The Special Tahsildar Vs. Prema

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Court : Chennai

Decided On : Feb-27-2012

Judge : R.Banumathi; S.Vimala, Jj.

Appeal No. : A.S.No.101 of 2007

Appellant : The Special Tahsildar

Respondent : Prema

Advocate for Def. : Mr.V.Raghupathi, Adv.

Advocate for Pet/Ap. : Mr.P.Pasupatheeswaran, Adv.

Judgement :

Prayer: Appeal filed under Section 54 of Land Acquisition Act against the Judgment made in L.A.O.P.No.2 of 1993 dated 07.08.2006 on the file of Subordinate Judge, Tirupattur.

JUDGMENT

R.BANUMATHI,J

1. Being aggrieved by the enhancement of compensation from Rs.10,000/- per acre to Rs.6,23,916/- per acre for the lands acquired in Kalendira village, Vaniyambadi Taluk for issuance of house site pattas to Adi-Dravidas, the

Government has preferred this appeal.

2. Facts in nutshell which led to the present appeal are as follows:-

Originally, 1st Claimant-Prema was the owner of 2.52 acres of land - (i) S.No.83/2A 0.41.0 Hectares [1.01 acres]; (ii) S.No.83/3A 0.61.0 Hectares [1.51 acres] and the land in S.No.83/3A was divided into house plots and the 1st Claimant sold 4800 sq. ft. to each of the Claimants 2, 3, 4 and 2400 sq. ft. to each of the Claimants 5, 6, 7. For acquisition of land in S.No.83/2A 0.41.0 Hectare and S.No.83/3A 0 0.61.0 Hectare, Section 4(1) notification was issued on 31.08.1989. Section 5-A enquiry was held on 16.02.1990. Declaration under Section 6 of the Act was published in the Gazette on 10.10.1990.

3. To fix the value of the land under acquisition, Land Acquisition Officer [LAO] has taken sales statistics (Ex.R1) from 11.10.1986 to 10.10.1989 and there were 44 sales effected during that period. LAO has taken Serial No.1 in Ex.R1-sales statistics i.e. sale deed dated 15.12.1988 [Ex.R2] under which 33 cents was sold for Rs.3,300/- i.e. Rs.100/- per cent. Based on the said sale deed (15.12.1988), LAO has fixed the value of the acquired land at Rs.10,000/- per acre and passed Award No.9/92-93 on 10.10.1992 .

4. On objection raised by the land owners, Reference under Section 18 of Land Acquisition Act was made. Land owners claimed enhancement of compensation at the rate of Rs.30/- per square feet. Before the Reference Court, 1st Claimant-Prema examined herself as CW1. 7th Claimant-Gopal was examined as CW2. Purchaser in Ex.C2-sale deed [Venu] was examined as CW3. Exs.C1 to C5 were marked on the side of the Claimants. On the side of Appellant, the then Special Tahsildar, Adi-Dravidar Welfare Department [Jeyabalan] was examined as RW1. Exs.R1 to R3 were marked on the side of Appellant.

5. Taking Ex.C2-sale deed (30.06.1988) as comparable sale, Reference Court has fixed the value of the land at Rs.13.25 per square feet. Deducting 1/3rd i.e. 33 - 1/3% for development charges and by awarding solatium at 30% and adding 12% additional market value, Reference Court fixed the value at Rs.14.71 per square feet. Deducting the compensation already paid by the LAO at 0.40 paise per

square feet, value of the acquired land was fixed at Rs.14.31 per square feet. On that basis, Reference Court has enhanced the compensation payable to the Claimants as under:- Name of Claimant

Extent of land acquired

Compensation awarded by the Reference Court

Prema

1st Claimant

88,272 sq. ft.

Rs.12,63,173.00 plus 9% interest for the period of one year [10.10.1992 to 10.10.1993] and thereafter interest at the rate of 15% per annum from 11.10.1993 till the date of deposit. P.Jegadeesan

2nd Claimant

4800 sq. ft.

Rs.68,688/- plus interest.

Alla Baksha (died) 3rd Claimant.

Legal Representatives of 3rd Claimant Claimants 9 to 15

4880 sq. ft.

Rs.68,688/- plus interest.

Kader Basha

4th Claimant

4800 sq. ft.

Rs.68,688/- plus interest.

Vijayalakshmi

5th Claimant

2400 sq. ft.

Rs.34,344/- plus interest.

Kalaivani

6th Claimant

2400 sq. ft.

Rs.34,344/- plus interest.

Gopal

7th Claimant

2400 sq. ft.

Rs.34,344/- plus interest.

Mustak Ahamed

8th Claimant

6. Onbehalf of Appellant, Mr.P.Pasupatheeswaran, learned Special Government Pleader (AS) contended that S.No.35/1A taken by the Reference Court as comparable sale is far away from the acquired land and while so, the Reference Court erred in taking Ex.C2-sale deed [30.06.1988] as basis and the enhancement of compensation from Rs.10,000/- per acre to Rs.6,23,916/- per acre [Rs.14.31 per square feet] is exorbitant. It was further submitted that Reference Court erred in fixing the market value on square feet basis when the acquired land is situated in an interior place. Learned Special Government Pleader would submit that Reference Court erred in relying upon Ex.C2-sale deed under which a small extent of 2640 sq. ft. was sold for fixing the market value of vast area acquired.

7. Mr.V.Raghupathi, learned counsel for Claimants 1 and 7 has submitted that the land acquired is in proximity to Chennai-Bangalore National Highways and also Vaniyambadi Railway Station and very near to Schools and Colleges and considering its proximity to developed area, Reference Court has rightly taken into account Ex.C2-sale deed as comparable sale for fixing the value of the land acquired at Rs.14.31 per square feet i.e. Rs.6,23,916/- per acre and the judgment of the Reference Court warrants no interference. In support of his contention, learned counsel placed reliance upon 2006 (2) CTC 733 [The Special Tahsildar (Land Acquisition), Adi Dravidar Welfare, Tirupathur v. Valliammal and others].

8. Reiterating the contentions of Claimants 1 and 7, Mr.Inamdar Ameenur Rahman, learned counsel appearing for Claimants 9 to 15 who are legal heirs of deceased 3rd Claimant has submitted that the Reference Court has rightly taken Ex.C2 as sale of comparable instance and fixed the market value of the acquired land at Rs.14.31 per square.

9. We have heard Mr.V.Raghavachari, learned counsel for 8th Claimant.

10. Upon consideration of rival submissions and the materials available on record, the point falling for consideration is whether the enhancement of compensation as Rs.14.31 per square feet by the Reference Court on the basis of Ex.C2-sale deed dated 30.06.1998 is just and reasonable?

11. The land acquired is in S.Nos.83/2A and 83/3A of Kalendira village, Vaniyambadi Taluk. The land acquired is stated to be in close proximity to Chennai-Bangalore National Highways and on another side Vaniyambadi-Tirupattur State Highways, Engineering College, Arts College and Concordia School. Acquired land is stated to be within the distance of one kilo meter from the bus stop and Vaniyambadi Railway Station. 1st Claimant-Prema (CW1) and other Claimants have stated that the acquired land is very near to the National Highways and State Highways and the acquired land would fetch higher market value.

12. Land Acquisition Officer has taken Serial No.1 in the sales statistics sale deed [Ex.R1] dated 15.12.1988 under which 5 cents in S.No.75/1D2 and 28 cents in S.No.75/1E, totalling 33 cents which was sold for Rs.3,300/-. By perusal of

Ex.R3-Topo sketch, it is seen that the data land in S.Nos.75/1D2 and 75/1E is situated far away from the acquired land. Admittedly, S.No.83/3A has been plotted out and sold as house sites to Claimants 2 to 7. Proximity of the acquired land to National Highways and that part of the acquired land was already sold as house sites would clearly show that the acquired land had potentials for being sold as house sites and while so, the Land Acquisition Officer was not right in taking the land in S.Nos.75/1D2 and 75/1E and fixing the market value on acre basis.

13. Market value   Determination of market value of a land acquired in terms of the provisions of the said Act depends upon various factors, the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefor are also required to be considered, namely, as to whether they are irrigated or non-irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road or highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land. [Vide (2005) 4 SCC 789 (Viluben Jhalejar Contractor v. State of Gujarat); (2008) 2 SCC 568 (Atma Singh v. State of Haryana) and (2009) 1 SCALE 545 (Revenue Divisional Officer-cum-LAO. v. Shaik Azam Sahib)].

14. For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration. Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is development or has prospect of development have to be taken into consideration [See (2008) 2 SCC 568 (Atma Singh (dead) through LRs. and others v. State of

Haryana and another].

15. Claimant has to prove that the compensation awarded by the Land Acquisition Officer is not adequate and the same does not reflect that the market value of the land on the date of notification under Section 4(1) of the Act. Claimant has to adduce evidence to the fact that on the relevant date the market value of the land in question was high. Determination of market value of the land depends upon facts and circumstances of each case, amongst them would be the amount of compensation mentioned in the sale deed executed in respect of similarly situated land nearby and at the date of issuance of notification under Section 4(1) of the Act.

16. In her evidence, CW1-Prema has stated that the acquired land is situated very near to the junction point of Chennai-Bangalore National Highways and Vaniyambadi-Tirupattur State Highways. CW1 has further stated that Priyadarshini Engineering College, Marudhar Kesari Jain Arts College, Concordia School and Vaniyambadi Bus Stand and Railway Station are situated at a distance of 1 1= kilo meters. She has further stated that in the area of the acquired land, there is a huge demand for house sites and she has plotted out S.No.83/3 and sold few house plots to the other Claimants retaining the balance for herself.

17. 7th Claimant-Gopal who was examined as CW2 has also reiterated the evidence of CW1. In his evidence CW2 has stated that he purchased 2400 sq. ft. under Ex.C1-sale deed (16.12.1987) and that he purchased the same for running his biscuit production company. CW2 has stated that he purchased the property for his business mainly because the land is surrounded by shops and houses. In his evidence, CW2 has further stated that acquisition of his land has greatly affected his biscuit business which he intended in his property.

18. The then Tahsildar of Adi-Dravidar Welfare Department was examined as RW1. In his evidence, RW1-Jeyabalan would also admit that the acquired land is situated very near to Chennai-Bangalore National Highways and Vaniyambadi-Tirupattur State Highways. RW1 would also admit that the acquired land is situated very near to Colleges and Schools. RW1 would admit that the land in S.Nos.83/2A and 83/3A was acquired mainly because the acquired land was

suitable for construction of houses. We may usefully refer to the evidence of RW1 which reads as under:-

VERNACULAR (TAMIL) PORTION DELETED

Evidence of RW1 would clearly show that the acquired land is in the midst of developed area and that it had potentials for development.

19. Sale of comparable instance - Stating that the sale deeds were executed in respect of the properties near to the acquired land, Claimants have produced Exs.C1 to C5. The details of Exs.C1 to C5 are as under:- Exhibit No. & Sale Deed dated

Survey Number and Extent

Value of the land mentioned in the Sale Deed

Rate per square feet

Ex.C1

Dt.16.12.1987

[Sale Deed pertaining to 7th Claimant]

S.No.83/3A

0.5= cents

Rs.20,625/-

Rs.8.60

Ex.C2

Dt.30.06.1988

[Sale Deed pertaining to CW3-Venu]

S.No.35/1A

2640 sq. ft.

Rs.35,000/-

Rs.13.25

Ex.C3

Dt.30.09.1988

[Sale Deed pertaining to Esther Rathinam]

S.No.34/3

1200 sq. ft.

Rs.21,500/-

Rs.17.91

Ex.C4

Dt.16.07.1990

[Sale Agreement pertaining to 8th Claimant]

S.No.83/2

0.11 cents

Rs.43,000/-

Rs.8.96

Ex.C5

Dr.19.07.1990

[Sale Deed pertaining to 8th Claimant.

S.No.83/2A

0.11 cents

Rs.43,000/-

Rs.8.96

20. Section 4(1) notification was published in the locality on 31.08.1989. Exs.C1 to C3-sale deeds would clearly show that the acquired land in S.No.83/3A and the adjacent lands were sold as house plots at the rate of Rs.8.60 to Rs.17.91 per square feet. Under Ex.C2-sale deed [30.06.1988], CW3-Venu and two others [Raji and Kullappan] purchased 2640 sq. ft. in S.No.35/1A for Rs.35,000/- i.e. Rs.13.25 per square feet. Ex.C2-sale deed which was about one year prior to Section 4(1) notification situated near to the acquired land is stated to be of same tharam and quality and therefore, Reference Court has taken Ex.C2-sale deed as comparable instance.

21. In (2003) 12 SCC 334 [Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. v. Nookala Rajamallu and others], principles of fixation of fair market value with reference to comparable sales are stated as under:- (i)when sale is within a reasonable time of the date of notification under Section 4(1);

(ii)it would be a bona fide transaction;

(iii)it should be of the land acquired or of the land adjacent to the land acquired; and

(iv)it should possess similar advantages.

The purchaser under Ex.C2-sale deed was examined as CW3. CW3-Venu has spoken about the purchase of plot as house plot. Considering Ex.C2-sale deed and the evidence of CW3-Venu, the above factors laid down in (2003) 12 SCC 334 are present in Ex.C2-sale deed and rightly Reference Court has taken Ex.C2-sale deed as sale of comparable instance.

22. Deduction Based on Ex.C2-sale deed [30.06.1988], Reference Court has taken the value of the acquired land at Rs.13.25 per square feet. Referring to the decision reported in AIR 1992 SC 666 [Special Tahsildar, Land Acquisition, Vishakapatnam v. Smt. A.Mangala Gowri], Reference Court deduced 1/3rd i.e. 339/3% for comparison with small plot and also for development. It is fairly well settled that the price fetched for small plots cannot form safe basis for valuation of large tracts of land. A large block of land will have to be developed by preparing a layout, carving out roads, leaving open space, plotting out smaller plots and also providing for sewerage and drains. Thus substantial area is to be used for development of sites.

23. Where the lands are acquired for specific purposes, deduction by way of development charges is permissible. In various decisions, the Supreme Court has laid down as general rule that laying of roads and other amenities 1/3rd is required to be deducted. The deduction made by the Reference Court at 339/3% i.e. 1/3rd is in accordance with the consistent view taken by the Supreme Court. Deducting 339/3% i.e. 1/3rd for development charges, Reference Court has fixed the value of the acquired land at Rs.8.81 per square feet. After fixing the value at Rs.8.81 per square feet and adding 30% solatium [Rs.2.64] and 12% additional market value [Rs.3.26], Reference Court arrived the value at Rs.14.71 per square feet and after deducting the compensation already paid by the LAO i.e. 0.40 paise per square feet, Reference Court enhanced the value to Rs.14.31 per square feet.

24. Learned Special Government Pleader would contend that Reference Court ought to have arrived at the market value and only thereafter should have awarded 30% solatium on the market value. Insofar as 12% additional market value, learned Special Government Pleader would contend that 12% additional market value should have been awarded on the market value only for a limited period i.e., from the date of Section 4(1) notification [31.08.1989] to the date of Award [10.10.1992] and while so, Reference Court erred in calculating 12% additional market value for the entire Rs.11.45 i.e. the market value [Rs.8.81] plus 30% solatium [Rs.2.64] and erred in adding 12% additional market value for the said amount [Rs.11.45] and therefore, the valuation fixed by the Reference Court at Rs.14.71 is exorbitant and liable to be set aside.

25. Based on Ex.C2-sale deed, Reference Court has taken the value at Rs.13.25 per square feet and deducting 339/3% i.e. 1/3rd for development charges, Reference Court rightly fixed the value at Rs.8.81 per square feet. Ofcourse, as per Section 23 (2) of Land Acquisition Act, 30% solatium is payable on the said market value of Rs.8.81. Insofar as 12% additional market value calculated by the Reference Court at Rs.3.26 per square feet, the method adopted is erroneous. As per Section 23(1-A) of Land Acquisition Act, 12% additional market value is to be calculated only on the value fixed at Rs.8.81 for a limited period from the date of Section 4(1) notification to the date of Award. While so, the Reference Court was not right in calculating Rs.3.26 per square feet for the entire market value plus 30% solatium.

26. Even though Reference Court has adopted an erroneous approach, we are not inclined to interfere with the value arrived at by the Reference Court at Rs.14.71 and enhanced by the Reference Court at Rs.14.31 per square feet. As discussed earlier, the acquired land being close proximity to National Highways and State Highways and developed area has potentials for future development. As is seen from Ex.C3-sale deed [30.09.1988], 1200 sq. ft. in S.No.34/3 was sold for a sum of Rs.21,500/- i.e. Rs.17.91 per square feet. The sale consideration stated in Ex.C3-sale deed would show that the land adjacent to the acquired land were sold for high value i.e. Rs.17.91 per square feet, but the Reference Court has taken the value at Rs.13.25 based on Ex.C2-sale deed. Considering the potentials of the acquired land and taking note of the fact that the Claimants are yet to receive the compensation, we are not inclined to interfere with the enhancement made by the Reference Court at Rs.14.31 per square feet. We do not find any reason warranting interference with the judgment of the Reference Court.

27. Findings of Reference Court in respect of 8th Claimant - Case of 8th Claimant is that he had entered into an agreement with the 3rd Claimant-Alla Baksha for purchase of 11 cents in S.No.83/2 under Ex.C4 [16.07.1990]. 8th Claimant had purchased 11 cents in S.No.83/2A from 4th Claimant-Kader Sahib under Ex.C5-sale deed [19.07.1990] for Rs.43,000/-. Based on Exs.C4 and C5, 8th Claimant claimed compensation for the property purchased by him.

28. In the judgment of the Reference Court, it is stated that 8th Claimant has entered into an agreement with the 2nd Claimant on 16.07.1990 [Ex.C4] for purchase of 11 cents in S.No.82/2. Like wise, Reference Court also stated that 8th Claimant purchased 11 cents in S.No.83/2A on 19.07.1990 [Ex.C5] from 3rd Claimant. Finding that the above said sale is hit by Section 52 of Transfer of Property Act, Reference Court held that 8th Claimant can claim the compensation from the amount to be payable to the 2nd and 3rd Claimants and dismissed the Claim of 8th Claimant.

29. Both reference to sale deed/agreement of sale pertaining to 8th Claimant by the Reference Court are factually incorrect. It is seen from Ex.C4-agreement [16.07.1990], 8th Claimant had entered into an agreement for sale with the deceased 3rd Claimant-Alla Baksha for purchase of 11 cents in S.No.82/2 for Rs.43,000/- and under Ex.C5-sale deed [19.07.1990], 8th Claimant had purchased 11 cents in S.No.83/2A on 19.07.1990 from 4th Claimant-Kader Sahib for Rs.43,000/-.

30. As held by the Reference Court, Section 4(1) notification is dated 31.08.1989 and the alleged agreement and sale by the 8th Claimant is dated 16.07.1990 and 19.07.1990 respectively and the said transactions are hit by Section 52 of Transfer of Property Act.

31. Learned counsel for 8th Claimant has submitted the finding of the Reference Court is erroneous and that 8th Claimant may be permitted to withdraw the amount. In this appeal, 3rd Claimant died and his legal representatives were brought on record as Claimants 9 to 15. 4th Claimant-Kader Basha has not entered appearance. As against the findings of the Reference Court, 8th Claimant has not preferred any appeal/cross objection. In such view of the matter and in the absence any appeal/cross objection by the 8th Claimant, the findings recorded by the Reference Court pertaining to 8th Claimant cannot be interfered with. However, it is open to the 8th Claimant to work out his remedy in accordance with law.

32. In the result, the enhancement of compensation made in L.A.O.P.No.2 of 1993 dated 07.08.2006 on the file of Sub-Court, Tirupattur is confirmed. The said

enhancement of compensation is inclusive of 30% solatium and also 12% of additional market value from 31.08.1989 to 10.10.1992. 9% interest awarded for the enhanced compensation from 10.10.1992 to 10.10.1993 and thereafter interest at the rate of 15% per annum from 11.10.1993 till the date of deposit by the Reference Court is also confirmed and this appeal is dismissed. It was stated before us that Appellant has deposited 25% of the compensation and the Claimants have withdrawn 50% of the same. Claimants 1,2,5 to 7 and 9 to 15 are permitted to withdraw the remaining 50% of deposited compensation along with accrued interest lying in the Court. Appellant is directed to deposit the balance 75% of the compensation amount along with proportionate accrued interest within a period of eight weeks from the date of receipt of copy of this judgment. On such deposit, Claimants 1,2,5 to 7 and 9 to 15 are entitled to withdraw their respective share along with proportionate accrued interest. It is open to the 8th Claimant to work out his remedy in accordance with law.

Consequently, connected M.P. is closed. No costs in this appeal.