

(2011) 11 MAD CK 0146

Madras High Court

Case No: A.S. No. 807 of 2003 and C.M.P. No. 12685 of 2003 and C.M.P. No. 7264 of 2005

The Special Tahsildar (LA) SHAR
Unit Ponneri

APPELLANT

Vs

K. Munusamy and Union of India

RESPONDENT

Date of Decision: Nov. 1, 2011

Acts Referred:

- Land Acquisition Act, 1894 - Section 10, 11, 18, 19, 23(A)
- 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, for the Appellant; M.S. Subramaniam for R1 and Mr. C. Krishnan, for Mr. M.T. Arunan for RR 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

1. The Appellant / Referring Officer, has preferred this instant Appeal as against the Award, dated 14.05.1993 in L.A.O.P.No. 402 of 1985 passed by the learned Sub-Judge, Tiruvallur (Tribunal).

2. The Government have acquired 22.64 acres of land situated in the village of Varivankuppam in Block -VI, in the Taluk of Ponneri, in the registration Sub-District of Ponneri, in the District of Chengalpattu and registered in the name of, or occupied by the persons mentioned in the award, dated 03.09.1984 passed by the Special Tahsildar (LA), SHAR, Unit-VI, Ponneri.

3. In the award of the Special Tahsildar (LA), SHAR, Unit-VI, Ponneri, dated 03.09.1984, it is among other things mentioned that in S.No. 20, 9 acres and 10 cents has been registered in the name of Desammal and Pakkiri and S.No. 24/1 measuring an extent of 13.54 acres is registered in the name of K.Munusamy, son of Krishnasamy Pillai. In all for the extent of A.22.64 cents, the compensation due has been mentioned as Rs.77,653.60. In respect of the first respondent/Claimant (in

L.A.O.P.No. 402 of 1985) in S.No. 24/1 and an extent of A 13.54cents have been acquired, for which, the compensation due is mentioned as Rs.47,672.05.

4. It transpires that the Government of India, Department of Space, have requested the State Government to acquire the entire patta lands, transfer all the poramboke lands in their favour and hand over the entire lands in 252, Karimanal Village in Ponneri Taluk in Chengalpattu District for expansion of their Satellite launching station, Sriharikotta. The entire population of the village has to be evacuated from this village, consequent on the acquisition proceedings initiated to acquire the patta lands and occupied private nathams of 252, Karimanal village. For the purpose of rehabilitation, the affected persons and provide them house-sites, an extent of A.81.74 cents of patta lands situated in Vairavankuppam, Kottaikuppam, H/o. Pulicat village was ordered to be acquired by the Government as per G.O.Ms.No. 2261, Education Department, dated 14.10.1981.

5. An extent of A.81. 74 cents have been split up into six blocks for speeding up the Land Acquisition proposals and the same is as follows:-

Block No.	Extent A.C.
I	27.45
II	4.92
III	6.00
IV	1.62
V	15.00
VI	26.75
Total	81.74 Acres

6. The Draft notification and the Draft Declaration notification pertaining to the urgency provision of the Land Acquisition Act in respect of Block No.I, measuring an extent of 26.75 acres was approved by the Government in G.O.Ms.No. 216, Education, Science and Technology Department, dated 3.2.1983 and published in Notification No. 1060 at Pages 7 and 8 of Supplement to Part-II, Section 2 of the Tamil Nadu Government Gazette, dated 2.3.1983. The Special Tahsildar (LA), SHAR, Unit-VI, was authorised under Clause (c) of Section 3 of Land Acquisition Act to perform the functions of the Collector.

7. Pursuant to the notification, the enquiry as per Section 11 of the Land Acquisition Act was conducted by the Special Tahsildar (LA), SHAR, Unit-VI at Pulicat Village on 13.06.1983 and other subsequent dates after following the prescribed necessary formalities by serving individual notices as per Section 9(3) and 10 of the Land Acquisition Act and by publishing notices u/s 9(1) and 10 of Land Acquisition Act in the village, Taluk Office, Ponneri and in the office of the Collector (LA).

8. Notices as per Section 9(1) and 19 and 9(3) and 10 were duly published and served in accordance with the rules and the award enquiry was conducted on 13.06.1983 and on other subsequent dates.
9. The present Appeal is concerned with S.No. 24/1 measuring an extent of Acres 13.54 cents belonging to the first respondent/ claimant. The first respondent /claimant before the Special Tahsildar (LA), SHAR, Unit-VI, Ponneri has claimed compensation per cent at Rs.360/-in respect of the acquired lands 13 Acres and 54 cents in S.No. 24/1. The Special Tahsildar (LA) in respect of the land belonging to the first respondent / claimant acquired has valued the land at Rs.17/-per cent in respect of S.No. 24/1, A 13.54 cents dry and has determined the value at Rs.23018/-. In respect of Casuarina tree in A 7.89 cents numbering 3024 plants, the same has been valued at Rs.2.16 per plant and the compensation has been assessed at Rs.6531.85 for the 350 Palmyrah trees at Rs.15/-per tree, the same has been valued at Rs.5250/-. For the two Dates trees, each 3 has been valued at Rs.10/-and the compensation has been arrived at Rs.20/-. The value has been valued at Rs.9900/-. In all a compensation of Rs.44,719.85 with 15 per cent solatium being arrived at 6708 has been awarded a sum of Rs.51,427.85. From the aforesaid sum of Rs.51,427.85, the apportionment amount of the first respondent/claimant comes at Rs.47,672.05.
10. Even before the Special Tahsildar (LA), SHAR, Unit-VI, Ponneri, the first respondent/claimant has given a statement in writing on 03.09.1984 pointing out that the compensation amount awarded, namely, Rs.51,429.25 has been a meager sum and therefore, he has prayed for the grant of Rs.360/-per cent.
11. The first respondent/claimant has been dissatisfied with the value of compensation determined by the Land Acquisition Officer, as referred to supra and because of his objection, the Referring Officer / Appellant has referred the matter as per Section 18 of the Land Acquisition Act to the Tribunal, viz., the Sub-Judge, Tiruvallur.
12. Before the Tribunal, viz., the Sub-Judge, Tiruvallur, L.A.O.P.Nos. 56 of 1986 and other 62 L.A.O.P., petitions have been commonly tried. On behalf of the respective claimants, witness CW1 has been examined and Exhibit A-1 to A-7 have been marked. On the side of the Appellant / Referring Officer, witness RW-1 has been examined and no documents have been marked.
13. In the common award, dated 14.05.1993 in L.A.O.P.No. 56 of 1986 and other 62 L.A.O.Ps., (including L.A.O.P.No. 402 of 1985), the Tribunal on appreciation of oral and documentary evidence available on record has passed an award by determining the compensation at Rs.400/-per cent in respect of S.No. 24/1 for an extent of 9 acre and 54 cents and also awarded a sum of Rs.50/-per cent for removing the claimant from the acquired land and further granted an interest at 12% from the date of Section 4(1) Notification as per Section 23(A) of the Land Acquisition Act 1894 and as per Section 28 of the Land Acquisition Act from the date of taking over possession

awarded interest at 9% p.a., for a period of one year and thereafter granted an interest at the rate of 15% p.a. It also granted two months time for making payment.

14. In the award, dated 14.05.1993 in L.A.O.P.No. 402 of 1985, the learned Sub-Judge, Tiruvallur, has mentioned the extent of acquired land in S.No. 24/1 as A.9.54 cents, instead of the correct extent of 13 acres and 54 cents.

15. The first respondent / claimant as the petitioner file C.M.P.No. 4490 of 2006 as in A.S.No. 807 of 2003 praying to amend the reference in L.A.O.P.No. 402 of 1985 on the file of the learned Sub-Judge, Tiruvallur and the same has been allowed by this Court, on 28.10.2010.

16. The Learned Special Government Pleader appearing for the Appellant / Referring Officer submits that the Tribunals awarded in L.A.O.P.No. 402 of 1985, dated 14.05.1993 is contrary to law, want of evidence and probability of the case and that the Tribunal has committed an error in fixing the market value of the land wrongly at Rs.450/-per cent (increasing it from Rs.10/-per cent) without relying upon any relevant piece of document.

17. It is the contention of the Learned Special Government Pleader that the Land Acquisition Officer has collected various sale deeds and that fix the compensation after holding enquiry under the Land Acquisition Act and after personally inspecting the land required.

18. Added further, it is the submission of the learned Special Government Pleader that the Trial Court ought to have seen that one or two land owners due to urgency and necessitated might have purchased small extents of adjoining lands at high prices and that high price value will not reflect the true value of the acquired lands.

19. Lastly, it is the submission of the learned Special Government Pleader that the Trial Court ought to have accepted the data land relied by the Land Acquisition Officer and confirm the award by him and in any event, the compensation fixed by the Court below is an excessive and arbitrary one.

20. At this juncture, it is useful to refer to the evidence of CW-1 (claimant in L.A.O.P.No. 56 of 1986) and also the evidence of RW-1 (Special Tahsildar (LA), SHAR Unit, Ponneri) for better and fuller appreciation of the case.

21. CW-1 in his evidence has deposed that he is the Power of Attorney of the claimant in L.A.O.P.No. 56 of 1986 and that the lands have been acquired for launching Sriharikotta Station and the Section 4(1) Notification has been issued on 08.12.1982 and that the acquired lands are fit for constructing houses and that the S.No. 310 has been situated on the sea side and even before Section 4(1) Notification, a cent has been sold as house site at Rs.200/-and Exhibit A-1 is the sale deed, dated 27.03.1982 in respect of S.No. 540 at the rate of Rs.200/◆and in S.No. 370 and S.No. 540 lands, there are no road facility, electricity facility and water supply facility and that during the enquiry, the rate has been fixed at Rs.10/-per

cent, which is an unlawful one.

22. CW-1 in his further evidence has deposed that 5, 6 units are situated at Kottaikuppam, near Pulicat village and there are numerous houses and light house quarters are situated and that the lands have been sold and the sale deeds are Exhibit A-3, A-4 and A-5 and Exhibit A-3 and A-4, sale deeds have been sold for Rs.3,300/-and Rs.4,120/-and in Pulicat village, a cent has been sold at the rate of Rs.750/-, as per Exhibit A-5, sale deed and on 04.02.1982, one cent has been sold at the rate of Rs.3,000/-and in Exhibit A-6 -lands, Casuarina trees have been raised and once in four years, they use to cut the Casuarina trees and per acre, they will get an income of Rs.20,000/-and for one harvest, a sum of Rs.8,000/-will be expended the balance at Rs.12,000/-will be the in come and for the second harvest, they will cut Casuarina trees without an expense and that four years, they will get an income at Rs.48,000/-and therefore, a compensation of Rs.480/-will have to be given per cent and in Exhibit A-7, award in L.A.O.P.No. 80 of 1984, dated 31.01.1986, the value per cent of land has been fixed at Rs.180/-and on 31.10.1990, the value of cent of land has been determined at Rs.160/-per cent.

23. It is the evidence of CW-1 (in cross examination) that he has shown Exhibits A-1 to A-7, documents, before the Tahsildar, he has claimed a sum of Rs.180/- to Rs.200/-per cent.

24. RW-1 (Special Tahsildar) in his evidence as deposed that the acquired lands are situated at Ponneri Taluk at Karimanal Village and the lands have been acquired for Sriharikotta Space Research Centre and the acquired lands are Punja lands and a compensation of Rs.10/-per cent has been awarded and in the acquired lands, Casuarina trees, will grow and that the Land Acquisition Officer has taken into consideration 44 documents and due as passed an award and the Land Acquisition Officer / Tahsildar, who passed the award, viz., Mr. Kannan, has expired and he has not inspected the acquired lands and that the inspection report of the award officer is not there and he is not aware of the fact that if a sum of Rs.2,000/-per acre for an year has been spent then in four years, he will get a sum of Rs.20,000/-and further he does not know if an amount of Rs.80,000/- has been spent for four years and an income of Rs.12,000/-, one will get.

25. The Learned counsel for the first respondent / claimant cites the common Judgment of this Court, dated 30.11.2009 in A.S.Nos. 654 to 656 of 1995 and Cross Objection No. 38 of 1996 and C.M.P.Nos. 6043 of 2004 and 8402 of 1995, wherein at paragraph Nos. 15 to 21, it is observed hereunder:-

15. The learned counsel for the claimants contended that the decision rendered by the Division Bench of this Court in A.S.Nos. 1021 to 1028 of 1995 has not application to the present case inasmuch as the acquired lands are situated in adjacent village namely Karimanal Vairavankuppam Village and it has to be determined on the basis of the potential of the lands in that village.

16. It is seen from the records that the claimants have produced Exs. C1 to C5 to substantiate that the lands, which are adjacent to the acquired lands, were sold for Rs.3,000/- per cent even prior to the notification u/s 4(1) of the Land Acquisition Act. Whereas, in the Cross Objection No. 38 of 1996 filed by the claimant in L.A.O.P.No. 924 of 1987, the compensation amount was restricted to Rs.300/- per cent.

17. The acquired lands are situated in Karimanal Vairavankuppam Village, which is a hamlet situated in Ponneri Taluk. The lands were acquired for the purpose of rehabilitating those persons who were evicted for establishment of Sriharikota Space Station. Therefore, it is clear that the Division Bench of this court in A.S.No. 1021 to 1028 of 1995 has fixed the value in respect of those lands where the Space Station was sought to be established and the acquired lands are situated in a different village where those persons, who were affected by reason of establishment of space station was ought to be accommodated.

18. The Court below, placing reliance on Exs. C1 to C6 and also the document relied on by the Land Acquisition Officer himself in the sale statistics found that 8 1/2 cents of lands was sold at a minimum of Rs.211.75 per cent and therefore adopted the same value for the purpose of awarding compensation. The Court below also awarded a sum of Rs.50/-per cent towards compensation for compulsory acquisition by taking note of the fact that the Government has invoked the urgency clause for the purpose of acquisition.

19. It is seen from the common Judgment passed by the Court below that no deduction has been granted for the purpose of development charges. When admittedly the lands of the claimants are acquired for the purpose of putting up house sites to rehabilitate those persons who were affected or displaced by reason of establishment of Space Station, the Court below ought to have given some deduction for the purpose of development charges as has been held by the Division Bench of this Court in the decision reported in [The Special Tahsildar, Neighbourhood Scheme Vs. Jaganathan Gounder and The Executive Engineer and Administrative Officer, Erode Housing Scheme](#). The Division Bench of this Court, in that Judgment, had categorically stated that 40% of deductions can be granted for development charges and if the value has been arrived on the basis of small extent of land, further 20% of deductions can be granted. The Honourable Supreme Court also held that 1/3rd deduction can be granted for the purpose of development charges. It is seen that the Division Bench of this Court in the decision rendered in A.S.Nos. 1021 to 1028 of 1995 has reduced the value of the acquired lands fixed by the Court below from Rs.400/-to Rs.100/-per cent in respect of Karimanal Village. In the instant case, since the Court below has not given any amount towards deduction, if 1/3rd amount is deducted from the value fixed by the Court below at Rs.211/-towards development charges, it would come to Rs.145/-and if it is rounded off, the amount of compensation can safely be arrived at Rs.150/-per cent. Consequently, I do not find any reason to enhance the compensation amount

ordered by the Court below, as has been prayed for in Cross Objection No. 38 of 1996.

20. As far as the sum of Rs.50/-per cent granted by the Court below towards compulsory acquisition in favour of the claimants is concerned, as rightly pointed out by the learned Special Government Pleader as well as the learned counsel for the requisitioning body, there is no provision in the Act to grant such a relief. The Court below has granted the sum of Rs.50/-apart from granting solatium, which is unsustainable. Therefore, the amount of Rs.50/-ordered by the Court below towards compulsory acquisition is unsustainable and the same is hereby set aside.

21. In the result, the appeals are partly allowed reducing the value of the land acquisition fixed by the Court below from Rs.211.75 to Rs.150/-per cent with all statutory benefits. The Cross Objection is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

26. He also relies on the Judgment of this Court, dated 26.07.2010 in A.S.No. 657 of 1995, wherein it is observed hereunder:

This appeal arises out of LAOP No. 61 of 1986, dated 12.01.1994 on the file of the Sub Court, Tirunallure. The Court below enhanced the compensation from Rs.17/-per cent to Rs.261.75 per cent. These awards were challenged in various appeals in A.S.Nos. 654 to 656 of 1995 before this Court. There was also cross objection filed by certain land owners. They were heard together and a common Judgment was passed on 30.11.2009. In paragraphs 19 to 21, this Court held as follows:

19.... In the instant case, since the Court below has not given any amount towards deduction, if 1/3rd amount is deducted from the value fixed by the Court below at Rs.211/- towards development charges, it would come to Rs.145/- and if it is rounded off, the amount of compensation can safely be arrived at Rs.150/- per cent. Consequently, I do not find any reason to enhance the compensation amount ordered by the Court below, as has been prayed for in Cross Objection No. 38 of 1996.

20. As far as the sum of Rs.50/-per cent granted by the Court below towards compulsory acquisition in favour of the claimants is concerned, as rightly pointed out by the learned Special Government Pleader as well as the learned counsel for the requisitioning body, there is no provision in the Act to grant such a relief. The Court below has granted the sum of Rs.50/- apart from granting solatium, which is unsustainable. Therefore, the amount of Rs.50/- ordered by the Court below towards compulsory acquisition is unsustainable and the same is hereby set aside.

21. In the result, the appeals are partly allowed reducing the value of the land acquisition fixed by the Court below from Rs.211.75 to Rs.150/- per cent with all statutory benefits. The Cross Objection is dismissed. No costs. Consequently,

connected Miscellaneous Petitions are closed.

2. In the light of the same, this appeal suit is partly allowed. The Order of the reference Court will stand modified. The compensation is directed to be paid at the rate of Rs.150/- per cent with other statutory benefits. There will be no order as to costs. Consequently, connected Miscellaneous Petitions stands closed.

27. The Learned Senior Counsel appearing for the Respondents 2 and 3 brings it to the notice of this Court that A.S.No. 772 of 2003, this Court by its Judgment, dated 15.07.2010, has allowed the Appeal in part and determined the market value of the acquired land at Rs.110/-per cent with 30% solatium, interest on solatium and additional compensation payable in terms of the provisions of the Land Acquisition Act.

28. One cannot ignore a vital fact that in A.S.Nos. 828 to 830 and 832 to 838 of 1995, this Court (Division Bench), between The Special Tahsildar (LA), SHAR Unit I, Ponneri Vs. Tmt. Subbammal and others, by a common Judgment, dated 22.09.2003, has allowed the appeals in part and fixed the market value of the acquired lands at Rs.110/-per cent with 30% solatium, interest on compensation, interest of solatium, additional compensation payable and interest of additional compensation in terms of the provisions of the Land Acquisition Act.

29. Likewise in A.S.No. 1018 of 1987, the Division Bench of this Court, by its Judgement, dated 20.02.2001, has allowed the appeal in part and determined the market value at the rate of Rs.110/-per cent, etc.

30. In this connection, this Court worth recalls the decision of the Hon"ble Supreme Court in The Special Land Acquisition Officer, Bangalore Vs. Adi Narayan Sheety, AIR 1956 SC 429, wherein it is laid down as follows:

in awarding the compensation under the Act the Court has to ascertain the market value of the land on the date of notification u/s 4(1) of the Act. It is also observed that there are several methods of valuation such as i) opinion of Expert ii) 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 iii) a number of years of purchase of the actual or immediately prospective profits of the land acquired. Also the potential value whether the land is close to developed or developing colonies, road, etc., will also be taken note of by a Court of law.

31. Further in Tamil Nadu Electricity Board Vs.R.Kandhaswamy, (2003) 2 LACC 396 (Madras), it is observed that

..crucial date for fixing the market value of the acquired lands is on the date of publication of Section 4(1) notification.

32. This Court aptly points out the decision of the Hon"ble Supreme Court, wherein it is held that the relevant date for fixing the market value of the acquired land is on

the date of notification as per Section 4 of the Land Acquisition Act, as per decision Jagath Singh Vs. Haryana State, (1996) LAC 60 (P&H).

33. A market value of a land should not be determined based on facts of imagination or on fancy. A market value of the land cannot be calculated with a mathematical precision. A certain amount of conjecture is inevitable. But a Court of Law ought to be careful not to go too far in this aspect. The essential test is that sitting in the arm chair of willing vendor would offer to a willing purchaser, taking all relevant prevailing conditions of the normal market, fertility of land, location suitability of purpose it was purchased, its existing potentialities and likely use to which in same condition would offer to pay the price as on date of notification.

34. The owner or the claimant in respect of the land acquired should not be put to loss by under valuation. But at the same time, public exchequer should not be put to undue burden by excess valuation. It is the primordial duty of a Court of law to strike the balance between the two interest, as opined by this Court.

35. On a conspectus of the over all assumption of the facts and circumstances of the case in a cumulative fashion and also taking into account, the contentions of the respective parties, this Court, on the basis of Equity, Fair Play, Good Conscience and to do equitable and complete justice to the parties in a justice oriented approach fixes the market value of the acquired land in S.No. 24/1 measuring an extent of A.13.54 cents at Rs.110/-per cent with 30% solatium, interest of solatium, and additional compensation payable in terms of the relevant Sections of the Land Acquisition Act 1894 by following the Division Bench Judgment in A.S.Nos. 828 to 830 and 832 to 838 of 1995, dated 22.09.2003 of this Court, which followed the Judgment in The Special Tahsildar (LA), SHAR Unit I, Ponneri Vs. Tmt. Subbammal and others, in A.S.No. 1018 of 1987, dated 20.02.2001. Accordingly, this Court allows the appeal in part leaving the parties to bear their own costs.

36. Before parting from this case, this Court seeks in aid of Rule 12 of the Legal Practitioners' Fees Rules, 1973, which enjoins 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.

37. Therefore, this Court fixes the fees of the learned Special Government (AS) in terms of Rule 12 of the Legal Practitioners' Fees Rules 1973, based on the facts and circumstances of the instant case.

38. Resultantly, the Appeal is allowed in part by modifying the award, dated 14.05.1993, passed by the Learned Special Judge, Thiruvallur, viz., (The Tribunal) in L.A.O.P.No. 402 of 1985. Considering the facts and circumstances of the case, there shall be no order as to costs. The connected Miscellaneous Petitions are closed.