

(2011) 09 MAD CK 0233

Madras High Court

Case No: A.S. No. 960 of 2008 and Cross Objection No. 48 of 2010

The Land Acquisition
Special Tahsildar,
Salem-Karur
Broadgauge Railway
Projet Salem-1

APPELLANT

Vs

K. Mariammal and
Others
K.
Mariammal and Others
Vs The Land
Acquisition Special
Tahsildar, Salem-Karur
Broadgauge Railway
Projet Salem-1 and The
Deputy Chief Engineer
(Construction)
Salem-Karur
Broadgauge Railway
Project Southern
Railway, Salem-5

RESPONDENT

Date of Decision: Sept. 15, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 22
- Land Acquisition Act, 1894 - Section 17, 18, 18(1), 4(1), 54

Hon'ble Judges: K. Mohan Ram, J; G.M. Akbar Ali, J

Bench: Division Bench

Advocate: P. Gunasekaran A.S.No. 960/08 AGP AS, for the Appellant; M. Venkatachalapathy Senior Counsel for Mr. M. Sriram For R.1 to R.5 Mr. V.G. Suresh Kumar No. 960/08 and R.2 in Cross.Obj. No. 48/10 For R.6 in A.S, for the Respondent

Final Decision: Dismissed

Judgement

G.M. Akbar Ali, J.

Appeal Suits filed u/s 54 of the Land Acquisition Act against the judgment and decree of the learned Additional Subordinate Judge, Salem in LAOP No. 3 of 2007 dated 17.4.2008.

Cross Objection filed under Order 41 Rule 22 of CPC against the judgment and decree of the learned Additional Subordinate Judge, Salem in LAOP No. 3 of 2007 dated 17.4.2008.

2. An extent of 3.00.5 hectares of land in S.No. 21/11A, 53 and its sub divisions, 58/1A, 59/8A, 68, 69/1A, 74/2B, sub divisions of 91 to 93 situate at Pallipatti (Kandampatti village), Salem was acquired for the purpose of Salem Karur Broadgauge Railway Line. Sec. 4(1) Notification was issued on 23.2.1999 under G.O.Ms.No. 63 and the same was published in the Government Gazette on 25.2.1999. As it was acquired invoking urgency provisions under Sec. 17 of the Act, enquiry was dispensed with and declaration under Sec. 6 was issued on 17.3.1999.

3. The lands in S.No. 91/3D2 and 92/2B, a total extent of 1.07.5 hectares belong to the respondents 1 to 5. They filed a writ petition challenging the acquisition. The writ petition was allowed. The Land Acquisition Officer filed an appeal in WA No. 162 and 188 of 2000. On 5.9.2007, orders were passed in the writ appeal permitting the claimants to withdraw the writ petition with liberty to proceed for an enhancement of compensation under Sec. 18 of the Land Acquisition Act.

4. Meanwhile, the Land Acquisition Officer passed an award on 4.8.1999 fixing the value of the acquired land at Rs.1,82,963/-per hectre. The claimant's reference was made to the Reference Court in LAOP No. 3/2007. In the same acquisition, there were many references and in LAOP Nos. 65 to 78 of 2002, the reference Court had enhanced the compensation to Rs.100/-per sq.ft.. Therefore, in LAOP No. 3/2007 also the Reference Court has fixed the market value at Rs.100/-per sq.ft.

5. Aggrieved by such enhancement, the Land Acquisition Officer has preferred the present appeal. The claimants have filed cross objection for further enhancement.

6. Mr. Gunasekar, the learned Additional Government Pleader (A.S) would submit that the enhancement by the reference Court is on the higher side. The learned Additional Government Pleader pointed out that the Land Acquisition Officer had considered more than 122 data sale deeds and has disregarded those sale deeds which relates to house sites and developed areas and sales for fancy prices and has considered a sale deed dated 11.11.1998 which relates to S.No. 16 where 0.54 acres of land was sold for a sum of Rs.40,000/-which works out to Rs.1.71 per sq.ft. The learned Additional Government Pleader would further point out that before the Reference Court, the claimants in LAOP No. 65/2 had relied on a sale deed dated 24.12.1998 where S.No. 103 was sold at Rs.240/-per sq.ft. According to the Additional Government Pleader, the sale deed

considered by the reference Court does not reflect the correct value on the date of 4(1) Notification and pleaded that the value fixed by the Land Acquisition officer has to be confirmed.

7. On the contrary, Mr. M. Venkatachalapathy, the learned Senior counsel who appeared for the claimants would point out that the claimants preferred Writ Petition No. 6112 of 1999 in the year 1999 and the same came to be allowed and the Government filed writ appeal and the same was disposed of in the year 2007 with liberty to the claimants to seek a reference u/s 18(1) of the Act. The learned Senior counsel pointed out that the writ appeal having been disposed of on a compromise in the year 2007, it should be construed that 4(1) Notification is of the year 2007. The learned Senior counsel pointed out that the claimants have produced Exs.A.9 and 10 dated 24.2.2006 under which the land has been sold at Rs.297/-and Rs.279/-per sq.ft respectively. According to the learned counsel that the value of the land should be more than Rs.1,500/-, but the claimants have restricted their claim to Rs.300/-per sq.ft. The learned Senior Counsel also pointed out that since the lands were acquired for the purpose of laying railway line, no development charges could be deducted. Therefore, the learned counsel pointed out that the enhanced compensation should be for a sum of Rs.2,34,41,800/-.

8. The learned Senior counsel relied on a decision reported in [Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others](#), . It is a case where the Madhya Pradesh High Court, Indore Bench annulled the Notification issued under Sec. 4(1) of the Act and on appeal, the Hon"ble Supreme Court found that if notification is cancelled at that stage, and no acquisition made, land owners would enjoy usual benefits of their land on account of the development of the neighbouring areas, and if re-acquisition is made, there would be claim for higher compensation and under those circumstances, the date of Notification was postponed from 1985 to 1988 and the market value of the land was directed to be determined with reference to the later date, as if the 4(1) notification is issued only in the year 1988.

9. The learned Senior counsel also relied on a decision reported in JT 2005 (10) SC 50 (Competent Authority vs Barangore Jute Factory) It is also a case where the acquisition was challenged and the High Court had quashed the acquisition and on considering whether the High Court was correct in quashing the acquisition, the Apex Court has held as follows:

Normally, compensation is determined as per the market price of land on the date of issuance of the Notification regarding acquisition of land. There are precedents by way of judgments of this Court where in similar situations instead of quashing the impugned Notification, this Court shifted the date of the Notification so that the land owners are adequately compensated. In that direction the next step is what should be the crucial date in the facts of the present case for determining the quantum of compensation. We feel that the relevant date in the present case ought to be the date when possession of the land was taken by the respondents from the writ petitioners. This date admittedly is 19th

February, 2003. We, therefore, direct that compensation payable to the writ petitioners be determined as on 19th February, 2003, the date on which they were deprived of possession of their lands.

10. The learned counsel further relied on a decision reported in [Padmasundara Rao and Others Vs. State of Tamil Nadu and Others](#), wherein, the Apex Court held thus:

The purpose for providing the period of limitation under the first proviso to Section 6(1) seems to be the avoidance of inconvenience to a person whose land is sought to be acquired. Compensation gets pegged from the date of notification u/s 4(1). Section 11 provides that the valuation of the land has to be done on the date of publication of notification u/s 4(1). Section 23 provides that the market value of the land is to be fixed with reference to the date of publication of the notification u/s 4(1) of the Act. The prescription of time-limit in that background is, therefore, peremptory in nature. The stipulation regarding the urgency in terms of Section 5A of the Act has no role to play when the period of limitation u/s 6 is reckoned.

11. In [Udho Dass Vs. State of Haryana and Others](#), the Apex Court held

Be that as it may, we must assume that the land owners were entitled to the compensation fixed by the High Court on the date of the award of the Collector and had this amount been made available to the landowners on that date, it would have been possible for them to rehabilitate their holdings in some other place. This exercise has been defeated for the simple reason that the payment of compensation has been spread over almost two decades. In this view of the matter, we are of the opinion that a landowner is entitled to say that if the compensation proceedings continued over a period of almost 20 years as in the present case, the potential of the land acquired from him must also be adjudged keeping in view the development in the area spread over the period of 20 years if the evidence so permits and cannot be limited to the near future alone. We, therefore, feel that in the circumstances, the appellants herein were fully entitled to say that the potential of the acquired land had not been fully recognized by the High Court or by the Reference Court.

12. The learned Senior counsel would also point out that the reference Court had not taken into consideration the potential value of the land and the post notification sale deed of the adjacent land can also be considered. He relied on a decision reported in [A. Natesam Pillai Vs. Spl. Tahsildar, Land Acquisition, Tiruchy](#), for that proposition.

13. The decision reported in [Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others](#), also relied wherein the Supreme Court has considered the deduction of developmental charges for the lands acquired for laying of Railway lines and held that in this case the question of the development of the land would not arise. He also relied on a decision reported in 2010 (6) CTC 327 (A. Natesam Pillai s Special Tahsildar, Land Acquisition, Trichy) where the Supreme Court has considered the

building potentiality of the acquired land while fixing the market value.

14. Mr.V.G. Suresh Kumar, the learned counsel who appeared for the Southern Railway would contend that the acquired lands have no potentiality to be developed into house sites and therefore, reliance of a sale deed relating to a house site by the reference court is erroneous.

15. We have considered the rival contentions advanced on either side and perused the materials available on record.

16. The claimants lands in S.No. 91/3D2 and S.No. 92/2B of 2.65 acres out of 10.5 acres was acquired invoking urgency provision under Sec. 17 of the ACT. 4(1) Notification dated 23.2.1999 was challenged by the claimants in WP No. 6112 of 1999. The learned single Judge of this Court had allowed the writ petition and quashed the Notification. Writ appeals were filed by the Government of Tamil Nadu and the Special Tahsildar of Salem-Karur Broadgauge line, in W.A.No. 162 and 188 of 2000. On 5.9.2007, this Court disposed of the Writ appeals by passing the following judgment,

These appeals arise out of the order passed by the learned Single Judge in WP No. 6112 of 1999. Learned counsel appearing for respondents⁴ to 8 in W.A.No. 162 of 2000, who are the legal heirs of the original writ petitioner, seeks leave to withdraw the writ petition with liberty to file a reference u/s 18 of the Land Acquisition Act for enhanced compensation, within a period of two weeks from today. If such reference is filed, the Civil Court shall consider the reference on merits and dispose of the same within a period of three months from the date of receipt of the reference. In view of withdrawal of the writ petition, the writ appeals do not survive and the same are closed. We, however, make it clear that the Reference Court shall not take into account the undertaking given by the Petitioners to the authorities while deciding the amount of compensation. Consequently, the connected miscellaneous petitions are also closed.

17. By that time, the Land Acquisition Officer had already passed an award fixing the land value at Rs.1,82,963/-per hectre (Rs.1.70 per sq.ft.). Various claimants in the same acquisition objected and references were made and land acquisition OPS were pending from the year 2002. The respondent's reference was also taken on file. By a common order dated 13.2.2003, in LAOP No. 65/2002, a sum of Rs.75/-was fixed per sq.ft. The claimants reference was made in LAOP No. 3/2007. The reference Court followed the earlier award and enhanced the compensation at Rs.100/-per sq.f.t. The enhanced amount is being challenged by both the land acquisition officer and the claimants have pleaded for further enhancement.

18. According to the claimants, the 4(1) Notification was initially quashed by this court in WP No,6112 of 1999 and the Writ appeal having been disposed of on a compromise on 5.9.2007, and no fresh 4(1) Notification having been issued for the purpose of fixing the market value of the lands acquired, it should be construed that 4(1) Notification is of the

year 2007.

19. No doubt, market value is determined as per the market value of the land on the date of issuance of 4(1) Notification. In the cases where the impugned notification being challenged, the Apex Court, on considering the long pendency of the judicial proceedings and also considering the fact that possession of the land was taken long before and the lands were also put in use for the purpose for which it was acquired, held that since the purpose had already been achieved, there is no point in quashing the Notification. Though there are several reasons to quash the notification, the Apex Court had shifted the date of Notification to a later date so that the land owners are adequately compensated. This principle is laid down in the following cases:

[Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others](#), . [Padmasundara Rao and Others Vs. State of Tamil Nadu and Others](#), JT 2005 (10) SC 50 (Competent Authority vs Barangore Jute Factory) [Udho Dass Vs. State of Haryana and Others](#),

20. By referring the above decision the learned Senior Counsel submitted that in the present case also the benefit should be given to the claimants as the notification was questioned and Writ appeals was disposed of with liberty to seek a reference u/s 18(1) of the Act.

However we are not in agreement of the arguments by the learned Senior Counsel. The Principle is applicable in the cases where the notification for the acquisition was liable to be quashed but not quashed for the reason that the the possession had already been taken and the land so acquired has also been utilised for the purpose for which it was acquired. In the case on hand, no doubt, initially the notification was quashed by an order dated 16.12.1999 in WP No. 6112 of 1999. The Government had filed the writ appeals. The order that came to be passed on 5.9.2007 which has already been extracted above would show that the claimants have sought permission to withdraw the writ petition itself with liberty to seek a reference under Sec. 18 of the Act for enhanced compensation.

21. In view of the withdrawal of the writ petition, the writ appeals were disposed of and there is no indication or observation by the Division Bench that the notification is liable to be quashed and in fact it was not quashed and there is no observation that the claimants are entitled for the postponement of the date of 4(1) Notification. The main difference between the decisions cited supra and the case on hand is that in those cases, the Hon"ble Supreme Court had almost decided to quash the impugned notification and instead of quashing the same and taking into consideration the long lapse of time, the court had shifted the date of notification so that the land owners are adequately compensated.

22. In the present case, the impugned notification though quashed in the writ petition, by withdrawal of writ petition, the status-quo ante was restored i.e., Notification stands revived as on 23.2.1999.

23. Therefore, we are unable to accept the contentions of the learned Senior counsel that it has to be construed that 4(1) notification is of the year 2007 and not 1999. Therefore reliance can not be placed on the two sale deeds produced by the claimants which are of the year 2006.

24. As far as the compensation is concerned, the Land Acquisition Officer has fixed the market value as Rs.1.70/-per sq.ft.which is Rs.1,82,963/-per hectre which is on the basis of a sale of S.No. 106. The Reference Court has enhanced the amount by fixing the market value at Rs.100/-per sq.ft. This was based on an award passed in LAOP NO.65 of 2002 which was marked as Ex.B.7 before the Reference Court. A sum of Rs.80/-per sq.ft was awarded in the above said LAOP. However, considering the conversion of lands into house plots, the Tribunal has fixed the market value as Rs.100/-per sq.ft. The Tribunal has also considered the severance of the land into two parts and has granted a sum of RS.2,00,000/-as severance compensation. It had also observed that due to the filing of the writ proceedings, the respondent has not taken possession of the land until the disposal of the writ appeal so the rate of interest at 9% was awarded from 23.10.2000 with other statutory reliefs.

25. A perusal of Ex.B.7 would show that in LAOP No. 65 of 2002 the Referece court had taken into account of Ex.A.6, a sale deed dated 24.12.1998, under which a house plot was sold at Rs.240/-per sq.ft. in S.No. 103. The same document has also been produced before the Refence Court as Ex.A.6. Ex.A.7 is also a sale deed dated 7.10.1998. Under Ex.A.6, the land was valued only at Rs.136/-per sq.ft. Since there was a building, the total value of the sale was fixed at Rs.1,60,000/-. Unfortunately, the Court below had considered the value at Rs.240/-per sq.ft. ($1,60,000/- \div 650 \text{ sq.ft} = \text{Rs.240/-}$). The document itself would show kidepyj;jpd; gug;gst[650 sq.ft. rJu mo gug;g[Rs.136/-bkhj;j kjpg;g[Rs.88,400/-. Therefore, the value of the land is to be fixed only at Rs.136/-per sq.ft.

26. As per the principle laid down in Konkan Railways, reported in [Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others](#), in the case of acquisition for laying railway line, the question of development thereof would not arise. Therefore, the deduction for development charges by the Reference Court is not correct. However, considering the land sold under Ex.A.6 is for a smaller extent of 650 sq.ft., we are of the considered view that a deduction at 20% has to be made which will be Rs.27.20/-. Therefore, it will be around Rs.108.80.

27. Considering the document is of the year 1998 and the acquisition being 1999, a 10% appreciation value is to be added which would be Rs.10.80 Thus, the market value will come to Rs.119.60 which is rounded to Rs.120/-per sq.ft.

28. Therefore, the market value of the acquired land as on 23.2.1999, the date of notification is fixed at Rs.120/-sq.ft.

29. As far as the severance compensation is concerned, the petitioner's land in S.No. 91/3D2 and in S.No. 92/2B has been acquired. As per the sketch submitted by the respondents that the proposed railway line cut across both the lands and thereby a small portion in 91/3D1 and a small portion in 92/2A is severed from the main portion. According to the respondents, lands measuring about 2.5 acres in S.No. 91 becomes waste due to severance.

30. In 2002 (2) TNLJ 249 (Special Tahsildar(Land Acquisition), Adi Dravidar Welfare, Srivilliputhur vs Chinna Ramaswami and Others a Division Bench of this Court has held that when a part of land is acquired, the remaining extent may be cut down into two parts, say for an instance, when the acquisition is a strip of land for formation of railway line or a channel. It may be that only a portion of a land is acquired but the left over area may not be suitable for the purpose to which it was or might have been used" and further held ` as we have already pointed out the left over area (unacquired lands) cannot be cultivated in the sense, it would not be profitable to cultivate the lands". Taking into consideration the Division bench had fixed a sum of Rs.200/-per cent in respect of unacquired lands by way of severance compensation.

31. Therefore, we are of the considered view that a sum of Rs.60/-per sq.ft may be fixed in respect of unacquired lands by way of severance compensation.

32. It is admitted that possession was taken only on 23.10.2000 as the writ proceedings were pending. Therefore, the claimants are entitled for 9% interest only from the date of actual taking over possession on 23.10.2000.

33. In the result, A.S.No. 960 of 2008 stands dismissed and Cross Objection No. 48 of 2010 is partly allowed and the market value is enhanced to Rs.120/-per sq.ft with statutory benefits. However, interest at 9% is payable only from 23.10.2000. The Special Government Pleader shall be entitled to claim separate fees of Rs.2000/-(Rupees two thousand only) in the appeal and cross objections. No costs.