The Special Tahsildar.Vs.

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SooperKanoon Citation : sooperkanoon.com/903999

Court : Chennai

Decided On : Sep-02-2010

Judge : K.Chandru, J.

Acts : Land Acquisition Act - Section 54

Appeal No. : Appeal Suit Nos.465, 467 to 485, 549 to 553, 555 to 558 of 2007

Appellant : The Special Tahsildar.

Respondent : N.Baskar, and anr.

Advocate for Def. : Mr.R.Subramanian; Mr.C.Kathiravan, Advs.

Advocate for Pet/Ap. : Mr.V.Ravi, Adv.

Judgement :

1. These twenty nine appeals are filed by the Special Tahsildar, Land Acquisition (Unit No.II), Outer Ring Road Project, Chennai Metropolitan Development Authority, challenging a common Judgment dated 29.06.2006 starting from L.A.O.P.Nos.337 of 2003 and batch cases on the file of the Additional District cum Sessions Judge cum Fast Track Court IV Poonamallee.

2. Heard the arguments of Mr.V.Ravi, learned Special Government Pleader (AS), appearing for the Acquiring authority, Mr.C.Kathiravan, Standing Counsel for CMDA, and Mr.R.Subramanian, learned counsel for the claimants

3. These appeals are filed under Section 54 of the Land Acquisition Act. The lands of the respondents/ claimants were situated in Malayambakkam Village, Sriperumbudur Taluk, Kancheepuram District. The lands were acquired for the purpose of formation of the Outer Ring Road connecting the Sub urban areas of Chennai Metropolitan City from Kundrathur Village to Minjur via Ponneri, Avadi.. A notification under Section 4(1) was issued on 12.07.2000. After following the due procedure under the Land Acquisition Act, an award came to be passed by the Acquiring authority in Award No.2/2003-04 dated 15.07.2003. The Acquiring Authority, fixed the market rate of compensation at Rs.600/- per cent.

4. On the survey of the lands, the authorities recorded that the lands were having deep pits and to level the lands, it requires lot of land fill. In many cases land fill will cost more than the compensation to be paid at the rate of Rs.600/- per cent. Therefore, it was noted that a token payment of Rs.1 per cent can be fixed. The aggrieved land owners objected to the lower rate of compensation and hence the matter was referred to the determination of market value by the jurisdictional Reference Court. Subsequently, the matters were assigned to the Fast Track Court IV, Poonamallee for determination of the market value. Those references were registered as different LAOP numbers starting from 337 of 2003 to 382 of 2003, 415, 416 and 418 of 2003. The matters were grouped together and jointly tried by the Addl. District and Sessions Court (Fast Track Court No.4) Poonamallee.

5. Before the Reference Court, on behalf of the claimants, one Ramamoorthi, (claimant in L.A.O.P.No.340 of 2003) was examined as C.W.1 as a common witness. On their side, 3 documents were filed and marked as Exs.C.1 to C.3. On behalf of the acquiring authority, the then Special Tahsildar Abdul Wahab was examined as R.W.1 and two documents were filed and marked as Exs.R.1 and R.2. The requisitioning authority viz., CMDA examined one Mrs.Bhuvaneswari, who was the Assistant Planning Officer of CMDA as R.W.2 and on the of the requisitioning authority, the Outer Ring Road Map was filed as Ex.RB1.

6. It is on the basis of these materials (both oral and documentary), the Reference Court fixed the market rate of compensation and finally awarded Rs.12,000/- per

cent together with other statutory payments like solatium, Additional compensation and interest with a common Judgment dated 29.06.2006, which is under appeal in these appeals.

7. The following table will show the names of the claimants, the LAOP Numbers, with which they were concerned and the corresponding Appeal Suits filed by the acquiring authority. Sl.No. Name of the claimants

L.A.O.P.No. APPEAL No.

1 N.Baskar 338/2005 465/2007

2 S.Ramamoorthi 340/2005 467/2007

3 S.Kumarasekaran 341/2005 468/2007

4 S.Umasankar 342/2005 469/2007

5 M.Jaisankar 343/2005 470/2007

6 S.Padmanaban 344/2003 471/2007

7 S.Kokilamal 345/2003 472/2007

8 S.Parthasarathapillai 346/2003 473/2007

9 S.P.Duraisamy 347/2003 474/2007

10 Bakthavathalam 348/2003 475/2007

11 Challapillai 349/2003 476/2007

12 Venupillai 350/2003 477/2007

13 Mahendran Dennadayalan 351/2003 478/2007

14E.Duraikannu 352/2003 479/2007

15 E.Duraikannu 353/2003 480/2007

16 P.Krishnan 354/2003 481/2007

17 V.Thulasi 355/2003 482/2007

18 R.Lakshmi 356/2003 483/2007

19 Kistammal 357/2003 484/2007

20 N.G.Ganesan 36/2004 485/2007

21 G.Gopal 358/2003 549/2007

22 C.Krishnan 359/2003 550/2007

23 M.S.Shanmugam Sundararajan Nangagopal Gangadaran 360/2003 551/2007

24 C.M.Ramachandran 378/2003 552/2007

25 N.Krishansamy 379/2003 553/2007

26 C.M.Ramachandran 382/2003 555/2007

27 P.Krishnan 415/2003 556/2007

28 Anusooya Devi Parimala Devi 416/2003 557/2007

29 M.Mohanasundram 418/2003 558/2007

8. It is seen from the records that the acquiring authority before determining the market value considered the various sale transactions that took place three years before the date of 4(1) notification viz., from 27.07.1997 to 28.07.2000 which are registered in the Sub Registrar's office at Kundrathur. Out of these 370 sale transactions, the authority rejected various documents on the following grounds:-

(i) they were beyond 1.6 k.m.

(ii) they were sold as house sites

(iii) they were sold for other than agriculture purpose (iv) Poramboke land

(v) lands which are having small area

(vi) lands which are also not having comparable land and

(vii) fancy rates have been sold He also for various reasons rejected the documents in Sl.Nos.33, 67, 221, 222, 267 and 317.

9. The authority considered the document in Sl.No.57, which related to Survey No.1071. It was found that in Survey No.1071/1, the land to the extent of 0.36.0 cent land were found to be agricultural land and paddy was grown. The said land was sold on 02.04.1998 with document No.1457 and the sale consideration worked out to Rs.21,600/- which worked out to Rs.600/- per cent. Considering that the same is closer to the acquired land, the authority recommended Rs.600/- per cent. He also found that even the acquired land they were classified as Punjai land but the crop pattern showed that they are Nanjai land and only agricultural operations were carried out on the basis of water received from Sembarambakkam lake as a last point. Only few acreages were shown as agricultural lands. The other lands were used for non agricultural purpose. It also found that substantial portion of the land were having deep pits and therefore it required lot of development work to be done before being put to use for the purpose for which the acquisitions were made. It is under these circumstances, he recommended the compensation at the rate of Rs.600/- per cent.

10. Before the Reference Court, on behalf of land owners, Exs.C1 to C3 were filed. In respect of Ex.C3 dated 27.05.1999 it has to be found in Survey No.236/2. The Court below found that such land is in the neighbouring village viz., Kozhumanivakkam and where that land was sold at Rs.16,000/- per cent on 27.05.1999. Therefore it was not taken into account. Ultimately, the Court below found that Ex.C.1 the land was sold at Rs.14,824/- per cent on 04.06.1998 and in Ex.C.2, which also in the sale village, it was sold for Rs.11,772/- on 23.06.2000, while Ex.C.1 was situated 1 k.m. away on the left side of the Outer Ring Road Ex.C.2 is also one k.m. away on the right side of the Outer Ring Road. The Court below found that Ex.C.1 is comparable with all respects to the lands which is under acquisition and therefore, it took that as the basis for determining the market value.

11. Since the document is dated 04.06.2998 and that the 4(1) notification came to be issued after two years, the Court below found that due appreciation in value should be given since that document was already two years old. On that basis, it fixed 10% increase per annum towards the value of the said land and fixed the market value at Rs.17,790/- per cent. Since the acquiring authority demanded development charges, the Court below fixed the development charges and ordered deduction of 33 1/3% per cent which worked out to Rs.5,930/- and after deducting the said amount, the market value came to Rs.11,860/-. By rounding off the amount, it arrived at the figure of Rs.12,000/- per cent as the full value. Thus, it ordered the payment of Rs.12,000/- per cent compensation in respect of the lands which were acquired from the respondents claimants from Malayambakkam Village as noted already.

12. In the memorandum of grounds of appeal, it was contended by the acquiring authority that Exs.C1 and C2 are exemplars of small plots of land and are not comparable. It is also stated that Ex.C.1 is the sale deed relating to a village site, and a poramboke land and thus it was discarded by the acquiring authority. It is also further urged that the Court below should have granted 65% towards development charges. Under these pleas, it was submitted that the compensation awarded by the acquiring authority is exhorbitant.

13. Mr.R.Subramanian, learned counsel appearing for the respondents/claimants submitted that the Court below did not commit any error. The authorities have unreasonably rejected many of the sale comparable transactions and the reason given by them are spurious and not based upon any guidelines found under Section 23 of the Land Acquisition Act.

14. In the light of the rival contentions it has to be seen that whether the order passed by the Reference Court calls for interference?

15. The first contention that the Court cannot rely upon any exemplars where sale of small plots are concerned, as urged by the learned Special Government Pleader the same cannot be accepted for more than one reasons.

16. The Supreme Court while considering the determination of market value in respect of acquisition of vast track of land held that when other relevant material evidence is not available, exemplars of small plots of sale can be considered, of course with a rider that in such cases, the Court must give adequate discount is arriving at the value vide its judgment in Rishi Pal Singh v. Meerut Development Authority and another reported in (2006) 3 SCC 205.

17. The Supreme Court vide it Judgment Nelson Fernandes and others v. Special Land Acquisition Officer, South Goa and others reported in (2007) 9 SCC 447, while considering the scope of Section 23 held that while deciding the question of development charges, the purpose for which the land acquired is relevant to decide, whether deduction by way of development charges is required or not. In that case, it was found that the lands were acquired for the purpose of laying railway line and therefore, the Court held the question of deducting any amount towards development charges will not arise. Paragraph 30 may be usefully extracted below:- "30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in Hasanali Khanbhai & Sons v. State of Gujarat and Land Acquisition Officer v. Nookala Rajamallu had noticed that where lands are acquired for specific purposes, deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."

If it is seen in the said context, then it must be seen in the present case, the Court below had awarded 33 1/3 % deduction towards development charges.

18. As rightly contended by Mr.R.Subramanian, the learned counsel appearing for the claimants that out of 370 sale transactions which were taken note of by the acquiring authority, more than 50% related to land being sold as house sites. That fact cannot be loss site of. Further, the purpose of the acquisition is for laying a road linking several villages coming within the metropolis of Chennai City. Hence the matter cannot be looked into that the acquisition of agricultural land for putting

up some housing scheme. The Courts have also held that the purpose for acquisition can also be looked into while deciding the market value.

19. The Supreme Court vide its Judgment in Sangunthala v. Special Tahsildar (Land Acquisition) and others reported in 2010 (3) SCC 661 has held that the purpose of acquisition can also be taken note of for deciding the market value.

20. Very recently, the Supreme Court in A.Natesam Pillai v. Spl.Tahsildar, Land Acquisition, Tiruchy (Judgment date 11.08.2010) in Civil Appeal No.36 of 2004, had also observed that the potential value of the land in future can also be a relevant factor. In paragraph 22 it is held as follows:-

"22. Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, in so far as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration. The present acquired land has all the potentiality to be used as building sites, even in the immediate future, as it is located at a place in and around which building activity has already started. The evidence on record also clearly indicates that acquired land is abutting the main road. The acquired land is also surrounded by schools, Panchayat union office, shops and residential building in all three sides. The High Court also found, as a matter of fact, that the area where the acquired land is situated is fit for construction of houses. On an overall consideration and appreciation of the records, we feel that the deduction due to the small size of the exemplar land can easily be set off with the corresponding increase in price of the acquired land when compared with the land in Ex. A3 from the point of view of potential value."

21. If it is seen in the above context, then the Court below had not committed any error in relying upon Ex.C.1 as the basis for fixing the market value. But there was no necessity to grant 10% appreciation in the value of the land thus increasing the land cost from Rs.14,824/- to 17,790/- that too in the absence of any credible material. A perusal of the sale deeds for the 370 items found in the award proceedings showed that only in two cases in Sl.No.64 in Survey No.342/2 and Sl.No.370 in Survey No.75/1A, the land value was beyond Rs.10,000/-. In all other cases during the relevant period per cent cost worked out to less than Rs.10,000/-.

Viewed in this angle, the question of giving 10% increase over and above the face value of Ex.C.1 may not arise. The Court below had committed an error in granting 20% appreciation in the land value. If the compensation is worked out on the basis of the value found in Ex.C.1, then the cost of the land in that area at the relevant time will comes to Rs.14,824/- per cent. As ordered by the Reference Court, 1/3rd or 33 1/3 % is deducted towards development charges, then the rate will work out to Rs.9,883/- per cent. If it is rounded off, then it comes to Rs.10,000/- per cent. Therefore, this Court is of the opinion that the rate of compensation as per the market value of the lands acquired is Rs.10,000/- per cent. It has to be paid with other statutory payments to the claimant land owners.

22. In the light of the above factual matrix and the legal precedents all the appeals are allowed in part. The compensation as ordered by the Reference Court is modified. It is hereby directed that the respondents/claimants are entitled to get Rs.10,000/- per cent as compensation for the lands acquired together with other statutory payments to which they are entitled to. But, under the peculiar facts and circumstances of the case, there will be no order as to costs. It is also ordered that though a common judgment is pronounced, the learned Special Government Pleader (AS) and the learned Standing Counsel for Chennai Metropolitan Development Authority are entitled to get separate set of fees.