Mrs. Kotteswari Ammal and Mrs. C.P. Kasturibai Ammal Vs The Special Deputy Collector (Land Acquisition Works) and Managing Director, Metropolitan Transport Corporation

A.S. No. 550 of 1997 and C.M.P. No''s. 699 and 700 of 2008

Court: Madras High Court

Date of Decision: Aug. 5, 2009

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 41 Rule 27#Land Acquisition Act, 1894 â€" Section 10(2), 11, 18, 2, 23(1A)

Hon'ble Judges: P.R. Shivakumar, J

Bench: Single Bench

Advocate: J.R.K. Bhavanathan, for the Appellant; V. Ravi, Spl. GP (AS) for R1 and M. Chidambaram, for R2, for the Respondent

Judgement

P.R. Shivakumar, J.
This appeal is directed against the judgment and award (decree) of the learned VI Assistant Judge, City Civil Court,

Chennai dated 13.09.1996 made in L.A.O.P. No. 24/1993. The claimants whose lands were acquired, have come forward with the present

appeal complaining that the amount awarded by the Court below as compensation for the acquired land is grossly inadequate and praying for

enhancement of compensation. The 1st respondent herein is the Referring Officer and the 2nd respondent is the Managing Director of the former

Pallavan Transport Corporation, presently Metropolitan Transport Corporation, Ayanavaram, Chennai, the requisitioning authority for whose

benefit the land was acquired.

2. A total extent of 8 grounds and 2,102 sq.ft of land comprised in Survey Nos. 4059/1, 4059/14, 4059/15, 4059/16 and 4059/17 in Tondiarpet

Village, within the Sub-Registration Sub-District of Chennai in the District of Madras belonging to the claimants was acquired by the Government

for the purpose of construction of bus terminus in Tondiarpet. The draft notification u/s 4(1) of the Land Acquisition Act was approved in G.O.Ms.

No. 7522 (Transport) dated 31.08.1978 and the same was published at Page 29 of Part 2 Section 2 of Tamilnadu Government Gazette dated

20.09.1978. It was followed by an enquiry u/s 5(A) and declaration u/s 6 of the Land Acquisition Act. The same was approved by the

Government in G.O.Ms.630 (Transport) dated 24.05.1980 and was published at Page 23 of Part 2 Section 2 of Tamilnadu Government Gazette

dated 18.06.1980. Necessary notices were served on the owners of the lands and local publications were also effected in accordance with the

provisions of the Land Acquisition Act. The award enquiry u/s 11 was conducted and the Land Acquisition Officer (Referring Officer), namely the

Special Deputy Collector passed an award in Award No. 2/1983 dated 13.06.1983 fixing the Market value of the property at the rate of Rs.

10,000/- per ground as on 01.07.1971 based on the market value adopted for assessing the lands under Urban Land Tax. As the notification u/s

4(1) of the Land Acquisition Act was issued on 20.09.1978 i.e. after 7 years, the Trial Court chose to fix the market value of the property at Rs.

16,300/- by giving 9% increase per year for the market value fixed, as on 01.07.1971. However, the Trial Court ultimately fixed the market value

of the property as on the date of notification u/s 4(1) at Rs. 16,000/- per ground. Thus the total market value of the land as on the date of 4(1)

notification was arrived at Rs. 1,42,013.34p. The value of Trees and the value of the thatched shed were fixed at Rs. 100/- and Rs. 200/-

respectively, thus making the total market value to Rs. 1,42,313.34p. A sum of Rs. 21,347/- calculated at the rate of 15% as solatium was added

and the total amount of compensation payable to all the land owners was fixed at Rs. 1,63,660.34p. The land owners/claimants received the

amount under protest and requested the Referring Officer/Land Acquisition Officer to make a reference u/s 18 of the Land Acquisition Act to the

Court for fixing a reasonable compensation. Thus a reference came to be made to the City Civil Court, Chennai which was registered as L.A.O.P.

No. 24/1993 on the file of the VI Assistant Judge, City Civil Court, Chennai.

3. The registered owners of the land before acquisition were G. Sambandam Chettiyar, V. Kotteeswariammal, C.P. Kasturi Bai and Balambigai

Ammal, wife of the above said G. Sambandam Chettiyar. The said Balambigai Ammal, 4th claimant passed away subsequent to the passing of the

award by the Land Acquisition Officer. The claimants 1 to 3 claimed to have become entitled to the compensation and other benefits as the legal

heirs of the deceased 4th claimant Balambigai Ammal also. Their claim was recognised by the Collector in proceedings No. K2/15/80 of the

Collector of Madras dated 29.08.1984. The possession of the acquired land was taken by the Government on 12.03.1984. Even thereafter the

Land Acquisition Officer did not make payment of the compensation as per his award and failed to make a reference u/s 18 of the Land

Acquisition Act to the Court. Therefore, the claimants approached the High Court by filing a Writ Petition W.P. No. 462/85. By an order dated

23.09.1985, this Court directed payment of compensation to the claimants on or before 31.10.1985. It was also directed in the said order to

make a reference to the Court u/s 18 of the Land Acquisition Act. However, payment was made to the claimants only on 11.09.1989 and the

award copies were served on them on 20.10.1989. As no reference was made u/s 18 of Land Acquisition Act as demanded by the claimants they

had to again approach the High Court by filing a Writ Petition W.P. No. 15008/1992 for a Writ of Mandamus directing the Special Deputy

Collector, (Land Acquisition Officer), Madras City to make a reference to the City Civil Court, Chennai u/s 18 of the Land Acquisition Act. Only

subsequent to the filing of the said Writ Petition, the Land Acquisition Officer made a reference to the City Civil Court u/s 18 of the Land

Acquisition Act on 23.06.1993.

4. The appellants herein/claimants in their claim statements filed in the L.A.O.P. before the Court below contended that the land should be valued

at the rate of Rs. 1 Lakh per ground as on the date of 4(1) Notification (20.09.1978). They had also claimed that though the award was passed in

the year 1983, the compensation amount was paid after six years and a further delay of 4 years had been caused in making the reference to the

Court and hence they were entitled to damages at 100% of the market value for the delay u/s 48-A of the Land Acquisition Act. They had also

claimed other statutory benefits like additional market value calculated at the rate of 12% per annum on the market value in accordance with

Section 23(1-A) and Solatium at the rate of 30% u/s 23(2) of Land Acquisition Act. They had also claimed enhancement of the compensation for

the thatched shed at Rs. 20,000/- and value of trees at Rs. 4,000/- as against valuation adopted by the Land Acquisition Officer at Rs. 200/- and

Rs. 100/- respectively. They had also prayed for the award of interest on the compensation at the rate of 9% per annum for a period of one year

and thereafter at the rate of 15% per annum. Ultimately, the claimants claimed compensation to the tune of Rs. 90,00,000/-. The court below

framed a single issue as follows:

whether the market value fixed for the acquired land at the rate of Rs. 16,000/- per ground was proper? If not so, what was the actual market

value of the acquired land?

5. In the Trial, the 1st claimant G. Sambandam Chettiyar deposed as the sole witness C.W.1 on the side of the claimants and 12 documents were

marked as Exs.C1 to C12 on their side. One Dayalan, Special Thasildhar was examined as the sole witness (R.W.1) and three documents were

marked as Exs.R1 to R3 on the side of the Referring Officer.

6. At the conclusion of Trial, the learned Trial Judge confirmed the correctness of the market value of the land, value of thatched shed and trees

fixed by the Land Acquisition Officer. However, taking into account the change in law, the learned Trial Judge directed payment of solatium at the

rate of 30% instead of 15%. The learned Trial Judge also directed calculation of Additional Market value (though termed as interest) at the rate of

12% per annum from the date of 4(1) notification till the date of the award passed by the Land Acquisition Officer. The learned Trial Judge also

allowed interest at the rate of 9% per annum for the period of one year from the date of taking possession and thereafter at the rate of 15% per

annum till the enhanced compensation would be paid to the claimants.

7. As against the disallowed portion of the claim made by the claimants and contending that the amount awarded as compensation is grossly

inadequate, the claimants have come forward with the present appeal u/s 54 of the Land Acquisition Act, on various grounds set out in the

memorandum of appeal.

8. Pending disposal of the appeal, the appellants/claimants have come forward with C.M.P. No. 699 of 2008 under Order 41 Rule 27 C.P.C.

seeking permission to adduce additional evidence and another petition C.M.P. No. 700/2008 under Order 41 Rule 27 seeking permission to raise

additional grounds in the appeal. The said prayers have been made based on the contention that they were not able to produce necessary

documents before the trial court to prove the market value of the property as on the date of 4(1) notification as the existence of the said document

was not within the knowledge of the appellants at that point of time and they came across such documents only during the pendency of the appeal.

The prayer made in C.M.P. No. 700/2008 for permission to raise additional grounds is only consequential to the petition for reception of

additional evidence. The reasons assigned by the appellants for not producing the documents before the trial court, which are now sought to be

introduced are not satisfactory. Apart from the same, the documents now sought to be introduced are sale deeds pertaining to properties situated

at a considerable distance from the acquired property. In addition to that those documents are not sale deeds relating to vacant sites. They are sale

deeds under which land along with buildings were sold. The documents do not contain the split up particulars of the value as the value of land and

value of building. However, the appellants have chosen to get a valuation certificate for the building from one building surveyor. The same could

have been done in respect of Ex.C11 before the trial court. Having failed to do so, the appellants have now come forward with the present petition

to introduce such evidence only to fill up the lacunae caused in their case. Therefore, this Court is of the considered view that both the petitions do

not have any merit in them and they deserve to be dismissed. In addition to that, this Court is of the view that the issue involved in the case can be

decided conveniently with the help of the evidence adduced before the trial court. No case for adducing additional evidence has been made out by

the appellants under Order 41 Rule 27 of Civil Procedure Code. Therefore, this Court comes to the conclusion that C.M.P. No. 699/2008 and

C.M.P. No. 700/2008 deserve to be dismissed.

9. Though the Land Acquisition Officer considered six sale deeds for the purpose of fixing the market value of the acquired property as on the date

of Section 4(1) notification, namely 20.09.1978, the Land Acquisition Officer came to the conclusion that all the six sale deeds did not reflect the

correct market value of the acquired property as on the date of Section 4(1) notification. Of course, out of the six sale deeds included in the sales

data, five sales had taken place for a rate lesser than the one fixed by the Land Acquisition Officer, as the market value of the acquired property.

The Land Acquisition Officer had fixed the market value of the acquired property as on the date of Section 4(1) notification at Rs. 16,000/- per

ground. Under the five sale deeds rejected by the Land Acquisition Officer as not reflecting the correct market value, the lands had been sold

comparatively at a lesser rate per ground. Under one sale deed bearing document No. 706/1978 pertaining to S. No. 4310/56, the property was

sold at the rate of Rs. 19,393/- per ground. The Land Acquisition Officer did not rely on the said sale, as the subject matter of the sale was at a

distance of more than four furlongs and according to him the same would not reflect the true market value of the land acquired. After discarding all

the six sale deeds considered by him to fix the market value, the Land Acquisition Officer chose to adopt the Urban Land Tax value. The value

fixed under the Urban Land Tax for the acquired land on 01.07.1971 was adopted to be the market value of the acquired land on the said date.

As Section 4(1) notification was issued after seven years from the said date, the Land Acquisition Officer fixed the market value as on the date of

Section 4(1) notification by giving an increase at the rate of 9% per annum. Ultimately, deducting a sum of Rs. 300/- from such amount, the Land

Acquisition Officer fixed the market value of the acquired property at Rs. 16,000/- per ground.

10. Though the appellants/claimants would have challenged the method adopted by the Land Acquisition Officer in arriving at the market value of

the acquired property, it is trite law that a reference u/s 18 of the Land Acquisition Act (LAOP) is not an appeal against the award of the Land

Acquisition Officer and the court dealing with the reference u/s 18 is not an appellate forum sitting in appeal over the award of the Land Acquisition

Officer. A reference u/s 18 is original proceedings akin to a suit wherein the claimant occupies the position of the plaintiff and the Referring officer

occupies the position of the defendant. As it is an original proceedings like a suit, it is for the claimant to prove his case that the market value of the

acquired property as on the date of Section 4(1) notification was more than the amount fixed by the Land Acquisition Officer and that he is entitled

to an enhanced compensation calculated adopting a higher amount as market value of the acquired property. The appellants, in an attempt to show

that the market value of the acquired property was more than the amount fixed by the Land Acquisition Officer, had produced copies of four sale

deeds marked as Ex.C2, C3, C11 and C12. But, out of the four sale deeds, Ex.C2 and C3 came into existence several years after the notification

u/s 4(1) of the Land Acquisition Act was published. Therefore, the court below has rightly refused to fix the market value of the acquired property

based on Ex.C2, C3 and C12. So far as Ex.C11 is concerned, no doubt, it is a document contemporary to the notification u/s 4(1) of the Land

Acquisition Act. But the said sale deed pertains to S. No. 2996/2001 in New Washermanpet, whereas the acquired property is situated in

Tondiarpet village. Apart from that under the said document, a land measuring 1,347 sq.ft. along with the building therein was sold for a sum of Rs.

39,000/-. The value of the land and building have not been separately given. A specific suggestion was put to CW-1 that the said land sold under

Ex.C11 was far away from the acquired land. Of course the said suggestion was denied by CW-1. But, CW-1 himself admitted that he did not

know either the vendor or the purchaser under Ex.C11. CW-1 has also pleaded ignorance of the name of the street in which the said property was

situated. Therefore, this Court finds no defect or infirmity in the choice of the court below to reject the said document as not helpful to assess the

correct market value of the acquired land as on the date of notification u/s 4(1) of the Land Acquisition Act.

11. On the other hand, the Referring Officer has produced a true copy of an assessment order made under the provisions of the Urban Land Tax

Act, 1966 relating to the survey number in which the acquired land was comprised as the basis on which the market value was sought to be fixed.

The acquired land is comprised in S. Nos. 4059/1, 4059/14, 4059/15, 4059/16 and 4059/17. The assessment order under the Tamil Nadu Urban

Land Tax Act, 1966 was made in respect of S. No. 4059/1. It is adjoining the acquired land which can seen from the survey field map of S. No.

4059/1 and 4059/14 to 19 marked as Ex.R2. A copy of the Urban Land Tax Assessment order dated 07.03.1995 has been produced and

marked as Ex.R1. As the documents produced on the side of the appellants/claimants are not helpful to fix the market value of the land acquired,

the decision arrived at by the learned trial judge to assess the market value of the acquired land on the basis of Ex.R1 assessment order cannot be

termed either infirm or discrepant. But whether the learned trial judge has rightly assessed the market value of the acquired property in accordance

with the particulars found in Ex.R1 Assessment Order has got to be considered.

12. The assessing authority, namely the Assistance Commissioner of Urban Land Tax, relying on a sale deed, came to the conclusion that the

market value of the property comprised in S. No. 4059/1 as on the date of 01.07.1971 was Rs. 16,000/- per ground. In fact the assessing

authority under the Urban Land Tax Act has made the following observation in Ex.R1 Assessment Order:

Hence I consider that a higher rate of Rs. 16,000/- per ground can be reasonably determined for the case land and I accordingly finally determine

the market value at Rs. 16,000/- per ground u/s 10(2-b) of the Act for the case land.

13. However, relying on a government order in G.O.Ms. No. 2625 Revenue dated 27.02.1976, which directed the market value for the purpose

of Urban Land Tax as on 01.07.1971 should be limited to double the market value fixed on the earlier occasion, namely as on 01.07.1963,

Assessing Authority (Assistant Commissioner of Urban Land Tax), fixed market value as on the date of notification at Rs. 10,000/- per ground.

The market value fixed as on 01.07.1963 was Rs. 5,000/-, the assessing officer under the Urban Land Tax Act limited the market value of the said

land to Rs. 10,000/- per ground as on 01.07.1971. This aspect was not properly considered by the learned trial judge. The actual market value as

on 01.07.1971 was unequivocally fixed under Ex.R1 at Rs. 16,000/- per ground. However, only for the purpose of taxation, the same was limited

to Rs. 10,000/-. Therefore, this Court is of the considered view that the learned trial judge committed a mistake in fixing the market value of the

acquired property at the rate of Rs. 10,000/- per ground as on 01.07.1971 instead of Rs. 16,000/- per ground as the said date. It shall be quite

reasonable and justifiable to fix the market value of the acquired land as on 01.07.1971 at Rs. 16,000/- per ground. Since there was a gap of 7

years and two months between 01.07.1971 and the date of Section 4(1) notification, an increase in the market value at a certain percentage has to

be allowed which the court below has rightly done. But the trial judge allowed the increase in the market value @ 9% per annum. What is the basis

on which the rate of increase was decided is not spelt out in the judgment of the trial court. On the other hand, when there is no guideline, we can

get a clue from Section 23(1-A) of the Land Acquisition Act which says that an additional market value of the land at the rate of 12% per annum

shall be calculated from the date of Section 4(1) notification till the date of award or the date of taking possession, whichever is earlier. The said

section is intended to be made applicable for the period subsequent to the date of Section 4(1) notification. By analogy we can take a clue from

the said section as to at what percentage the increase in the market value should be given when the market value of the acquired property is fixed

with reference to some years prior to the date of Section 4(1) notification, to find out what could be the market value as on the date of 4(1)

notification. Therefore, this Court comes to the conclusion that instead of 9% increase per annum, the trial court should have allowed 12% increase

in the market value per annum. While calculating the market value as on the date of Section 4(1) notification we can disregard the fraction of a

year, namely 2 months (approximate) and calculate the increase in market value of the acquired land as on the date of 4(1) notification for seven

years at the rate of 12% per annum. Thus the market value of the acquired land as on the date of 4(1) notification per ground is to be fixed as

follows:

Market value as on 01.07.1971

per ground : Rs. 16,000/-

As on the date of Section 4(1)

notification, namely 20.09.1971

increase in market value @ 12%

per annum for 7 years : 16,1000 x 12 x 7

100

: Rs. 13,440/-

So, the market value of the acquired land as on the date of Section 4(1) notification is to be fixed at Rs. 29,440/- (16,000/- + 13,440) per ground.

In accordance with the aboe said calculation, the market value of the acquired property as on the date of Section 4(1) notification should be fixed

at the rate of Rs. 29,440/- per ground. The compensation shall be worked out as follows:

Market value of the acquired land measuring 8 grounds 2,102 sq.ft. @ Rs. 29,440/- per ground is Rs. 2,61,304.53. Though Section 23(1-A) was

introduced subsequent to the award passed by the Land Acquisition Officer, the same is applicable to pending cases. Therefore, an additional

market value @ 12% per annum from the date of 4(1) notification till the date of award or date of taking possession whichever is earlier should be

calculated and added to the market value. The possession of the property is said to have been taken by the government on 12.03.1984.

Therefore, the additional market value shall be calculated for the period from 20.09.1978 to 12.03.1984 @ 12% per annum on the market value.

As per the amended Section 23(2) which is applicable to pending cases, 30% solatium should be calculated. A small thatched shed with mud walls

and an old boring pump have been valued at the rate of Rs. 200/- and Rs. 100/- respectively. There need not be any change in the said valuation.

The same is to be added to the market value of the property. So, the total market value of the acquired land including thatched shed and boring

pump is fixed at Rs. 2,61,604.53. The break-up details are furnished below:

Market value at the rate of

Rs. 29,440/- per ground for

8 grounds 2102 sq.ft. = Rs. 2,61,304.53

Value of the thatched shed and

bore pump = Rs. 300.00

Total market value = Rs. 2,61,604.53

30% solatium = Rs. 78,481.359

Additional market value calculated

at the rate of 12% per annum on the

market value for the period from

the the date of 4(1) notification

till the date of award of the land

Acquisition Officer. i.e. from

20.09.1978 to 12.03.1984

(i.e. 2000 days) is = Rs. 1,72,013.94

The total amount of compensation

to which the appellant/claimant

No. 1 shall be entitled is = Rs. 5,12,099.83

(which is rounded to Rs. 5,12,100.00)

The amount awarded by the Land

Acquisition Officer as compensation, = Rs. 1,63,660.34

The balance amount representing

the enhanced compensation payable

to the appellant/claimant No. 1 is = Rs. 3,48,439.66

(which is rounded to Rs. 3,48,440.00)

14. As per Section 28 of the Land Acquisition Act on the compensation awarded in excess of the sum awarded by the collector (Land Acquisition

Officer), the land owner shall be entitled to an interest at the rate of 9% per annum, from the date on which possession was taken by the

government, for a period of one year and thereafter at the rate of 15% per annum from the date of expiry of the above said period of one year till

deposit. In addition to the said interest, since the appellants/claimants were not paid even the compensation amount awarded by the Land

Acquisition Officer till the claimants filed their Writ Petition in the High Court in W.P. No. 462/1985 and the amount awarded as compensation by

the Land Acquisition Officer was paid only on 11.09.1989, it shall be just and necessary to direct the respondents to pay an interest on the amount

awarded by the Land Acquisition Officer, namely Rs. 1,63,660.34 at 9% per annum from 12.03.1984, the date on which possession was taken till

11.09.1989, the date on which the amount awarded by the Land Acquisition Officer was paid/deposited.

15. Out of four claimants, the fourth claimant died and the claimants 1 to 3 were recorded as the legal representatives. Subsequently, the first

claimant, by name M.G. Sambandam Chettiar also died and the second and third claimants were recorded as the legal representatives of the first

claimant. As such the appeal has been preferred by the second and third claimants alone. They are entitled to the compensation for acquired

property in equal moieties.

16. In the result, the appeal is allowed in part and the award of the trial court is modified as follows:

a) The total market value of the property including the value of thatched shed and bore pump is fixed at Rs. 2,61,604.53P

b) A sum of Rs. 78,481.359 being 30% of the market value is awarded as solatium u/s 23(2) of the Land Acquisition Act.

c) A sum of Rs. 1,72,013.94 is awarded as additional market value calculated @ 12% per annum on the market value from the date of 4(1)

notification till the date of award.

d) The total amount of compensation, (market value + solatium + additional market value) is fixed at Rs. 5,12,100.00

e) After deducting the amount awarded by the Land Acquisition Officer as compensation as per his award, the enhanced compensation to which

the respondent herein/claimant is entitled is fixed at Rs. 3,48,440/-

f) On the enhanced amount of compensation, the respondent herein/claimant shall be entitled to an interest @ 9% per annum from the date on

which the Government took possession of the land, namely 12.03.1984 for a period of one year and thereafter at the rate of 15% per annum till

the amount is deposited.

g) The respondent shall also pay interest on the amount awarded by the Land Acquisition Officer, namely Rs. 1,63,660.34 from 12.03.1984 (the

date of taking possession) to 11.09.1989 (the date of deposit/payment of the said amount) at the rate of 9% per annum.

And

h) There shall be no order as to cost in this appeal.