(2002) 10 MAD CK 0156

Madras High Court

Case No: Appeal Suit No''s. 740 to 743 of 1996

Cholan Roadway Corporation Limited		APPELLANT
	Vs	
Kasthurai Ammal, The Land Acquisition Officer, (Revenue Divisional Officer), M. Jayachandran, M. Devendran, R.K. Radhakrishnan Chettiar and V. Parthasarathy Naidu		RESPONDENT

Date of Decision: Oct. 23, 2002

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11
- Land Acquisition (Amendment) Act - Section 4(1)
- Land Acquisition (Tamil Nadu Amendment) Act, 1996 - Section 25
- Land Acquisition (Tamil Nadu Amendment) Act, 1997 - Section 25(1)
- Land Acquisition Act, 1894 - Section 18, 4(1)

Citation: (2003) 2 CTC 548 : (2003) 2 LW 330 : (2003) 1 MLJ 19

Hon'ble Judges: A.S. Venkatachalamoorthy, J; A. Kulasekaran, J

Bench: Division Bench

Advocate: K.V. Subramanian, for the Appellant; R. Asokan, Addl. Govt. Pleader for R-2 (LAO) and V. Ramasubramanian, for Respondent-1, for the Respondent

Final Decision: Dismissed

Judgement

1. For construction of an Additional Depot for Cholan Transport Corporation, Kumbakonam, an extent of 1 acre 10890 sq. ft. comprised in T.S. No. 2092 to 2094 and 2095 in Palavathan Kattalai village and Ullur village, Kumbakonam Taluk, was acquired by the Government of Tamil Nadu. Notification u/s 4(1) of the Land Acquisition Act was published in the Government Gazette dated 23.3.1988. The Land Acquisition Officer, after complying with the formalities and after hearing all the

parties concerned, passed the award dated 25.10.1989, fixing the market value of the acquired land at Rs. 15.96 per sq. ft..

2. Not satisfied with such fixation by the Land Acquisition Officer, the respondents/land owners sought for a reference u/s 18 of the Land Acquisition Act. The Reference Court viz., the Subordinate Court, Kumbakonam, took the references on file and numbered them as LAOP Nos. 20 to 22/90 and 24/90. Before the Reference Court, claimant in LAOP No. 20 of 1990 examined himself as PW-1. The respondents also examined two more witnesses and produced Exs. A1 and A2 in support of their claim for enhanced compensation. On behalf of the Revenue RW-1 was examined and Exs. B1 to B7 were marked. The learned Subordinate Judge, after considering the oral and documentary evidence available on record, fixed the market value at Rs. 25.30 per sq. ft. with all statutory benefits.

3. Being aggrieved by the Judgment of the Reference Court, enhancing the compensation, the above appeals have been filed by the Land Acquisition Officer, representing the State.

4. A.S. No. 743 of 1996 has been filed against LAOP No. 20 of 1990. Appeal Suit Nos.740 to 742 of 1996 have been filed against the judgment in LAOP Nos. 21, 22 and 24 of 1990 respectively.

5. Learned counsel appearing for the appellant contended that the Reference Court has erred in fixing the market value at Rs. 25.30 per sq. ft. when the land owners themselves had agreed to receive the compensation at the rate of Rs. 10/- per sq. ft. and that the same is reflected from the letter addressed to the appellant/Corporation. The learned counsel would elaborate his submission by contending that the respondents/land owners are the willing sellers to sell the property in question at the rate of Rs. 10/- per sq. ft. That being so, the Reference Court ought not to have enhanced the compensation, more so, in view of Section 25 as amended by the Land Acquisition (Tamil Nadu Amendment) Act 1996.

6. Learned counsel appearing for the respondents would inter alia contend that the Land Acquisition Officer, representing the State, aggrieved by the Judgment in LAOP Nos. 20 to 22 and 24 of 1990 on the file of the Subordinate Court, Kumbakonam, filed appeals before this Court and the same were numbered as A.S. Nos. 436 to 439 of 1996 respectively and in which the present appellant was also a party. According to the learned counsel, those appeals were disposed of by a Division Bench of this Court on 12.07.2001, confirming the judgment of the Reference Court. The learned counsel would further contend that in as much as in those appeals, the present appellant was a respondent and since that Judgment has become final on a principle analogous to the principle of res judicata, these appeals have to be dismissed.

7. Learned counsel appearing for the respondents produced before us a copy of the Judgment of the Division Bench of this Court in A.S. Nos. 436 to 439 of 1996 dated 12.07.2001. As rightly pointed out by the learned counsel for the respondents, the

judgment of the Reference Court in LAOP Nos. 20 to 22 and 24 of 1990 has been confirmed by the Division Bench. Learned Additional Government Pleader appearing for the State, on a query made by this Court, submitted that as against the Judgment in A.S. Nos. 436 to 439 of 1996 dated 12.07.2001, no appeal has been filed before the Supreme Court. That being so, the said Judgment has become final and binding on those, who are parties in those Appeals.

The res judicata principle is based partly on the maxim of Roman Jurisprudence interest reipubliae ut sit finis litium, which means, it concerns the State that there be an end to law suits and partly on the maxim nemo debet bis vexari pro una at eadem causa which means no man should be vexed twice over the same cause.

8. The appellant cannot be permitted to re-agitate the same matter over and again in these appeals, on the same basis/reasonings on which the principle of res judicata has been introduced in Section 11 of CPC.

9. Yet another reason for which the appeal has to be dismissed is that if this appeal is heard, then, the possibility of this Court coming to a different conclusion cannot be ruled out. The situation may arise wherein while one Division Bench confirms a Judgment of the Reference Court in an Appeal filed by one party, another Division Bench subsequently hearing an appeal against the same Judgment of the Reference Court by another party, may allow fully or in part. Such a situation cannot be allowed to arise.

10. Even otherwise, we do not find any substance in the contention made by the learned counsel for the appellant. The only contention raised before this Court is that the respondents/land owners in their letter addressed to the appellant/Corporation agreed to sell the property at Rs. 10/- per sq. ft. and that being so, they cannot claim a higher compensation than that in view of Section 25 (1) of the Land Acquisition Act (Tamil Nadu Amendment XVI of 1997). This submission of the appellant has to be rejected for two reasons independently of each other. Firstly, that letter was addressed only to the Corporation, but however, the claim before the Land Acquisition Officer at the time of the enquiry was at the rate of Rs. 150/- per sq. ft. At best, the letter can be a piece of evidence and nothing more and the Court can, while fixing the compensation, certainly look into the other evidence as well. It is likely that at the time of writing the letter, the land owners would not have verified the value of the land and that apart, they are at liberty to make the proper claim before the Land Acquisition Officer in the award proceedings.

11. Secondly, as far as the present case is concerned, Section 4(1) Notification was in the month of March 1988, i.e., long after 1984, when the Central Amendment Act was introduced and before the Tamil Nadu Act XVI of 1997 came into force. The said Section viz., Section 25(1), as introduced by the Tamil Nadu Amendment Act is not retrospective in operation. That being so, the provision of Section 25 (1) as

introduced by Tamil Nadu Amendment would not apply to the case on hand (refer:- Krishi Utpadan Mandi Samiti Vs. Kanhaiya Lal and Others,).

12. There are no merits in the Appeal suits. Appeals stand dismissed.