IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2015 & Delivered on : 28-03-2016

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and
The Honourable Mr.Justice T.MATHIVANAN

Appeal Suit No.387 of 2012

1. Kunnummal Kootayi Susheela (Deceased)

2. P.Anupama

(2nd appellant brought on record as L.R. of deceased sole appellant vide order of Court dated 14.8.2015 made in M.P. 1& 2/2015) ...Appellant /Petitioner

Vs.

1. Deputy Collector (Revenue) cum Land Acquisition Officer, Mahe.

2. Chief Medical Officer, C.H.C. Palloor. ...Respondents/Respondents

Appeal Suit filed under Section 54 of the Land Acquisition Act, 1894, against the Judgment and decree passed by the Special Judicial Officer for Land Acquisition (Sub Judge) at Mahe on 9.8.2011, in L.A.O.P.No.3 of 2009.

For Appellant : Mr.R.Yashodh Vardhan Sr.Counsel for Mr.K.Raja Shrinivas

For Respondents : Mrs.N.Mala, AGP (Puducherry)

JUDGMENT

V.RAMASUBRAMANIAN,J

This appeal is filed by the Legal Representative of the land owner challenging the quantum of compensation awarded by the Land Acquisition Tribunal.

2. We have heard Mr.R.Yashodh Vardhan, learned senior counsel appearing for the appellant and Mrs.N.Mala, learned Additional Government Pleader (Puducherry), appearing for the respondents.

3. By a Notification issued under Section 4(1) of the Land Acquisition Act on 23.10.2007, the land of the extent of 0.35.50 Hectares in R.S.No.21/2A/2 in Palloor Village was sought to be acquired for the purpose of construction of a Community Health Centre. The appellant conveyed no objection and hence a Declaration under Section 6 was issued within two months.

4. By an award passed on 22.4.2009, the Land Acquisition Officer fixed the compensation at Rs.534/- per square meter for the land and separately valued the compound wall and trees. Not satisfied with the quantum of compensation, the appellant sought a reference under Section 18. Accordingly, a reference was made and the Land Acquisition Tribunal, by an award passed on 9.8.2011 in L.A.O.P.No.3 of 2009 enhanced the compensation from Rs.534/- to Rs.800/- per square meter. Not satisfied with such enhancement and claiming a sum of Rs.2,224/- per square meter, the Legal Representative of the land owner has come up with the above appeal.

5. The Land Acquisition Officer took note of the fact that 105 sales had been effected during the period of one year immediately preceding the date of notification under Section 4 (1). But he discarded 103 transactions on the ground that they related to lands located far away from the acquired land and also dissimilar.

6. He retained the sale transactions at serial numbers 46 and 74 and found those lands to have the same potentiality. Under the sale deed at serial number 46, a garden land of an extent of 0.04.26 Hectares, located in Survey No.23/3 had been sold for Rs.305/- per square meter. Under the sale deed at serial number 74, another garden land located in Survey No.15/9 measuring an extent of 0.03.22 Hectares had been sold at the rate of Rs.534/- per square meter. Therefore, the Land Acquisition Officer chose to adopt the rate of Rs.534/- per square meter.

7. Before the Tribunal, the land owner was examined as P.W.1. He filed the certified copy of a sale deed dated 28.3.2007 as Ex.P1. An Advocate Commissioner was appointed to report about the proximity of the land to other lands. His report dated 24.9.2010 was taken as Ex.C1. The work estimate submitted by the Advocate Commissioner was marked as Ex.C2.

8. On the side of the Land Acquisition Officer, the Chief Medical Officer of the Commune Health Center was examined as R.W.1. The copy of the award passed by the Land Acquisition Officer was filed as Ex.R1. Two sale deeds dated 12.3.2007 and 8.5.2007 were filed as Exs.R2 and R3. The guideline rate for the village and the topo sketch of the village were filed as Exs.R4 and R5. The sale particulars gathered by the Land Acquisition Officer were filed as Ex.R6.

9. The Tribunal, based upon the topo sketch Ex.R5 and the guideline register filed as Ex.R4 first came to the conclusion that the acquired land is classified partly as commercial land and partly as residential land. The Tribunal also found that out of 105 data sales taken into account by the Land Acquisition Officer, one related to a commercial property and the rate reflected therein was Rs.743/- per square meter. Since the Land Acquisition Officer failed to consider the commercial nature of a part of the acquired property and also since the Land Acquisition Officer compared the acquired land with certain residential lands located far away, the Tribunal held that the fixation of compensation at Rs.534/- per square meter by the Land Acquisition Officer was wrong.

10. At the same time, the Tribunal also rejected Ex.P1 under which the property in R.S.No.126/7 was sold for a sum of Rs.42,03,000/-. Though the Tribunal found that as per Ex.R5, the land in R.S.No.126/7 was located diametrically opposite to the acquired property, the Tribunal rejected the same on the ground that it was a garden land.

11. Having rejected the method of fixation arrived at by the Land Acquisition Officer and also having rejected Ex.P1, the Tribunal took note of a sale deed found at serial number 10 in Ex.R6, data sales. Under this sale deed, the land of an extent of 0.02.2 Hectares had been sold for Rs.1,50,000/-. Since the sale had taken place at least one year before the date of issue of notification under Section 4(1), the Tribunal took the sale value of Rs.743/- per square meter reflected in the sale deed at serial number 10 of the data sales and arrived at the market value as Rs.800/- per square meter. To arrive at such a rate, the Tribunal also took note of the guideline rate for commercial land at Rs.784/- per square meter. This enhancement of compensation from Rs.534/- per square meter to Rs.800/- per square meter has been accepted by the Land Acquisition Officer, as they have not filed any appeal. But the land owner has come up with the appeal seeking enhancement of compensation to Rs.2,224/- per square meter.

12. The main contentions of the appellant are:

(i) that the Tribunal committed an error in rejecting Ex.P1;

(ii) that the Tribunal failed to come to the logical conclusion that it ought to have done, on the basis of the report of the Advocate Commissioner with regard to the locational advantages of the land; and

(iii) that the Tribunal failed to give due weightage to the potentiality of the land.

13. Since the entire case of the appellant rests upon Ex.P1, it may be necessary to consider Ex.P1 in greater detail. Ex.P1 is a sale deed executed on 28.3.2007 by one Balaraman in favour of the Mahe Co-operative Centre for Information Technology Limited. The sale deed was registered as Document No.331/2007 in the Office of the Sub-Registrar, Mahe. The extent of the land covered by the sale deed is 0.18.90 Hectares in R.S.No.126/7. The nature of the property is indicated in the sale deed to be garden land. The sale consideration reflected under the document is Rs.42,03,000/-. Since 1 Are is equal to 100 square meters, the rate per square meter as reflected in the said document works out to Rs.2,224/- per square meter.

14. Even in the claim statement filed before the Tribunal at the earliest point of time, the land owner made a reference to the sale deed Document No.331/2007 and claimed a much higher rate of Rs.7,413/- per square meter. Unfortunately, the Land Acquisition Officer did not even deal with this claim in his counter statement.

15. In the affidavit filed in lieu of chief-examination, the land owner again referred to the sale deed Document No.331/2007 in paragraph 6 and filed the document as Ex.P1. A very weak suggestion was made on behalf of the Referring Officer during the cross-examination of P.W.1 that the land covered by Ex.P1 was located far away from the acquired land.

16. But an Advocate Commissioner appointed by the Tribunal filed a report which was taken on record as Ex.C1. The Advocate Commissioner had also taken along with him the Government Surveyor and the Licensed Building Surveyor. After inspecting the acquired land, the Commissioner also inspected the land covered by sale deed Document No.331/2007. In his report Ex.C1, he gave his opinion as follows:-

"On inspection I am of the opinion that this property covered by document no.331/2007 and acquired property is similarly situated. Because both properties are similar and larger in extent, both properties has got direct road access, both properties are garden land also. Compared to the property covered by document no.331/2007 acquired property has got more importance due to its situation near State Highway.

> The consideration paid as per document no.331/2007 for one Square Metre is Rs.2,224/-. Since acquired property has got more importance I am of the view that Rs.2300/- per Square Meter or such other amount which this Hon'ble Court deem fit to grant can be fixed as value of one square meter of acquired property. "

17. We do not know whether the report of the Commissioner was challenged by the Land Acquisition Officer in a manner known to law. Therefore, the statement that the acquired land as well as the other land are similarly situated, cannot be rejected so easily.

18. In the affidavit filed by the Chief Medical Officer who was examined as R.W.1, he did not touch upon the sale deed document no.331/2007. As a matter of fact, the Chief Medical Officer is not even competent to speak about the market value of the land. The Referring Officer did not examine himself as a witness.

19. What is more damaging to the case of the respondents is that R.W.1 stated during cross-examination that he cannot deny the suggestion that the acquired property and the property covered by Ex.P1 are similar. He also admitted that he had not seen the property mentioned in Ex.P1. R.W.1 further admitted that the acquired land had a lot of locational advantages. The relevant portion of the cross-examination of R.W.1, is extracted as follows:-

> "The valuation of the acquired property is done by the Tahsildar and not by me. I have seen the acquired property. I have not seen the property mentioned in Ex.R-2, Ex.R-3 and Ex.P-1. The acquired property is in Palloor village and part of Mahe Municipality. Except court and civil station all other facilities are available in Palloor also. Mahe Dental College, Ayurvedic College are in Palloor. Biggest showrooms are situated very near the acquired property. The 25% of the property is classified as commercial property and the rest as residential. It is mentioned that the distance from the acquired

property to the State Highway is less than 50 meters. The acquired property is situated in same Resurvey as a single plot. Entire western boundary of the acquired property is thar road. Except water facility other facilities are available. Water facility can be made available."

20. However, in the course of hearing, Mrs.N.Mala, learned Additional Government Pleader contended that the land in R.S.No.126/7 covered by Ex.P1 was located far away from the acquired land. Though the respondents themselves had filed topo sketch as Ex.R5, the topo sketch is actually broken into several parts and hence the distance between the land covered by Ex.P1 and the acquired land was not decipherable.

21. Therefore, on 9.10.2015, we directed the parties to file affidavits indicating the following:-
(a) Distance between the acquired land and the State Highway.
(b) Distance between the acquired land and the lands covered by Exhibit P-1 i.e. Serial No.64 in Exhibit R-6, and the sales particulars in Palloor Village for the period from 28.10.2006 to 29.10.2007.

(c) Distance between the acquired land and the lands covered by Exhibit R-2 and R-3 marked by the Respondent/LAO before the Tribunal i.e. Serial No.46 & 74 in Exhibit R-6.

(d) Distance between the acquired land and the lands covered by the documents on the basis of which the Tribunal has fixed the value. i.e. S.No.10 in Exhibit R-6.

22. In response to the said order, the land owner filed an affidavit indicating that the distance between the acquired land and the land covered by Ex.P-1 is 500 meters and that the distance between the acquired land and the State Highway is 50 meters. The distance between the acquired land and the data sales taken into account by the Land Acquisition Officer is 200 meters.

23. Therefore, relying upon Ex.P-1, it is contended by Mr.R. Yashodh Vardhan, learned senior counsel for the appellant that the Tribunal ought to have fixed the compensation, based upon the value reflected in Ex.P-1. The learned senior counsel also relies upon the decision of the Supreme Court in Haryana State Industrial Development Corporation [(2010) 11 SCC 175].

24. We have carefully considered the pleadings as well as the documents and the contentions.

25. There cannot be a serious dispute about the fact that the acquired land was similar to the land covered by Ex.P-1

except that the land covered by Ex.P-1 had certain additional locational advantages. The Advocate Commissioner has indicated that the nature of both the properties is one and the same. If the distance of about 500 meters is actually a point, that should also go in favour of the land owner. This is for the simple reason that even admittedly the acquired property is located at a distance of 50 meters from the State Highway. But the land covered by Ex.P-1 is located at least half-a-kilometer away. In other words the distance between the State Highway and the property covered by Ex.P-1 is at least 10 times greater than the distance between the State Highway and the acquired land.

26.The only area where there could be a dispute is that the property covered by Ex.P1 is of a larger extent, available as a single block and was acquired for industrial purpose. Therefore, we are of the considered view that if we deduct 40% from the value reflected in Ex.P-1, the market value of the land covered by the present proceeding could be properly arrived at.

27. Therefore, this appeal is allowed and the award of the Tribunal is modified, enhancing the compensation payable for the acquired land to Rs.1,334/- per square meter (Rs.2,224/- minus 40% of 2,224/-) . On the said amount, the appellant/land owner will be entitled to interest, solatium etc., as awarded by the Tribunal in accordance with the statutory prescriptions. The appellant will be entitled to proportionate costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Special Judicial Officer for
land Acquisition (Sub Judge at Mahe)

+1cc to Mr.K.Raja Srinivas, Advocate sr.19226

A.S.No.387 of 2012

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