

(2009) 07 MAD CK 0443

Madras High Court (Madurai Bench)

Case No: A.S. (MD) No"s. 514, 515, 529 and 530 of 1996

The Revenue Divisional Officer
(Land Acquisition)

APPELLANT

Vs

Kitchanan
Kitchanan Vs The
Revenue Divisional Officer (Land
Acquisition)

RESPONDENT

Date of Decision: July 8, 2009

Citation: (2009) 5 CTC 142

Hon'ble Judges: M.M. Sundresh, J

Bench: Single Bench

Advocate: K.M. Vijayakumar, Additional Government Pleader in A.S. Nos. 514 and 515 of 1996 and Mr. S.V. Jayaraman, for Mr. S. Kadarkarai in A.S. Nos. 514 and 515 of 1996, for the Appellant; K.M. Vijayakumar, Additional Government Pleader in A.S. Nos. 529 and 530 of 1996 and Mr. S.V. Jayaraman, for Mr. S. Kadarkarai, Advocate in A.S. Nos. 514 and 515 of 1996., for the Respondent

Final Decision: Dismissed

Judgement

M.M. Sundresh, J.

In view of the common issue involved in all the four Appeals they have been taken up together for hearing. A.S. Nos. 514 and 529 of 1996 have been filed against the judgment and decree passed in L.A.O.P. No. 264 of 1993. Similarly A.S. Nos. 515 and 530 of 1996 have been filed against L.A.O.P. No. 263 of 1993 on the file of Sub Court, Srivilliputtur, wherein the Reference Court has fixed the valuation at Rs. 5/- per square feet as against the valuation of Rs. 2.33/- per square feet fixed by the Land Acquisition Officer. The brief facts of the Appeals are as follows:

Lands in Survey Nos. 133/3 and 133/5 of Arupukottai village have been acquired for the purpose of creation of a playground and for the construction of police quarters respectively. The said lands in both the cases belong to the same person.

2. In so far as the lands which is a subject matter of A.S. Nos. 514 and 529 of 1996 are concerned they have been acquired by publication of Notification u/s 4(1) on 16.03.1983. Thereafter, an award was passed fixing the valuation at Rs. 2.33/- per square feet. Challenging the same a reference was sought for and the Reference Court has enhanced the said amount to Rs. 5/- per square feet. The appellant in A.S. No. 514 of 1996 has preferred the appeal challenging the said enhancement and the appellant in A.S. No. 529 of 1996 has filed this Appeal seeking further enhancement to Rs. 10/- per square feet.

3. Similarly the Notification u/s 4(1) was publication on 13.04.1983 for the lands which is the subject matter of the Appeals in A.S. Nos. 515 and 530 of 1996, the purpose of the acquisition was for the construction of police quarters. In the said case also the Land Acquisition Officer has fixed the same amount of Rs. 2.33/- per square feet which has been enhanced to Rs. 5/- per square feet by the Reference Court. Hence the Appeals by the State as well as the claimant.

4. The Learned Additional Government Pleader submitted that the Reference Court has failed to consider the data sale deed in Ex. B4. It is further submitted by the Learned Additional Government Pleader that there is no deduction for relying upon Ex. A15. According to the learned Additional Government Pleader that the mere finding regarding the potentiality of the land cannot be the basis for fixing the valuation. The Learned Additional Government Pleader further submitted that in so far as the judgment rendered in L.A.O.P. No. 263 of 1993 is concerned, the Court below has committed an error in granting interest from 1.3.1982 till the publication of the Notification u/s 4(1) was dated 16.03.1983 since the Reference Court has got no power to pass such an award. Similarly in so far the L.A.O.P. Nos. 264 of 1993 is concerned the Reference Court has no authority to extend the land from 15681.68 square feet to 16086.27 square feet.

5. On the contrary, the learned counsel for the appellants in A.S. Nos. 529 and 530 of 1996 submitted that the Court below has failed to consider the evidence of P.W. 1 to P.W. 3 as well as the document filed in Ex. A1 to Ex. A15. The learned counsel further submitted that in view of the specific reference made in the award in Award No. 3/87 to the effect that the claimant has sought for Rs. 10/- per square feet, the Court below has wrongly given a finding what is sought for is only Rs. 5/- per square feet. The learned counsel has also submitted that on mere surmise, the Court below has held that the correction has been made from Rs. 5/- per square feet to Rs. 10/- per square feet subsequently. Hence, the learned counsel has submitted that the Appeals filed in A.S. Nos. 529 and 530 of 1996 will have to be allowed.

6. I have heard the Learned Additional Government Pleader as well as the counsel for the appellant in A.S. Nos. 529 and 530 of 1996. In the case on hand, the Land Acquisition Officer has fixed the amount of Rs. 2.33/- per square feet relying upon Ex. B4. The Reference Court has considered Ex. B4 and held that the same cannot be the basis for fixing the valuation. The Reference Court has also taken into

consideration about the potentiality of the land acquired. In fact the very purpose for which the lands acquired itself would show the potential value of the land. The lands have been acquired for the purpose of playground which indicates the existence of school already. Similarly lands have also been acquired for the Police Department earlier. It is also to be seen that the lands are adjoining to the Aruppukottai Municipality surrounded by schools, colleges and other places of importance.

7. The Court below has fixed at Rs. 5/- per square feet by rejecting the contention of the claimants, that the claimants cannot ask for any amount beyond Rs. 5/- per square feet. As seen earlier that there was some corrections on the Applications seeking enhancement from Rs. 5/- per square feet to Rs. 10/- per square feet. Therefore, in the absence of any specific finding to the effect and also in view of the fact that in L.A.O.P. No. 264 of 1993 the award itself makes a reference for Rs. 10/- per square feet was sought for, this Court is of the opinion that the said reasoning given by the Court below cannot be sustained.

8. However in the case on hand, the lands relied upon by the claimants for fixing the valuation of the lands acquired are for lesser extent. Further it is seen that no deductions have been made towards the development charges. As contended by the learned Senior Counsel appearing for the claimants the question of deduction towards development charges is one and facts to be decided based upon the facts and circumstances of each case. In the present case already the land acquired in A.S. No. 514 of 1996 is used for the purpose for which the acquisition has been made.

9. There was a lease between the school and the claimants for the said purpose even before the acquisition and the lands have already been acquired earlier for the very same purpose by the Police Department. Therefore this Court is of the opinion that the usual deductions towards development charges as well as for relying upon the sale deeds which contain smaller extent of land cannot be followed in the present case. Therefore, this Court is of the opinion that even though the claimants are entitled to get more compensation in view of the finding that the reasoning given by the Court below that the claimants cannot be asked for more than Rs. 5/- per square feet. However taking into consideration of the fact that some amount will have to be deducted towards the development charges as well as for relying upon the sale deeds which contain smaller extent of land, this Court is of the opinion that the amount fixed by the Court below at Rs. 5/- per square feet is just and reasonable. Hence the same is hereby confirmed.

10. In so far as the other contentions raised by the learned Additional Government Pleader are concerned, this Court finds that there is considerable force in the said submission. The Court below ought not to have give an interest for the period between 1.3.1982 to 16.3.1983. The powers of the Reference Court will have to be exercised only under the Land Acquisition Act. The Reference Court has got no power or authority to make any payments towards interest for what happened prior

to the Notification issued u/s 4(1) of the Land Acquisition Act, 1894. In this connection it is useful to refer the judgment of Hon"ble Supreme Court reported in [R.L. Jain \(D\) by Lrs. Vs. DDA and Others](#), wherein the Hon"ble Supreme Court was pleased to hold that in such a case the Courts cannot award any interest even assuming the possession is taken prior to the Notification issued u/s 4(1). Similarly the contention of the learned Additional Government Pleader that the Court below cannot enhance the extent of land is also the opinion of this Court on merits, acceptance, etc.

11. The reasoning given earlier also would apply to the present case. The Notification u/s 4(1) followed by the declaration u/s 6 and the award passed u/s 11 would indicate the extent of land. Therefore, the only issue to be decided by the Reference Court when a reference has been made u/s of 18 of Land Acquisition Act is as to whether what is the amount of compensation to be fixed in a given case. Hence, this Court is of the opinion that the finding of the Court below by extending the area acquired is incorrect. Further even on facts, the Land Acquisition Officer has clearly stated in his award that the lands have been acquired based upon the revenue records showing the title of the claimant. Hence, the judgment and decree of the Court below in so far as fixation of value at Rs. 5/- per square feet is hereby confirmed. However the judgment of the Court below in L.A.O.P. No. 263 of 1993 in so far as granting interest from 1.3.1982 to 16.3.1983 is concerned, is set aside and the judgment and decree of the Court below in L.A.O.P. No. 264 of 1993 in so far as the increase of the extent of land from 15681.68 square feet to 16086.27 square feet is concerned, is also set aside. It is made clear that the claimants are entitled to all the statutory benefits as provided under the Act. No costs. Consequently, Appeals vide A.S. Nos. 529 and 530 of 1996 are dismissed.