IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.10.2015 & Delivered on: 28.3.2016

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

Appeal Suit Nos.60 & 61 of 2002

The Land Acquisition Officer
Revenue Department — Appellant in
Pondicherry. ..both Appeals/Respondent

Vs.

1. P.S.Krishnaraj
2. Canagaradjou
3. Rajeswari @ Santha
4. Gnezalatchoumy @ Radhabaye — Respondents in
5. O.Mohan ..A.S.No.60/02/Petitioner

1. P.S.Krishnaraj (Deceased)
2. Gajalakshmi
3. Rajeswari @ Santha — Respondents in
4. Kanagaraj ..A.S.No.61/02/Petitioners

[R2 to R4 brought on record as LRs of the deceased R1 vide order dated 24.4.2007 in CMP Nos.4076 & 4077/06]

Appeals under Section 54 of the Land Acquisition Act against the common order dated 22.02.2002 made in LAOP Nos.3 & 4 of 2001 on the file of the Principal District Judge, Pondicherry.

For Appellants : Mrs.N.Mala, Addl.G.P. (P)
For Respondents : Mrs.Usha Ramman

J U D G M E N T

V.RAMASUBRAMANIAN,J.

These appeals are filed by the Land Acquisition Officer under Section 54 of the Land Acquisition Act, 1894, against a common award passed in two references under Section 18 taken on file as LAOP Nos.3 and 4 of 2001.

2. We have heard Mrs.N.Mala, learned Additional Government Pleader, Puducherry and Ms.Usha Ramman, learned counsel for the respondents/land owners.

3. By a notification issued under Section 4(1) of the Land Acquisition Act, 1894, in G.O.Ms.No.67 dated 14.10.1998, published on 03.11.1998, the land of an extent of 3.34.00 hectares in R.S.No.17/1C/1 was sought to be acquired, for the purpose of construction of a hospital for women and children.

4. Similarly, by another notification issued under Section 4(1) under G.O.Ms.No.49 dated 28.7.2000 and published on 15.8.2000, another land of the extent of 00.17.32 hectares was sought to be acquired. Both the acquisitions were made by invoking the urgency clause under Section 17(3) and hence, the enquiry under Section 5-A was dispensed with.

5. The Land Acquisition Officer passed two separate awards, one in Award No.2 of 2000 dated 10.4.2000, fixing compensation at the rate of Rs.1,23,740/- per are and another in Award No.11 of 2000 dated 11.12.2000 fixing the compensation at Rs.3,22,800/- per are. In another words, the market rate fixed under the first award was Rs.115/- per sq.ft. and the market rate fixed under the second award was Rs.300/- per sq.ft. While the land acquired under the first notification was in R.S.No.17/1C/1, the land acquired under the second notification was located in R.S.Nos.17/1A and 17/1B/1. The properties were nevertheless comprised in a single block, in Reddiyarpalayam Village. Therefore, aggrieved by the quantum of compensation, the land owners sought references. The references were taken on file as LAOP Nos.3 and 4 of 2001. Eventually, the Land Acquisition Tribunal fixed the compensation at Rs.350/- per sq.ft. uniformly for the lands covered by both the notifications. Aggrieved by the enhancement of compensation to Rs.350/- per sq.ft., from Rs.115/- per sq.ft. in one case and from Rs.300/- per sq.ft. in the other case, the Land Acquisition Officer has come up with the above appeals.

6. It is seen from the award of the Land Acquisition Officer, in the first case that he took into consideration 590 sales that were effected in a period of one year preceding the date of notification under Section 4(1). Out of them, 78 sales had taken place within the vicinity of the land under acquisition. Therefore, those statistics were retained and the rest were rejected. Out of those 78 sale transactions retained for consideration, the Land Acquisition Officer accepted the transaction at serial No.508, whereunder the land of an extent of about 0.01.16 hectares was sold for Rs.1,55,172/- per are. After deducting 1/3rd towards development cost, the Land Acquisition Officer arrived at the market value as Rs.115/- per sq.ft.

7. Insofar as the second award is concerned, the Land Acquisition Officer took note of 722 sale transactions effected in a period of one year preceding the date of issue of the notification under Section 4(1) namely 14.8.2000. Out

of them, the Land Acquisition Officer took into consideration only 90 transactions. Of these 90 transactions, the transactions at serial No.433 related to the sale of a land at a rate of Rs.3,20,000/- per are, which worked out to Rs.300/- per sq.ft. Therefore, the Land Acquisition Officer fixed the market value at Rs.115/- per sq.ft. for the land acquired under the first notification and at Rs.300/- per sq.ft. for the land acquired under the second notification.

8. Before the Tribunal, evidence was recorded in common for both the references. Three witnesses were examined on the side of the land owners. The Land Acquisition Officer was examined as RW1. Three rough sketches were marked on the side of the land owners as Exx.A1 to A3. The sale deeds dated 05.10.1998 and 20.6.2000 were marked as Exx.A4 and A5. The valuation certificate issued by a Chartered Engineer was marked as Ex.A6.

9. On the side of the Referring Officer, the copies of the awards were filed as Exx.B1 and B5. The topo sketches relating to both the awards were marked as Exx.B2 and B6. The xerox copy of the sale particulars taken note of under both the awards were marked as Exx.B4 and B8.

10. The Tribunal, to begin with, found fault with the Land Acquisition Officer fixing the compensation at two different rates for the land comprised in one single block. Though the dates of the notification under which both the lands were acquired were different, the fact that they were comprised in a single block, was not disputed. The fact that both the lands were also abetting the East Coast Road was also not disputed.

11. Thereafter, the Tribunal took up for consideration whether the fixation of Rs.300/- per sq.ft. as the market value was correct or not. Based upon the evidence of the Land Acquisition Officer himself, the Tribunal came to the conclusion that the acquired land was in a fully developed area with pucca metal roads, electricity connection and water facility. Under Ex.A4 sale deed dated 05.10.1998, the land of an extent of about 4800 sq.ft. had been sold for Rs.23.00 Lakhs, which worked out to Rs.479/- per sq.ft. Under Ex.A5 sale deed dated 20.6.2000, the land of an extent of 525 sq.ft. had been sold for Rs.4,50,000/- making the market value work out to Rs.857/- per sq.ft.

12. Therefore, after taking note of the ratio laid down by the Supreme Court in Collector, Raighar v. Dr. Harisingh Thakur [AIR 1979 SC 472] and K.Posayya v. Special Tahsildar [AIR 1995 SC 1641] and the decision in P.Ram Reddy v. Land Acquisition Officer [1995 (2) SCC 305], the Land Acquisition Tribunal took note of the sale under item No.438 of the sales statistics. Under the sale deed that was included as item No.438, the land of an extent of 93 cents had been sold for

Rs.3,76,882/- per are. This related to the sale of the land in R.S.No.81/6B. The date of the sale was 10.7.2000. Therefore, finding that this land was located within the vicinity of the acquired lands, as per the topo sketches marked even on the side of the Land Acquisition Officer as Exx.B2 and B6, the Tribunal arrived at the compensation of Rs.350/- per sq.ft.

13. While the Land Acquisition Officer is aggrieved even by the fixation of Rs.350/- per sq.ft. as the market value, the learned counsel for the land owners argued before us for a further enhancement. The claim for further enhancement is based upon a decision of this Court in S.V.Mehta v. Deputy Collector in A.S.No.23 of 2004 dated 22.9.2006.

14. The decision of the Division Bench of this Court in S.V.Mehta [A.S.No.23 of 2004] arose out of an award passed on 29.8.2003 by the III Additional District Court, Pondicherry, in LAOP No.26 of 2001. The land covered by the said award was acquired pursuant to a notification under Section 4(1) issued on 22.8.1995. The land was located in the very same East Coast Road, allegedly within a distance of about less than 200 meters. The Land Acquisition Officer had fixed the compensation at Rs.139.70 per sq.ft. The Tribunal confirmed the award passed by the Land Acquisition Officer. Therefore, he came up with an appeal in A.S.No.23 of 2004. By a judgment dated 22.9.2006, this Court enhanced the compensation to Rs.580/- per sq.ft. Therefore, the land owners want a higher compensation than what was awarded by the Tribunal.

15. In addition, the land owners have also come up with a petition in CMP No.384 of 2013, under Order XLI, Rule 27 of the Code for adducing additional evidence. The document that the land owners want to file as additional evidence is a sale deed dated 21.4.1994 registered as document No.1329/94. Under the said sale deed, the land of an extent of about 317 sq.mtrs. was sold by the Pondicherry Housing Board, in favour of Pondicherry Co-operative Building Centre Limited, for a sale consideration of Rs.25,10,000/-. The market rate therefore works out to Rs.727/- per sq.ft. Hence, the land owners claim that the compensation should be even higher than what was awarded by the Tribunal.

16. But, the claim of the land owners for the further enhancement of the compensation is opposed by Mrs.N.Mala, learned Additional Government Pleader (Puducherry) on the ground that despite a lapse of more than 13 years from the date of filing of the first appeal, the land owners neither filed cross objections, nor filed independent appeals seeking enhancement. Therefore, the learned Additional Government Pleader submits that the land owners cannot seek further enhancement.

17. However, the law on the issue is well settled. Without multiplying authorities, it is sufficient to make a reference in this regard to the judgment of the Division Bench of this Court in the Managing Director, Annai Sathya Transport Corporation Ltd. v. Janardhanam [2000 (2) CTC 272]. It was held in the said decision that this Court has power by virtue of Order XLI, Rule 33 of the Code to grant appropriate relief. Though the power is discretionary, the same could be used in appropriate cases. Therefore, we have to find out whether this is a fit case for the invocation of the provisions of Order XLI, Rule 33 of the Code.

18. Insofar as the objection of the Land Acquisition Officer to the award passed by the Tribunal is concerned, we do not think that any valid ground is made out for interfering with the award of the Tribunal. The main ground on which the award of the Tribunal is assailed by the Land Acquisition Officer is that the Tribunal could not have fixed the same amount of compensation for the lands acquired under two different notifications issued with a time gap of two years.

19. On first principle, the said contention is perfectly valid and justified. As we have pointed out earlier, one notification was dated 14.10.1998 published on 03.11.1998. The second notification was dated 28.7.2000 and published on 15.8.2000. Therefore, if we look at the first contention of the learned Additional Government Pleader, without reference to the facts of the present case, the contention appears to be valid.

20. But, a careful scrutiny of the above contention with reference to the peculiar facts of the case would show that the above contention will not actually advance the cause of the appellant/Land Acquisition Officer. The Tribunal arrived at the market value of land at Rs.350/- per sq.ft. on the basis of the sale deed referred to in serial No.438 of the data sales filed as Ex.B8 on the side of the Referring Officer. The sale under this document had taken place on 10.7.2000 in respect of the land situate in R.S.No.81/6B. The extent of land sold under the document was 93 centiare for a consideration of Rs.3,76,882/- per are. Since this transaction had taken place on 10.7.2000, just before the issue of the notification under Section 4(1), in the second case, the same rate could not have been adopted for the land acquired under a notification issued in October 1998.

21. Unfortunately for the appellant, this Court had already arrived at the compensation payable as Rs.580/- per sq.ft. for a land acquired under a notification dated 22.8.1995. Therefore, today the argument of the appellant does

not hold good, especially in the light of Section 28-A of the Land Acquisition Act. Hence, the first contention is rejected.

22. The next contention of the learned Additional Government Pleader for the appellant is that the Tribunal failed to take note of the difference in the potentiality of the lands acquired under two different notifications. According to the learned Additional Government Pleader, the Land Acquisition Officer considered the potentiality and took note of as many as 78 out of 590 sale transactions in one case and 90 out of 722 sale transactions in another case and took into account only the higher sale value. Therefore, the contention of the Additional Government Pleader is that the Tribunal ought not to have interfered with the award of the Land Acquisition Officer.

23. But, we are unable to accept the above contention. At the outset, the Land Acquisition Officer committed a mistake in rejecting outright, more than 80% of the data sales either on the ground that they related to lands located far away or on the ground that the nature and quality of land covered by those transactions were different. Such wholesale rejection cannot be accepted.

24. In any case, today the land owners are armed with a judgment of this Court in A.S.No.23 of 2004. The land covered by the said decision was acquired for the purpose of widening the 100 feet road on the East Coast Road. As per the sketch filed by the learned counsel for the land owners, the land in question as well as the land covered by A.S.No.23 of 2004 are located in the same road within a distance of less than 200 meters. Moreover, the sale deed on the basis on which this Court fixed the compensation in A.S.No.23 of 2004 was dated 27.4.1994. The sale deed was executed by the Pondicherry Housing Board in favour of the Pondicherry Co-operative Building Centre Limited. This sale deed was at least four years anterior to the first notification dated 14.10.1998. Therefore, today in the light of the judgment of this Court in A.S.No.23 of 2004, the award of the Tribunal cannot be assailed by the Referring Officer.

25. That takes us to the last question as to whether the land covered by the judgment in A.S.No.23 of 2004 is comparable to the land covered by the present cases.

26. It is seen from a sketch filed by the land owners that both the land covered by A.S.No.23 of 2004 as well as the land covered in the present appeals are located in Cuddalore-Chennai ECR 100 feet road. Both the lands are corner plots. While both the plots are located to the west of ECR, the land

covered by A.S.No.23 of 2004 has the Tindivanam-Pondicherry Road on the northern side. The land covered by the present appeals has a road leading to Periyar Nagar on the southern side. Thus, both are corner plots. The distance between the land covered by A.S.No.23 of 2004 and the land covered by the present appeals is indicated in the sketch to be 120 meters. Therefore, we have no alternative but to go ahead on the basis of the judgment in A.S.No.23 of 2004.

27. The learned Additional Government Pleader (Puducherry) contended that the land covered by A.S.No.23 of 2004 was in a residential locality with lot of houses on both sides and that therefore, the same is incomparable. But, the said contention loses sight of the fact that even the land covered by the present appeals is located in between residential localities, both on the northern and western sides. Therefore, as held by the Supreme Court in Administrator General of West Bengal v. Collector, Varanasi [AIR 1988 SC 943], the prices fetched for small developed plots would be relevant for determining the market rate of large extent of land with potentialities for urban use.

28. If we keep in mind the principles laid down in the aforesaid decision and look at the facts of the present case, it will be clear that the land covered by A.S.No.23 of 2004 was sold pursuant to a notification dated 22.8.1995. While allowing the appeal, this Court deducted 20% towards development charges and arrived at the compensation of Rs.580/- per sq.ft.

29. In normal circumstances, this rate of Rs.580/- per sq.ft. as fixed for the notification issued on 22.8.1995 should be enhanced at least at the rate of 10% per year to arrive at the market value as on the date of the first notification under Section 4(1) dated 14.10.1998. If so done, the market value would get increased to more than Rs.700/- per sq.ft. If it is further enhanced by applying the same principle to the date of the second notification under Section 4(1), namely 28.7.2000, the rate may cross Rs.800/- per sq.ft.

30. But, keeping in mind the fact that Pondicherry is a small Union Territory and also the fact that the purpose of acquisition is to establish a hospital for women and children, we deem it fit to adopt the same rate as fixed by this Court in A.S.No.23 of 2004, despite the fact that the appreciation in respect of these appeals had taken place pursuant to the notifications issued 3 to 5 years after the date of the notification out of which A.S.No.23 of 2004 arose.

31. In view of the above, the appeals filed by the Land Acquisition Officer aggrieved by the enhancement of compensation granted by the Tribunal are dismissed. However, the award passed by the Tribunal is enhanced from Rs.350/- per sq.ft. to Rs.580/- per sq.ft. together with all other benefits as per the Act, on condition that the land owners pay proportionate Court fee for the drafting of the decree in their favour. The land owners will also be entitled to proportionate costs. CMP No.384 of 2013 is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kpl

TO

The Principal District Judge,
Puducherry.

Copy to: The Section Officer, VR Section,
High Court, Madras.

+3ccs to M/s. Usha Ramman, Advocate, S.R.No. 19457,19920
+1cc to the Government Pleader, S.R.No.19083

UG(CO)
EU(17/05/2016)

A.S.Nos.60 & 61 of 2002.