

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 36 OF 2004

A. NATESAM PILLAI Appellant (s)

VERSUS

SPL. TAHSILDAR, LAND ACQUISITION, TIRUCHY Respondent(s)

Date: 11/08/2010 This Appeal was called on for hearing today.

For Appellant(s) Mr. K.K. Mani, Adv.
Mr. Ankit Swarup, Adv.
Mr. K. Lakshminarayan, Adv.

For Respondent(s) Mrs. Promila, Adv.
Mr. T.S. Kumaran, Adv.
Mr. V.G. Pragasaam, Adv.

Hon'ble Dr. Justice Mukundakam Sharma pronounced the
Judgment of the Bench comprising His Lordship, and Hon'ble Mr.
Justice Anil R. Dave.

The appeal is allowed in terms of the signed Reportable
judgment which is placed on the file.

(KUSUM SYAL)
SR.PA

(RENU DIWAN)
COURT MASTER

(Signed Reportable Judgment is placed on the file)
REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 36 OF 2004

A. Natesam Pillai ... Appellant

Versus

Spl. Tahsildar, Land Acquisition, Tiruchy ... Respondent

JUDGMENT

Dr. Mukundakam Sharma, J.

1. This appeal is directed against the judgment and order dated 27.11.2002 passed by the Madras High Court whereby the High Court reversed the order passed by the Reference Court by reducing the amount of compensation granted by the Reference Court to the appellant from Rs. 17/- per sq. feet to Rs. 9/- per sq. feet.

2. Before we deal with the contentions raised before us, brief facts leading to the filing of the present appeal are required to be stated. For providing house sites at Adi Dravidas, land measuring an extent of 3.90 acres comprised in Survey No. 118/A in Palangudi Village was acquired by the Government of Tamil Nadu by issuing a notification under Section 4(1) of the Land Acquisition Act which was published on 23.9.1992. The Land Acquisition Officer awarded a sum of Rs. 1.72 per sq. ft. for the acquired land. At the instance of the aggrieved land owner, i.e. the appellant, reference was made under Section 18 of the Land Acquisition Act before the Additional Sub Court, Trichy.

3. Before the Reference Court, the appellant adduced documentary evidence in the form of Sale Deeds Exs. A1 to A4 and examined two witnesses. The Revenue also produced documents exhibited as Exs. B1 and B2, but no witness was examined from the side of the Revenue. The Reference Court after consideration and appreciation of the evidence adduced fixed the market value of the acquired land at Rs. 17/- per sq. feet.

4. Being aggrieved by the said order, the State preferred an appeal before the High Court. The question for consideration before the High Court was whether the amount of compensation for the acquired land fixed by the Reference Court i.e. Rs. 17/- per sq. feet is correct or not and whether the appeal filed by the State for reducing the amount of compensation be allowed.

5. The High Court after consideration of the records came to the conclusion that the amount of compensation i.e. Rs. 17/- per sq. feet is on the higher side, and that the appropriate amount of compensation would be Rs. 9/- per sq. feet and accordingly reversed the order passed by the Reference Court with the aforesaid modification of the rate of compensation fixing the same at Rs. 9/- per sq. ft.

6. The appellant, original owner of the land, has filed this appeal praying for setting aside the order passed by the High Court and has prayed for enhancement of the amount of compensation taking into consideration the potential value of the land.

7. The learned counsel appearing for the appellant contended that the High Court took notice of the market value of the acquired land only with reference to the actual use. According to the appellant, the Court failed to take notice of its value with reference to the better use to which it is reasonably capable of being put to in the immediate or near future and thereby failed to take into consideration future potentiality of the land and instead based itself only on the realized possibility and thus committed an error.

8. The learned counsel appearing for the respondent, on the other hand, contended that the amount of compensation granted by the High Court is appropriate, and does not deserve to be interfered with.

9. The Reference Court granted compensation at Rs. 17/- per sq. feet after holding that the acquired land is a potential house site being located in a very important locality and that the amount of compensation granted by the Land Acquisition Officer, i.e., 1.72 per sq. ft. was totally an unjust and inadequate amount.

10. The High Court, on the other hand, fixed the market value of the acquired land at Rs. 9/- per sq. ft. by setting aside the order

passed by the Reference Court. The High Court while coming to the aforesaid conclusion held that Ex. A3 is a comparable sale transaction. Under Ex. A3, 1710 sq. ft. land was sold for Rs. 20,000/- which would work out to Rs. 11/- per sq. ft. Nonetheless, the High Court also pointed out the fact that the acquired land has got higher potential value, as the acquired land is abutting the main road and when compared with the land covered under Ex. A3, the acquired land is surrounded by Schools, Shops, Panchayat Union Office etc. However, considering the fact that the acquired land is a large tract of land wherein while making development there would be loss of land due to both internal and external development like roads, etc., and that when compared with the land of Ex. A3 which is a very small area of land, there has to be deduction in value of the acquired land and so calculating the rate of compensation was scaled down to Rs. 9/- per sq. ft.

11. Therefore, it falls upon us to determine whether the High Court was correct and justified in scaling down the compensation to be given to the appellant. To this effect, we must give due consideration to the Sale Deeds Exs. A1 to A4 placed by the appellant, in order to determine the appropriate and just compensation that must be given in pursuance of the instant land acquisition.

12. It is important to note that Ex. A1 and Ex. A4 are sale deeds executed subsequent to the date of notification under Section 4(1) and for this reason, the High Court held these to be irrelevant for the purpose of determining compensation. The first clause of Section 23 of the Act clearly provides that the amount of compensation awarded for the land acquired is required to be determined on the basis of market value of the land at the time of publication of the notification under Section 4 of the Act. Therefore, it is the duty of both of the Land Acquisition Officer as also of the Court to determine the actual compensation payable for the land acquired by referring to evidence regarding fair and just compensation near about the proximate date or on the date itself of the publication of the notification under Section 4. At times, in order to prove the actual, fair and just

compensation for the land acquired, sale deeds of the adjacent land or nearabout adjacent land are produced to indicate the trend of the value of the land within the near vicinity of the acquired land. Such sale deeds are taken notice of generally when they are prior in point of time to the date of notification, and any sale deed which is post notification dated is generally ignored, unless evidence is led to show that there was no increase in price despite such acquisition.

13. This Court in Administrator General of W.B. v. Collector, Varanasi, reported at (1988) 2 SCC 150, has held:

"Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. This Court in State of U.P. v. Jitendra Kumar, reported at (1982) 2 SCC 382 observed: (SCC p. 383, para 3)

"It is true that the sale deed Ex. 21 upon which the High Court has relied is of a date three years later than the notification under Section 4 but no material was produced before the court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex. 21 under which the Housing Society itself had purchased land in the neighbourhood of the land in dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ex. 21."

But this principle could be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction."

14. As a result of such acquisition, the market value of the adjacent land would generally, and in most cases, go up and therefore, such post notification transaction may not be a sound criterion to determine and assess the value of the acquired land. In the present case, the appellant has also not adduced any evidence to show that the market value of adjacent land has not increased in the interregnum. The Reference Court and the High Court were justified in rejecting these sale deeds from consideration. We must, therefore, keep the aforesaid two sale deeds outside our consideration while assessing and determining the just and fair compensation for the

acquired land. Ex. A2 is also a sale deed but the same also is not a safe guide as the price for the land covered therein was later on increased to make it in parity with the government prescribed rate.

15. Consequently, it is to be seen if Ex. A3 may be relied upon in determining the claim of the appellant. The High Court, while noting that Ex. A3 does indeed represent a comparable sales transaction also held that since the same concerns a very small area of land, it could be applicable to the acquisition of a large tract of land as the one in question, once deduction as necessary and required is given.

16. In *Rishi Pal Singh and Others vs. Meerut Development*

Authority and Anr. reported in (2006) 3 SCC 205 this Court while dealing with the issue relating to a large tract of land held as follows:-

"5.....With respect to the first reason, that is, exemplars of small plots have been taken into consideration by the Reference Court, in the first instance our attention was invited to some judgments of this Court to urge that there is no absolute bar to exemplars of small plots being considered provided adequate discount is given in this behalf. Thus there is no bar in law to exemplars of small plots being considered. In an appropriate case, specially when other relevant or material evidence is not available, such exemplars can be considered after making adequate discount. This is a case in which appropriate exemplars are not available. The Reference Court has made adequate discount....."

17. Furthermore, in *Administrator General of W.B. v. Collector,*

Varanasi (cited hereinabove), this Court has held:

"It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that the large extent to be valued does not admit of and is ripe for use for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of hypothetical lay out could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a case, necessary deductions for the extent of land required for the formation of roads and other civil amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for

the period of deferment of the realisation of the price; the profits on the venture etc. are to be made."

18. The small area of land measuring 1710 sq. ft. was sold for Rs. 20,000/- as per Ex. A3 dated 15.7.92 which works out to a value of Rs. 11/- per sq. ft. A comparison of the two plots, namely, land in Ex. A3 and the acquired land shows that they are not identical. While the land in Ex. A3 may not be an excellent guide it is still a better guide than any other document exhibited on record. The same could be used as a relevant yardstick to assess the just and reasonable compensation in the present case.

19. We find from the counter affidavit filed by the respondent-State that the said land covered by the Ex. A3 is located out of the Municipal Corporation limit of Trichy, whereas the acquired land is located within the Municipal Corporation limit of Trichy. Consequently, it cannot be disputed that the acquired land, being in the heart of the city and having excellent prospects of being used as residential site, definitely has an edge regarding the potential value over the land covered by Ex. A3.

20. This building potentiality of acquired land must also be taken into consideration while determining compensation. In P. Ram Reddy v. Land Acquisition Officer, Hyderabad Urban Development Authority reported at (1995) 2 SCC 305, this Court held as follows: -

"8. Building potentiality of acquired land.-- Market value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under Section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under Section 4(1) of the LA Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under Section 4(1) of the LA Act, the same has to be done not

merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under Section 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged under Section 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now."

21. This Court in *Hasanali Khanbhai & Sons v. State of Gujarat*

reported in (1995) 5 SCC 422 also held that:-

"3.But it is settled law by series of judgments of this Court that the court is not like an umpire but is required to determine the correct market value after taking all the relevant circumstances, evinces active participation in adduction of evidence; calls to his aid his judicial experience; evaluate the relevant facts from the evidence on record applying correct principles of law which would be just and proper for the land under acquisition. It is its constitutional, statutory and social duty. The court should eschew aside feats of imagination but occupy the armchair of a prudent, willing but not too anxious, purchaser and always ask the question as to what are the prevailing conditions and whether a willing purchaser would as a prudent man in the normal market conditions offer to purchase the acquired land at the rates mentioned in the sale deeds. After due evaluation taking all relevant and germane facts into consideration, the Court must answer as to what would be the just and fair market value..... "

22. Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, in so far as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration.

The present acquired land has all the potentiality to be used as building sites, even in the immediate future, as it is located at a place in and around which building activity has already started.

The evidence on record also clearly indicates that acquired land is

abutting the main road. The acquired land is also surrounded by schools, Panchayat union office, shops and residential building in all three sides. The High Court also found, as a matter of fact, that the area where the acquired land is situated is fit for construction of houses. On an overall consideration and appreciation of the records, we feel that the deduction due to the small size of the exemplar land can easily be set off with the corresponding increase in price of the acquired land when compared with the land in Ex. A3 from the point of view of potential value.

23. Although it is true that the land covered by Ex. A3 is a small tract of land and therefore cannot be compared in size with the large area of land acquired under the present notification, it is to be concluded that the land in question would definitely fetch a higher price than what is fixed by the High Court. A prospective purchaser would only be too willing to pay for the acquired land having immediate potentiality of being used as a residential site in a prime locale at almost the same, if not, higher price than the land covered by Ex. A3 which is located outside the Municipality area.

24. We are in agreement with the conclusion of the High Court that the acquisition of a large tract of land merits a discount in compensation. However, in the present circumstance, it is significant to note that the compensation granted by the High Court does not match the potentiality of the land, even after the discount has been taken into consideration. Even on giving a discount in respect of the acquired land being a large tract as compared to the small portion of land sold under Ex. A3, according to us, the rate of Rs. 11/- would be adequate and just compensation for the same.

25. In our considered opinion, by scaling down the rate of compensation to Rs. 9/- from Rs. 11/- per sq. ft., the High Court denied just and reasonable compensation to appellant, thereby

resulting in a miscarriage of justice.

26. We, therefore, hold that the appellant shall be entitled to compensation at Rs. 11/- per sq. ft. for the acquired land which we consider to be just and fair. Needless to say that the State shall also be liable to pay additional compensation and solatium on the amount enhanced and fixed in terms of this order including payment of interest in terms of the rate of interest awarded by the Reference Court. The appeal stands allowed to the aforesaid extent without any costs.

.....J.
[Dr. Mukundakam Sharma]

.....J.
[Anil R. Dave]

New Delhi,
August 11, 2010.