IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Appeal Suits Nos.461 and 462 of 2000

1. The Special Deputy Tahsildar, (Land Acquisition),
   Chennai Metropolitan Development
   Authority, 8, Gandhi Irwin Salai,
   Egmore, Chennai 8.

2. The Member Secretary,
   Chennai Metropolitan Development
   Authority, 8 Gandhi Irwin Salai,
   Egmore, Chennai 8. Appellants in both the appeal suits

v.

1. P.Madhusudanan
2. D.N.Tirupurasundari Ammal (died)
3. G.Damayandhi
4. R.Anjugam
5. D.G.Raja Shanmugam
6. S.Malliga
7. G.S.Mohan
8. S.Aravindan
9. G.Parimala Respondents in AS No.461 of 2000

R6 and R7 brought on record as L.Rs.
Of the deceased R2 vide order dated
11.08.2005 made in CMP.Nos.9220 &
9221/2005 and 15975 & 15976/2005

R8 and R9 brought on record as L.Rs.
Of the deceased R6 vide order dated
15.11.2007 made in CMPs.3228 to 3230/07.

1. Gowri Ammal (died)
2. Rani Ammal (died)

3. Thiripurasundari Ammal (died)
4. G.Dhamayanthi
5. R.Anjugam
6. D.G.Rajashanmugam
7. Sarojiniraja
8. Kalaivani
9. K.Amudha
10. R.Ravichandran
11. S.Malliga (died)
12. G.S.Mohan
13. S.Aravindan
14. G.Parimala

Respondents in AS No.462 of 2000

R10 brought on record as LR of the deceased R1 vide order dt.28.8.2003 made in CMP No.11768 of 2003.

R11 and R12 brought on record as L.Rs. of the deceased R3 vide order dated 11.08.2005 made in CMPs.9220 and 9221/2005 & 15975 & 15976/2003.

R10 recorded as LR of the deceased R2 vide order dated15.11.2007 made in CMP.No.2694 of 2007

R13 & R14 brought on record as L.Rs of the deceased R11 vide order dated 15.11.2007 made in CMP. Nos.3231 to 3233 of 2007

Appeal Suits filed under section 54 of the Land Acquisition Act against the order dated 20.09.2000 made in L.A.O.P. No.257 of 1988 and 260 of 1988 on the file of the Subordinate Judge, Tiruvallur.

For Appellants : Mr.R.Viduthalai, Advocate General assisted by Mr.V.Ravi, Special Government Pleader

For Respondent 1 in AS.No.461/00 & Respondent 10 in AS.No.462/2000 : Mr. S.Prabhakar, for Mr.K.Bakthavatchalam

For Respondents 3 to 5 in AS 461/00 & Respondents 4 to 6 in A.S.462 of 2000: Mr.S.R.Sundaram

For Respondent 6 in in A.S. No.461/2000 & for Respondent 11 in AS.462 of 2000 : Mr.S.V.Jayaraman, Senior Counsel for Mr.A.Venkatesan & AV.Ezhilarasu

For Respondent 7 in A.S.461 of 2007 : Mr.V.Balasubramanian

For Respondent 7 in AS.462 of 2007 : Mr.G.Jermiah

For Respondents 8 and 9 in A.S. No.462 of 2000 : Mr.L.Rajasekar

JUDGMENT

K.RAVIRAJA PANDIAN, J.

An extent of 20.50 acres of land in survey Nos.3/1A2A (10 acres), 3/1A2D1(10.26 acres) and 3/1A2D2 (0.24 acres) situated in the village Sathankadu, Saidapet Taluk has been acquired for the public purpose of formation of iron, steel hardware market by the Madras Metropolitan Development Authority under the provisions of the Land Acquisition Act, 1894 (hereinafter called 'the Act'). Notification under section 4(1) of the Act was issued on 10.09.1987 and declaration under section 6 of the Act has been issued on 28.12.1987. The land acquisition officer passed an award in Award No.3/87-88 dated 30.03.1988 determining the compensation in a sum of Rs.201/- per cent by taking the sale deed in document No.D.3366 dated 25.10.1982 as a data land. In the said document 6.25 acres of dry land in Survey No.255/3A in Manali village has been sold for a sum of Rs.78,125/-. On the basis of the said sale, the Land Acquisition Officer has arrived at the value of the land under acquisition at Rs.125/- per cent and after giving a notional increase of 10 per cent, he arrived at the compensation at Rs.201/- per cent. In addition to that the Land Acquisition Officer has granted 12% addition on the compensation amount for the period between issuance of 4(1) notification and taking over possession of the property. The statutory solatium of 30% has been granted.

2. The owners of the land, not being satisfied with the award amount requested the land acquisition officer to refer the case under section 18 of the Act before the competent Court. Pursuant to the same, the Special Deputy Collector, MMDA, Guindy by his proceedings dated 11.04.1988 referred the matter to the subordinate Court, Tiruvallur, which has been taken on file as LAOPs Nos.257 and 260 of 1988 in respect of the land in an extent of 10.00 acres and 9.20 acres respectively.

3. Before the Reference Court, the claimants claimed that the location of the acquired land is in the prime area in the Express Highways within the Madras Metropolitan area limits having frontage of about 1536 feet east to west facing the road. The area in which the property under acquisition is situated, was already declared as Industrial Zone surrounded by several major industries, such as Tamil Nadu Petro Chemicals Ltd., Madras Refineries Ltd., Indian Adities Ltd., Madras Fertilisers Ltd., etc., Thiruvottiyur Industrial area is very near to the acquired lands. The heavy factories at Ennore, Manali, Sekkadu, Ernavoor are within the radius of 3 kms from the acquired land. The acquired land is situated immediate to the Government poromboke land which is abutting the Ennore Express High Road. There are frequent bus services to the acquired land and could be reached within 20 minutes from parrys corner. The width of the connecting road is 200 feet and on the eastern side there is also a road called Beach Road which connects the Madras City within 30 minutes by bus. Even before acquisition nearer to the acquired land, the North Chennai Thermal Power Project scheme existed. The Indian Oil Corporation Ltd had proposed to start its unit in that area. A project for mini port is also under serious consideration. The acquired land is situated in the developed area, potential for future development is very high. During the year 1985 a property in survey No.165/1B which is adjacent to the acquired land was sold for a sum of Rs.29,180/- per cent. In the year 1986 another adjacent property was sold for a sum of Rs.30,167/- per cent and in the year 1987 the property in survey No.173/6 was sold for a sum of Rs.15,199/- per cent. In August, 1985 the adjacent property was sold for a sum of Rs.34,603/- per cent in the same Sathangadu village. To that extent the claimants adduced evidence and marked three documents originally as Exs.C1 to C3 and after remand 5 documents and proved those documents. The claimants claimed a compensation at the rate of Rs.30,000/- per cent and further sum of Rs.2000/- per cent towards compulsory dispossession.

4. The Reference Court by its award dated 20.09.2000 determined the compensation at Rs.14,356/- per cent by taking document Ex.C.3 as comparable sale and granted Rs.1500/- per cent towards compulsory dispossession and 12% of the market rate was ordered to be paid as additional amount. The appellants were also directed to pay 9% interest on additional compensation. Interest at 15% for total compensation was awarded from 08.04.1989 till the date of payment and solatium at 30% was awarded. The said award of the Reference Court is assailed in these appeals by the Special Deputy Collector and the Member Secretary, Metropolitan Development Authority.

5. Mr.R.Viduthalai, learned Advocate General appearing on behalf of the appellants contended that (1) the Reference Court, for the purpose of determination of compensation, relied on a

document, Ex.C.3 in which an extent of 1307 sq. ft has been sold. When a larger chunk of area has been acquired atleast 30% of the value arrived at on the basis of the smaller extent document has to be deducted. The Reference Court did not do so. (2) Even the development charges, which is generally deducted at the rate of Rs.30 to 40 per cent of the market value has not been deducted in this case. (3) The amount of compensation @ Rs.1500/- per cent towards compulsory dispossession is uncalled for.

6. On the other hand, Mr.Jermiah, learned counsel appearing for some of the claimants contended that having regard to the locality in which the acquired lands are situated, there is no need for deduction. The further fact that Ex.C.3 dated 11.09.1985 was long prior to issuance of 4(1) notification dated 10.09.1987, therefore an yearly appreciation of the value of the land at the rate of 15% has to be given. If that is taken into account, that would set off the percentage of deduction applied for larger extent. He further contended that it is not in all cases of land acquisition certain percentage towards development charges is to be deducted. When the lands are already developed no such deduction is necessary. In this case, the lands are regarded as even land by the Land Acquisition Officer, which is evident from the description of the land situated in the award. Hence, the deduction for development charges need not be given in this case.

7. Mr. S.V.Jayaraman, learned senior counsel appearing for some of the claimants submitted that when there are facilities, such as roads and drainage, there need not be any deduction towards development charges. The purpose of acquisition itself is a factor for determination of fixing a market value. The purpose of acquisition of the land in question is for formation of Iron and Steel Hardware Market by the Madras Metropolitan Development Authority. The land under acquisition being already a developed one, there is no necessity to deduct any amount from the compensation awarded by the Reference Court.

8. We heard the learned counsel on either side and perused the materials available on record.

9. From the rival contentions, the point for consideration in these appeals could be summarized as follows:

1. Whether the rate accepted on the basis of the sale consideration of small part of the land would be useful guidance for determination of the market value or does it require certain percentage of deduction?
2. Having regard to the facts that the land has been declared as an industrial area, is it necessary to deduct development charges? If so, what is the percentage? Alternatively, can the land under acquisition be regarded as a developed land as contended by the respondents/claimants?

3. Whether the compensation at the rate of Rs.1500/- per cent for compulsory acquisition is warranted in this case?

10. Before adverting to the points raised above for consideration, we could conclude that the appellant did not dispute that Ex.C.3 is comparable document for determination of the compensation. It is also manifest from the fact that the land covered under Ex.C.3 document and the lands which are under acquisition are having same potential value and very nearer to each other. Presumably that might be the reason the appellant has not argued that Ex.C.3 cannot be regarded as comparable document. Now, we will consider the first question whether the sale consideration of the small plot could be regarded as a safe criteria for determination of compensation.

11. It is very well settled proposition where large area of land is the subject matter of acquisition, the rate at which small plots are sold cannot be said to be a safe criteria. Useful reference can be had to the decisions of the Supreme Court in The Collector of Lakhimpur v. Bhuban Chandra Dutta, AIR 1971 SC 2015, Prithvi Raj Taneja (dead) by L.Rs. v. The State of Madhya Pradesh, AIR 1977 SC 1560 and Kausalya Devi Bogra v. LAO, Aurangabad, AIR 1984 SC 892.

12. However, it cannot be laid down as an absolute proposition that the rates fixed for small plots could not be the basis for fixation of the rate. In cases where there is no other material available for determination of the compensation, it is open to the Land Acquisition Officer or the Reference Court to compare the price paid for small plot of land. However, in such cases, necessary deduction or adjustments have to be made while determining the price. Under Ex.C3 an extent of 1307 sq. ft. of land has been sold for a sum of Rs.43,366/-. On that basis, the value for a cent of land has been arrived at Rs.14,356/-. The extent of acquired land is Rs.20.50 acres (892980 sq. ft only (1acre = 43560 sq.ft), which is nearly 686 times over and above the extent of land covered under Ex.C3. When the extent is so large, one cannot expect that the willing purchasers would purchase the land for the price a lesser extent was sold. Even the seller would reduce the price when the extent is so large. Hence, having regard to the largeness of extent covered under the acquisition proceedings, 30% deduction would balance the interest of both the parties, in our considered view. Vide Prithvi Raj Taneja (dead) by L.Rs. v. The State of Madhya Pradesh, AIR 1977 SC 1560 and Kausalya Devi Bogra v. LAO, Aurangabad, AIR 1984 SC 892.

13. On behalf of the claimants, it was contended by Mr.Jermiah that Ex.C3 is dated 21.09.1983 whereas 4(1) notification was dated 10.09.1987. The acquired land is within the metropolitan development area. The value of the land would

always increase year by year and within a period of four years between the date of Ex.C.3 and 4(1) notification, the value of the land would have been escalated several manifold. That has not been taken into consideration. To support his contention, he relied on the decision of a Division Bench of this Court in the case of The Special Tahsildar, Adi Dravidar Welfare, Sivagangai v. Muthu Konar, 2004 (5) CTC 56, in which the Division Bench has observed that in fixation of the rate of compensation under the land acquisition Act, there is always some element of guess work, but that has to be based on some foundation. It must spring from the totality of evidence, the pattern of rate, the pattern of escalation and escalation of price in the years preceding and succeeding the 4(1) notification. After so observing, the Division Bench added 15% appreciation of value per year. In this case under Ex.C3 dated 21.09.1983, an extent of 1307 sq. ft. of land has been sold for a sum of Rs.43,366/-. On that basis, the value for a cent of land has been arrived at Rs.14,356/-. Under Ex.C.1 dated 23.05.1984 an extent of 598 sq. ft., has been sold for Rs.13,200/-. The value of one cent works out to Rs.9,535/-. Under Ex.C2 dated 24.05.1985 an extent of 2000 sq. ft was sold for Rs.48,000/-, which works out to Rs.10,368/- per cent. Under Ex.C8 dated 27.08.1987 and extent of 600 sq. ft has been sold at Rs.35,000/- which works out to Rs.25,199 per cent. Though there is fluctuation during the period between Ex.C3 and Ex.C1 documents, considering Exs.C2 and C8, the value of the land has gradually been escalating year by year and from the period from 1983 to 1987 escalation is 30%. Ex.C3 sale deed, which is taken as comparable document is dated 21.09.1983, whereas 4(1) notification was issued on 10.09.1987. So, on that basis, we can safely conclude that the escalation could be 30% for 4 years from 1983 to 1987. The 30% deduction to be made in the value of the land arrived at on the basis of Ex.C3 for largeness of the area acquired thus gets set off by the 30% of escalation of price granted by us.

14. Now, coming to the second issue as to the deduction of development charges, the deduction towards development charges also could not be fixed in a straight jacket formula. It would also depend upon various factors involved in respect of each case. In respect of the undeveloped land which has a potential value for commercial purposes, normally 1/3rd amount of compensation would be deducted 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 suitable for required purpose. The land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction. May be the land is situated in the midst of the developed area all around, but that land may have a hillock or lose soil may be low lying or may be having deep ditches. So, the amount of expenses that may be incurred in developing the area also varies. The claimant who claimed that his land is

fully developed and nothing more is required for development must show on the basis of the evidence that it is such a land and it is so located. In the absence of such an evidence merely saying that the area adjoining his land is a developed area, is not enough. Even if smaller portion of the land is abutting the main road in the developed area, it does not give the land the character of developed area. In the present case, it is admitted that one portion in the northern side is abutting the main road and in respect of the remaining large area planned development is required for laying of internal roads, drainage, sewer, water, electricity lines and other civic amenities. It is on evidence that the land is surrounded by factories, heavy industries. This factum has also been admitted by R.Ws.1 and 2 in their evidence. The purpose for which the land was acquired was also for industrial purpose, for the formation of iron and steel hardware market. There is also frontage available to the main road.

15. Having regard to the position of availability of amenities around the acquired land and the further requirement is only making provision for water, electricity lines and other civic amenities, laying of internal roads, drainage, etc., we are of the considered view that 30% of the value could be deducted towards development expenses. Vide Ravinder Narain v. Union of India, (2003) 4 SCC 481 and Viluben Jhalejar Contractor (dead) by L.Rs. v. State of Gujarat, (2005) 4 SCC 789, and Lucknow Development Authority v. Krishna Gopal Lahoti, Civil Appeal No.5112/2007 dated 02.11.2007.

16. The third issue is award of Rs.1500/- per cent for compulsory dispossession. On the face of it, we are not able to sustain the above award, as the same would not come within any one of the factors incorporated under section 23 of the Land Acquisition Act. No evidence has been let in that the acquisition of the land is seriously affecting the claimant's other property or the claimants are compelled to change their residence and place of business or the acquisition proceedings severed the acquired land from other lands of the claimants.

17. Learned counsel for the claimants has not very seriously argued for sustaining this component of the award and as a matter of fact Mr.Jermiah, learned counsel who led the argument on behalf of the claimants, admitted across the bar that the compensation awarded at the rate of Rs.1500/- per cent for compulsory dispossession cannot be legally sustained. Hence, that part of the award is set aside.

18. For the foregoing reasons, the impugned award stands modified to the extent that (1) 30% for development charges has to be deducted from the compensation; (2) The award of Rs.1500/- per cent granted in the award of the Reference Court is set aside.

19. In the result, the appeals are allowed to the extent indicated above. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Subordinate Judge
Tiruvallur.

2. The Section Officer,
VR Section,
High Court, Madras.

2 ccs to Government Pleader, Sr. 70539, 70540
1 cc to Mr.G. Jeremiah, Advocate, sR. 70720
1 cc to Mr.S.R. Sundaram, Advocate, Sr. 70626
4 ccs to M/s. Christhopher Vijaya, Advocate, Sr, 70523, 70522
1 cc to Mr.K. Bathavathavaslu, Advocate, SR. 70719
4 ccs to M/s. L. Rajasekar, Advocate, Sr. 70628
2 ccs to M/s. V. Balasubramanian, and Associates,
SR. 70655, 70656

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