

SUPREME COURT OF INDIA

Iyasamy

Vs.

Spl. Tahsildar, Land Acquisition

C.A.Nos.1760-1761 of 2004

(Dr.Mukundakam Sharma and Anil R.Dave JJ.)

30.09.2010

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. All these appeals are arising out of the land acquisition proceeding in which various notifications under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") were issued in proximity of time, i.e. in 1981, with respect to adjoining lands in the Erode and Periasemur Villages for the construction of houses for the scheme called "Erode West Neighbourhood Scheme" and therefore we propose to decide them by a common judgment and order. The Civil Appeal Nos. 1760-1761 are directed against final judgment and order dated 18-01-2001 passed by the Madras High Court in Appeal No.298/92 and CMP No. 15057/97 wherein the High Court by its impugned judgment partly allowed the appeal filed by the Respondent and declined to condone the delay of 7 days in filing the Cross appeal by the appellants and consequently, dismissed the CMP No. 15057/97. Consequent thereto, the cross-appeal of the Appellants was also dismissed without going into merit.

“The Civil Appeal No. 6875-6877/04 and 7434/04 are directed against the final judgment and order dated 17/10/03 passed in A.S. Nos. 754/02, 759/02. 760/02 and 128/92 by the Madras High Court whereby the High Court by its impugned judgment and order dismissed the appeals filed by the appellants.”

2. The appellants were not satisfied with the compensation awarded by the Land Acquisition Officer, so there were 12 LAOPs filed before the Reference Court. The Reference Court enhanced the compensation and fixed it at the rate of Rs. 6/- per sq. ft. Both the appellants and respondent filed appeals before the High Court. The High Court was pleased to remand back the appeals to the Reference Court except A.S. No. 298/92.

3. In A.S. No. 298/92, the appellants moved CMP No. 15057/97 to condone the delay of 7 days in filing the cross objection. The High Court dismissed the said application.

Consequently, the cross appeal of appellants was dismissed. As far as the appeal filed by the respondent in A.S. no. 298/92 was concerned, the High Court referred its judgment in A.S. No. 71/92 which was in reference to the same scheme for the adjoining survey no. and in which the High Court enhanced the market value to Rs. 9/- per sq. ft. and thereby the High Court in its impugned judgment and order dated 18/1/2001 also enhanced the market value of the land involved in A.S. No. 298/92 to Rs. 9/- per sq. ft., and deducted 33-1/3% towards development charges and ultimately the compensation was fixed at Rs. 6/- per sq. ft. The High Court also rejected the claim of interest on solatium u/s 23 (2) and additional compensation u/s 23(1A) of the Act.

4. As far as the matters remanded back are concerned, the Reference Court fixed compensation at the rate of Rs. 6/- per sq. ft. after remand for the lands involved in LAOP Nos. 4/87, 9/87, 19/87 and 25/87, against which A.S. No. 754/02, 759/02, 760/02 and 128/92 were made.

5. Simultaneously, by separate orders, the Reference Court in LAOP Nos. 22/87, 24/87, 26/87 and 410/00, which were matters involving neighbouring lands for the same housing scheme and which were also remanded back by the High Court, fixed compensation at the rate of Rs. 13-14/- per sq. ft., against which appeals were also filed. All these appeals were decided by the High Court by judgment and order dated 17/10/03 whereby the High Court reduced the compensation of 13-14/- per sq. ft. awarded in LAOP Nos. 22/87, 24/87, 26/87 and 410/00 by the Reference Court to 6.25/- per sq. ft., while A.S. Nos. 754/02, 759/02, 760/02 and 128/92 were dismissed upholding the compensation @ 6/- per sq. ft.

6. We have heard the learned counsel appearing on behalf of the parties at length. The principal issue that arises for our consideration is what would be the reasonable compensation for the acquired lands in the present case.

7. The learned counsel for Appellants contended before us that the Reference Court in LAOP Nos. 22/87, 24/87, 26/87 and 410/00 fixed compensation at the rate of Rs. 13-14/- per sq. ft., therefore, the appellants are also entitled to the same amount of compensation and that the High Court by its impugned judgment and order dated 17/10/03 erroneously fixed the market value @ Rs.6.25/- and 6/- by overlooking the evidence of sale instances (i.e.Ex. C15, C16 and C17) which shows the market value of the adjoining lands at Rs. 19-20/- per sq. ft. Further, the learned counsel for appellants contended that the deduction of 1/3rd towards development charges is illegal and not sustainable.

8. We have considered the evidence on record and appreciated the documents to determine the just and fair market value of the acquired lands. The High Court by its impugned judgment and order dated 17.10.2003 considered Exhibit C3 which is a sale deed in which the sale of the adjoining land was made at the rate of Rs. 10/- per sq ft. The evidence produced further proves that this land is on the Nasiyanur Road and very near and almost adjacent to the land acquired. Therefore, this piece of evidence is very valuable and dependable for determining the market value in the present case.

9. However, this sale deed pertains to a small portion of land i.e. one acre and four cents, while the acquired land is a large tract of land.

10. The legal position in this regard has been reiterated by this court time and again. It was held in *Smt.Kausalya Devi & Anr.*¹, (in paragraph 13) that: - "Where large tracts of land are acquired, valuation in transaction in regard to smaller properties does not offer a proper guideline and therefore, cannot be taken a real basis for determining compensation.

11. For determining the market value of a large property on the basis of a sale transaction for smaller property a deduction should be given."

12. Besides, in *Kasturi & Ors. v. State of Haryana*² it was held that (in paragraph 7):- "It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes."

13. . If we assess the market value of the land acquired at Rs. 10/- per sq ft. on the basis of Ex. C3 and deduct 1/3 rd towards development charges, it comes approximately to Rs. 6.25 per sq ft. As far as Exs. 15, 16 and 17 are concerned, in those documents, transaction were made at the rate 20/- per sq. ft. But the lands pertaining to those sale deeds are highly developed and better located being situated right on the Manickampalayam road not very far from the Mettur road, and the Municipal Colony.

14. Therefore, if a deduction of 65% should be made as is done in some cases decided by this Court, the valuation would come to Rs. 6.25/-. The aforesaid lands covered by the three exhibits are land of better quality, and better location with better connectivity. Besides, these are small pieces of land compared to a large tract of land acquired in the present case. Therefore, a deduction of 65% of land value appears to be just and appropriate. For quality and location of land, if deduction is permissible at 1/3rd valuation and for smaller piece of land pitted against large tract of land also another 1/3 rd deduction is permissible, the same would again amount to valuation being fixed at Rs. 6/- or Rs. 6.25/-. This amount of compensation was awarded by the High Court in respect of acquired lands in LAOP Nos. 22/87, 24/87, 26/87 and 410/00. The lands in LAOP Nos. 22/87, 24/87, 26/87 and 410/00 have an access to road which connects Nasiyanur Road and Manickampalayam Road, however, such advantages are not available to the land in the present case as the same are landlocked plots.

15. Therefore, we uphold the compensation at the rate of Rs. 6/- per sq. ft. in respect of present lands as awarded by the High Court.

16. There is also other guidance available on record to determine the valuation in the form of various awards with respect to acquisition of adjoining lands. These awards are important piece of evidence for arriving at the market value acquired land in view of the decision of this court in *Mohammad Raofuddin vs. Land Acquisition Officer*³, wherein it was held that (paragraph 21): - "...reliance on earlier judgment in respect of a land situated in the same village, acquired only six months ago, could not be said to be an irrelevant factor affecting the determination of market value/ compensation in respect of the land of the appellant."

17. The High Court in A.S. No. 875 of 1991 and cross-objection No. 253 of 1992 fixed the market value at Rs. 6, 99, 934/- for one acre and ten cents, which works out to Rs. 6/- per sq. ft. The lands are situated in S.No. 147/1, Periasemur village acquired for the same public purpose pursuant to notification under Section 4 of the Act dated 15.07.1981. Though the revenue village is different, the lands are located very adjacent and in the same locality having similar facilities. Similarly in A.S. No. 137 of 1993 and the cross-objection No. 72 of 1994, the Division Bench of the High Court fixed the market value of the land Rs. 5.53 per sq. ft. In this matter the land was covered by S.No. 145/1,2,3 and 4, Erode village acquired for the same Erode neighbourhood scheme by the notification dated 5/1/1981, which is next to the present acquired land. In A.S. No. 584 of 1986 in which adjoining land was acquired via notification dated 14-3-1973, the division bench of the High Court fixed the market value Rs. 5/- per sq. ft. Since all these awards have become final and binding, therefore reliance could be placed on the same. Consequently, the reasonable compensation and fair market value of the present acquired land should be Rs. 6/- per sq.ft. 1. The learned counsel for Appellants in Civil Appeal Nos. 1760-1761/04 are also claiming interest on solatium and additional compensation as the impugned order of the High Court was pronounced prior to judgment in *Sunder v. Union of India*⁴. Since the present appeal was pending before this court, therefore, the ratio of *Sunder v. Union of India* would entitle the appellants to receive interest on solatium under section 23 (2) and additional compensation under Section 23 (1A) in terms of the said decision. It was decided in *Gurpreet Singh v. Union of India* reported at (2006) 8 SCC 457 that such interest can be claimed only from the date of the judgment in *Sunder* (supra) i.e. 19.9.2001. Therefore, the appellants in the Civil Appeal Nos. 1760-1761/04 shall be entitled to such interest for the period after 19.9.2001, not the period prior to the same.

18. In view of the aforesaid, we do not find any merit in these appeals to interfere with the quantum of compensation awarded by the High Court and accordingly, dismiss the Civil Appeal Nos. 6875-6877/04 and 7434/04. However, we partly allow the Civil Appeal Nos. 1760-1761/04 with respect to interest on solatium u/s 23(2) and additional compensation u/s 23(1A) of the Act, which shall be guided by observations and directions made in paragraph 11 above. The parties are left to bear their own cost.

¹(1984) 2 SCC 324

²(2003) 1 SCC 354

³(2009) 14 SCC 367

⁴(2001) 7 SCC 211