

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

**Annammal (Died) and 3 Others Vs. the Special Tahsildar (Land Acquisition),
Madras Export Processing Zone, Saidapet, Madras-15 and 3 Others**

**Annammal (Died) and 3 Others Vs. the Special Tahsildar (Land Acquisition),
Madras Export Processing Zone, Saidapet, Madras-15 and 3 Others**

SooperKanoon Citation : sooperkanoon.com/777433

Court : Chennai

Decided On : Feb-05-2001

Reported in : (2001)2MLJ82

Judge : P. Shanmugham and ;A. Subbulakshmy, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 8 and 23; [Code of Civil Procedure \(CPC\), 1908](#) - Order 41, Rule 27

Appeal No. : A.S. Nos. 1085 of 1990 and 481 of 1991

Appellant : Annammal (Died) and 3 Others

Respondent : The Special Tahsildar (Land Acquisition), Madras Export Processing Zone, Saidapet, Madras-15 and 3 O

Advocate for Def. : Mr. S. Shanmuga Velayutham ;for Mr. D. Malaichamy

Advocate for Pet/Ap. : Mr. V. Ravi, Additional Government Pleader (A.S.)

Judgement :

ORDER

P. Shanmugam, J.

1. A.S. No.1085 of 1990 is an appeal preferred by the claimant and A.S.No.481 of 1991 is filed by the Special Tahsildar, separately in reference to the same land.
2. An extent of 0.52 acres of lands in survey No.35/182 at Kadapei Village, Saidapet Taluk were acquired for the purpose of setting up Madras Export Processing Zone by SIPCOT under the [Land Acquisition Act, 1894](#) (hereinafter referred to as the Act). The notification under section 4(1) of the Act was published on 23.1.1985. Award No.4 of 1986 dated 28.11.1986 was passed by the Land Acquisition Officer fixing a compensation for the land at Rs.11,274.50 at the rate of Rs.145.85 per cent for an extent of 52 cents of land. The respondent sought for a reference, and on reference, the Reference Court, in L.A.O.P.No.492 of 1987, enhanced the compensation to Rs.1,04,000 at the flat rate of Rs.2,000 per cent. Aggrieved by this determination, both the above appeals have been filed.
3. According to the learned counsel for the claimant, the fixation of compensation is inadequate and the value of the land is more than Rs.2,000 per cent. According to him the Court ought to have awarded atleast Rs.3,600.
4. Learned Additional Government Pleader, appearing on behalf of the Special Tahsildar, in his appeal, submitted that the court below erred in enhancing the compensation by 14 times and without giving any specific reasons for arriving at Rs.2,000 per cent. The data sale taken by the reference court for comparison are small extent of lands and cannot be the basis for fixing the market value and awarding the compensation.
5. After hearing the counsel for both sides, we find that the learned Judge has relied on Ex.A.1, a sale deed dated 7.11.1984 in reference to a sale of five cents of land for Rs.2,000 which works out to Rs.400 per cent. Admittedly, this sale is in reference to a house plot of a small extent of land, whose value cannot be compared for acquisition of a large extent of land, in this case 0.54 acres. But, in the absence of any other documentary evidence filed and relied on by the parties, the materials available namely Ex.A.1 along with the evidence of P.W.1 can be taken into account. The appellants in A.S.No.1085 of 1990 have filed an application under Order 41, Rule 27 of the Code of Civil Procedure to receive additional document, which is a certified copy of the judgment in L.A.O.P.No.491

of 1987 dated 12.12.1988, wherein on the basis of the sale deed dated 7.11.1984 (Ex.A.1 in that judgment), the market value is fixed at Rs.3,600 per cent. In that case, the value determined by the parties works out to Rs.3,363 per cent, but the stamp paid on the guideline value is at Rs.4,545 per cent. However, the court adopted the value at Rs.6,000 per cent on the basis of potential value and reduced it by 40% for development charges. Ultimately fixing it at Rs.3,600 per cent. The determination on the basis of the guideline value cannot be sustained. The market value has to be determined on the basis of the value that a willing purchaser will be paying to a willing buyer, and the burden of proving the market value is always on the claimant. The Supreme Court in *Land Acquisition Officer, Gadwal v. Sreelatha Boopal*, held that it is settled legal position that the court has to put itself in the arm chair of a prudent purchaser and put the question to itself whether the amount in the given circumstances would fetch the same market value as is likely to be determined by the Court when a small piece of land would be offered for sale. In this case, it was pointed out and not disputed that the land sold under Ex.A.1 had no road facilities and it was in a remote portion of a land in the midst of wet cultivable lands. It was further alleged that the said sale deed was brought about with the sole aim of getting excessive compensation for the lands to be acquired under the cultivation proceedings. Besides, it is in reference to a very small extent of land compared to the 52 cents of land that was sought to be acquired in this case. Unlike in other cases where the very same learned subordinate Judge has enhanced the value by 40% to Rs.6,000 and thereafter reduced it by 40% for development charges, in this case, he has straight away deducted 50% for development charges from Rs.4,000. The learned subordinate Judge, in L.A.O.P.Nos.568 of 1987 (A.S.No.1088 of 1990) and L.A.O.P.No.523 of 1987 (A.S.No.835 of 1990), had enhanced the value of the land to Rs.6,000 and after deducting 40% towards development charges, fixed the market value. In all other cases also, the lands were acquired for the purpose of Madras Export Processing Zone. Therefore, due allowance has to be given for adopting the value in reference to the small extent of land and for development charges.

6. According to the learned counsel for the claimant, the future possibility of the use of the land should be taken into account and in support of the said contention, he relied on the judgment of the Himachal Pradesh High Court in *Collector,*

Bilaspur v. Lachman, , wherein the learned Judge has taken the view that the value which the land has on account of the manner in which it is actually being used for the time being, but also its value in relation to future possibilities also should be taken note of. Learned Counsel also submitted that in reference to the notifications for the same purpose and acquisition of different lands, awards were passed and the court below has fixed the market value at about Rs.4,000 in similar awards. according to him, the previous judgments determining the value of similar lands are admissible. In Chintamani Sahu v. Collector, Cuttack, , a division Bench of the Orissa High Court has taken the view that the process of determination of the market value from the very nature of things has to be by inference and rational guess work. A document which was marked as exhibit being a judicial determination of the market value of similar land, in the neighbourhood of the acquired land, which had also been compulsorily acquired, furnishes good guide in determining the market price of the acquired land in question. It is admissible and relevant piece of evidence following the judgment if the Supreme Court in Khaja Fizuddin v. State of A.P., 1963 SC 177. To the same effect is the decision in Mehtar v. Collector, Durg, .

7. In K.S. Shiva Devamma and others v. Assistant Commissioner and land Acquisition Officer, 1996 (2) SCC 621, the Supreme Court held that when the lands possessed of potential value for building purposes, but the same cannot be put to immediate use for building purposes, the extent of deduction for development charges may be from 53% to 33 1/3%. The Supreme Court took note of the fact that under the building rules, upto 53% of the land in that case was required to be left out. The court has laid as a general rule that for laying the roads and other amenities, 33 1/3% is required to be deducted. Where development has already taken place appropriate deductions need to be made. It was held in that case that in view of the obligations on the part of the owner to hand over the land to the City Improvement Trust for laying of roads and for other amenities and its requirement to expend money for laying the roads, water supply lines, electricity, etc., deduction of 53% and further deduction towards development charges at the rate of 33 1/3% as ordered by the High Court was found to be not illegal. In K. Vasundara Devi v. Revenue Divisional Officer, , it was held that when adjoining and reliable sale deeds of small extents were considered to determine

the market value, the same will not form the sole basis to determine the market value of large tracts of land. Sufficient deduction should be made to arrive at the just and fair market value of large tracts of land. 40% deduction towards development charges was held to be proper. In *Hasan Ali Kanu Bai and sons v. State of Gujarat*, it was held that the High Court was justified in deducting 60% of the value for development charges. In *Smt. Basavva v. Special Land Acquisition Officer*, when the land under acquisition situated in an undeveloped area and likely to take a long time for development, deduction between 33 1/3% to 53% of the market value for development charges was held to be valid by the Supreme Court and giving additional deduction of 12%, i.e. total deduction of 65% in the circumstances of the case was held to be valid.

8. In *Special Tahsildar v. Abdul Reguman*, a Division Bench of this Court has taken the view that if the land in question is situated in a fully developed area, it does not require any further improvement or development and therefore, deduction of 20% for the pathway for compensation is not proper. The Division Bench, in that case, found that the Subordinate Judge, in his order, did not give any reason for deduction of 20% for pathway from the market value. Further, it was found from the oral and documentary evidence that the lands which were in question were situated away built in the lands acquired. In this case, we are concerned with two aspects namely whether the lands under acquisition are situated in a developed area and whether the value of developed plots can be adopted. On both facts, we find that the lands in question of an extent of 0.52 acres are not developed lands, they are cultivable lands and therefore, in order to make these lands suitable for house sites or for building purposes, even according to the Corporation and M.M.D.A. Rules, nearly more than 30% of the lands have to be left out and only the remaining extent of the land can be sold to the purchasers. Secondly, the lands that are taken for comparison are in an approved layout. The price that was fixed for these lands, therefore, cannot represent the market value for this undeveloped area in question. The development that has taken place in the adjoining areas may be a relevant factor for the purpose of considering these lands as having potential for building purposes. But, that by itself will not render these lands in question fit for building purposes without further development, namely laying down of roads, drainage, open space etc. Therefore, in our view,

the judgment has no application to the facts of this case.

9. Applying the principles laid down by the Supreme Court as well as other High Courts, it is seen that the reference court has enhanced the compensation to Rs.1,000 relying on Ex.A.1 in the light of the increasing prices in other cases. For instance in L.A.O.P. Nos. 523 and 568 of 1987, the value has been reduced by 40% towards developing charges. The lands being of a comparable nature in every respect, we are of the view that the value as per Ex.A.1 can be taken only for the purpose of guidance and subject to its smallness and that it was an agricultural land, we determine the market value of the lands acquired at Rs.3,400 per cent, and after deducting Rs.1,400 towards development charges, we fix the value at Rs.2,040 per cent.

10. For these reasons, appellants in A.S.No.1085 of 1990 are entitled for compensation at the rate of Rs.2,040 per cent for their 52 cents of lands acquired. The liability to pay interest is only on the excess amount of compensation paid under Section 23(1) of the Act and not on the amount already determined by the Land Acquisition Officer under Section 11 and paid or deposited. The claimant/claimants are not entitled to interest on solatium under Section 23(2) or on the additional amount under Section 23(1A). Similarly, no solatium is payable on additional amount as held by the Supreme Court in Premnath Kapoor v. National Fertiliser Corporation of India Limited, . The question whether solatium has to be considered as a component of compensation and whether interest can be paid thereon has been referred to a Larger Bench by the Supreme Court in Kaupurchand v. State of H.P, . Therefore, the claimant/claimants shall be entitled to interest on the basis of the judgment that will be rendered by the Supreme Court in this case, without seeking further amendment to the decree in case the point is decided in their favour.

11. The appeal is allowed accordingly. A.S.No.481 of 1991 is dismissed. No costs. Consequently, the connected C.M.P.s are closed.