned Counsel fairly conceded that solatium and rate of interest awarded by the Appellate Court is erroneous.

4. Acquired land 1.32.5 hectares -3.29 acres is part of S. No. 127/5 [S. No. 127/5A]. Data Sale Deed relates to the sale of 2.35 acres of dry land - 2.10 acres in S. No. 121/B and 0.25 acres -S.N0.125/3A4 of Keela Tiruchendur Village as per Doc. No. 306 dated 08.03.1996. The Acquisition Officer took the view that the lands sold under Data Land are similar in all respects to the land under acquisition and accordingly, fixed the value of the acquired land at Rs. 1,333.35 per cent and at Rs. 3,29,745 per

hectare. Data Sale Deed appears to have been taken as basis on the only premise that data Sale Deed relates to a larger plot.

5. It is no doubt true that Courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land by comparable sales method, the land sought to be compared must be similar in potentiality and nature and certain factors which are required to be kept in view. In [Shaji Kuriakose and Another Vs. Indian Oil Corpn. Ltd. and Others](#),], the Supreme Court has inter-alia laid down the following factors-

- 1) the sale must be a genuine transaction,
- 2) that the Sale Deed must have been executed at the time proximate to the date of issue of notification u/s 4 of the Act,
- 3) that the land covered by the sale must be in the vicinity of the acquired land,
- 4) that the land covered by the sales must be similar to the acquired land, and
- 5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the Court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.

6. In this case, though the data land in S. No. 121/1B and 125/3A4 are proximate to the date of issuance of Sec.4(1) notification, data land cannot be stated to be similar in nature to the one acquired or in the close vicinity of the acquired land. The Courts will have to take into consideration the largeness of area, remoteness from the developed locality etc. We are of the considered view that the lands in S.N0.121/1B and 125/3 are covered under data Sale Deed are little farther from the acquired land.

7. The amount of compensation cannot be ascertained with mathematical accuracy. Holding that for determining the market value of the land in acquisition, considerable adjustment has to be made having regard to various positive and negative factors vis-a-vis., the land under acquisition, by placing the two in juxtaposition, in [Viluben Jhalejar Contractor \(D\) by LRs. Vs. State of Gujarat](#), the Supreme Court has laid down the positive and negative factors which are as under :-

18. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefore. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not 19.

Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighborhood at or about the date of notification under Sec.4(1) or otherwise, other sale instances as well as other evidences have to be considered. 20.The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

94. Positive factors Negative factors :

Positive factors :	Negative factors:
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage compared to depth
(iv) nearness to developed area	(iv) lower level requiring the depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-a-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser
(vii) special value for an owner of an adjoining property to whom it may have some very special advantage.	

8. Claimant has produced Sale Deeds - Exs.C-2 and C-3. Ex.C-2 [dated 25.09.1995] is the Sale Deed in favour of Usha, who is none other than the daughter of claimant, Subbiah. Ex.C-2 relates to sale of five cents in S. No. 127/5 for Rs. 20,100/-. Value per cent comes to Rs. 4,020/-. Ex.C-3 [dated 25.08.1995] is the Sale Deed relating to S. No. 131/7 for three cents for Rs. 22,000/-. The learned Subordinate Judge has adopted Ex.C-3 as comparable land and fixed the market value at Rs. 7,333 per cent. The acquired plot is large in area i.e. 3.29 acres, whereas Ex.C-3 relates to a small corner plot of extent of 3 cents. Appellate Court has not deducted any depreciation for largeness of area, nor has it taken note of the fact that S. No. 131 is a developed

area, whereas acquired land S. No. 127/5A is not developed.

9. Keeping in view the purpose for which acquisition is made, the principle of deduction in land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land.

10. As noticed earlier, even as per the Sale Deed in favour of the claimant's daughter in S. No. 127/5, the value is Rs. 4,020/- per cent. Under Ex.C-3, for three cents, sale consideration is Rs. 22,000/- and per cent it is Rs. 7,333/-. Having regard to the location of the acquired land and location of the plot covered under Exs.C-2 and C-3, we deem it fit to fix the market value taking the average value of Exs.C-2 and C-3 i.e. -

Rs. 4,020/- + Rs. 7,333/- = Rs. 11,353 % 2 = Rs. 5,676.50.

In view of the passage of time, we round it to Rs. 6,000/-. For the entire extent of 3.29 acres of land, the value would be Rs. 19,74,000/-.

11. Deduction for largeness of area ; As held by the Supreme Court in 2004-2-L.W.839 = 2003(12) SCC 334 [Land Acquisition Officer, Kammarapally village Nizamabad District, A.P., Vs. Nookala Rajamallu and others], "where large area is the subject matter of acquisition rate at which small plots are sold cannot be said to be a safe criterion". In the said decision, considering the question, when there is acquisition of vast area of agricultural land, how the value is to be determined and what should be the percentage of deductions, the Supreme Court has held as follows:-

6. Where large area is the subject matter Of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to few decisions of this Court in The [The Collector of Lakhimpur Vs. Bhuban Chandra Dutta, Prithvi Raj Taneja \(Dead\) by Lrs. Vs. The State of Madhya Pradesh and Another](#), ; [Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another](#),

7. It cannot, however, be laid down as on absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in such cases necessary deduction/ adjustments have to be made while determining the prices.

[underlining added].

12. In [Viluben Jhalejar Contractor \(D\) by LRs. Vs. State of Gujarat](#), , the Supreme Court while laying down positive factors and negative factors. In paragraph No. 21 of the Judgment, the Supreme Court has inter-alia considered what could be the deductions for developmental charges held as follows:-

21. Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price.

13. Holding that when acquired land is not developed land and also not abutting the main road or national highway, deduction of 1/3rd amount is permissible, a Division Bench of this Court in 2006(2) CTC 733 : 2006-2-L.W.561 [The Special Tahsildar [Land Acquisition], Adi Dravidar Welfare, Tirupathur Vs. Valliammal and others], has held as under :-

The Apex Court in the decision [Padma Uppal and Others Vs. State of Punjab and Others](#), has held that "it is the settled proposition that price fetched for small plots of land cannot be applied to the lands covering a very large extent and that the large area of land cannot possible fetch a price at the same rate at which small plots are sold". In the case [Gulzara Singh and Others Vs. State of Punjab and Others](#), the Apex Court has upheld the deduction of 1/3rd land towards the developmental charges. In [K. Vasundara Devi Vs. Revenue Divisional Officer \(LAO\)](#), the Apex Court reiterated that when genuine and reliable sale deeds of small extents were considered to determine market value of large tracts of land. Sufficient deduction should be made to arrive at the just and fair market value for large tracts of land. In [Special Land Acquisition Officer, Bangalore Vs. V.T. Velu and Others](#), the Apex Court has held that at least 1/3rd of the land acquired is to be set apart for road purpose, developmental purpose and other civil amenities. In [U.P. Avas Evam Vikas Parishad Vs. Jainul Islam and Another](#), the Apex Court upheld the deduction of 1/3rd price towards the cost of development for the housing scheme. It has been held in [Ravinder Narain and Another Vs. Union of India \(UOI\)](#), "It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating Court to make comparison of the price paid for small plots of land. However, in such cases necessary deductions/ adjustments have to be made while determining the prices.

14. 1/3rd deduction from the amount of compensation has been normally directed to be deducted. See [Kasturi and Others Vs. State of Haryana](#), [Tejumaal Bhojwani \(Dead\) through Lrs. and Others Vs. State of U.P.](#), ; [V. Hanumantha Reddy \(Dead\) by Lrs. Vs. The Land Acquisition Officer and Mandal R. Officer](#), [H.P. Housing Board Vs. Bharat S. Negi and Others](#), and [Kiran Tandon Vs. Allahabad Development Authority and Another](#),

15. We find that houses are shown in S. No. 131. There is no evidence showing that the acquired land in S. No. 127/5A is developed. By looking at Ex.C-1 - Plan we find hardly any development had taken place in S. No. 127/5A prior to acquisition. Land was acquired for providing houses to Adi Dravidars. As discussed earlier, Supreme

Court has laid down, as general rule that for laying roads and for other amenities, 33 1/3% is required to be deducted. The Appellate Court has failed to take note of the largeness of area and the fact that the acquired land is not developed land. In our considered view the learned Subordinate Judge erred in not deducting 33 1/3% towards largeness of the area and also for the fact that the acquired land is an agricultural land.

16. As per sub Sec.(1) of Sec.(7) of the Act, the amount payable in respect of the land that is acquired under the Act shall be its market value on the date of publication of notice under Sec. 4(1) of the Act. We have calculated the value at Rs. 6,000/- per cent. For the entire extent of 3.29 acres, total value is Rs. 19,74,000/-. When we deduct 1/3rd, i.e. 33 1/3%, market value of the acquired land would be Rs. 13,16,000/-.

17. Solatium :-

The learned Subordinate Judge has awarded 30% solatium. 30% solatium is payable only under the Central Land Acquisition Act. In the present case, land was acquired to provide houses to Adi Dravidars and acquisition was made under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978. As per Sub Sec. (2) of Sec.(7) of the Act, in addition to market value of the land, the Prescribed Authority shall in every case, award 15% on market value as solatium, in consideration of the compulsory nature of the acquisition. Ordering Solatium at 30% is per se illegal and is to be modified as 15%, as per Sec.7(2) of the Act. Accordingly, solatium is fixed at 15%.

18. Interest :-

The learned Subordinate Judge has awarded 15% interest. Only under the Central Land Acquisition Act, as per proviso to Sec.34 of the Act, if the amount is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum. In the case on hand, land is acquired for providing houses to Adi Dravidars under Tamil Nadu Harijan Welfare Schemes Land Acquisition Act, 1978. Interest is payable as per Sec.12 of the Act :-

As per Sec.12 of the Act :- When the amount is not paid or deposited on or before taking possession of the land, the prescribed authority shall pay the amount with interest thereon at the rate of six per cent per annum from the time of so taking possession until it shall have been so paid or deposited and such interest shall be paid or deposited....

Interest awarded at 15% is erroneous and we reduce the same to 6% per annum.

19.The Judgment in L.A.O.P. No. 3/1996 on the file of Sub Court, Tuticorin is modified and this appeal is partly allowed. Amount of compensation payable is calculated at Rs. 13,16,000/-. As per Sec.7 of the Act, 15% solatium is payable. As per Sec.12 of the Act, interest is payable at the rate of 6% from the date of Award i.e. 22.11.1996 till 20.02.1998, till the date of deposit of amount.

20. We were informed that entire compensation amount of Rs. 29,48,247/- was already deposited on 20.02.1998. As per order in CMP Nos.2988 and 2989/1998 [dated 13.03.1998]. Claimant has withdrawn the entire amount i.e. 50% of the amount without furnishing security and another 50% on furnishing security. The entire compensation amount of Rs. 29,48,247 was deposited on 20.02.1998. Since entire amount has been withdrawn by Respondent, we are constrained to pass the following directions to get back the excess amount withdrawn by the Respondent. Both parties shall file calculation memo before the Sub Court, Tuticorin, within a period of four weeks from the date of receipt of a copy of this Judgment. Respondent is directed to re-deposit the excess amount into the Court to the credit of L.A.O.P. No. 3 of 1996, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit the Government/Appellant is permitted to withdraw the same. In case of failure to deposit the excess amount withdrawn by him, Respondent is liable to pay interest at the rate of 9% p.a. till realisation of the amount. In case of default, the Appellant is at liberty to proceed against the immovable property furnished as security, by filing Execution Petition for bringing the immovable property to sale. Any difference regarding the calculation shall be determined by the learned Subordinate Judge, Tuticorin. But any such difference and determination cannot be a ground for extending the time for deposit of excess amount.