

CASE NO.:
Appeal (civil) 1500 of 2004

PETITIONER:
Pattammal & Ors.

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 08/11/2005

BENCH:
Ashok Bhan & Altamas Kabir

JUDGMENT:
J U D G M E N T
With

Civil Appeal Nos. 1501 of 2004, 1502 of 2004 and
Civil Appeal No 6651 of 2005 @ SLP(Civil)No. 6309/04

ALTAMAS KABIR, J.

Leave granted in Special Leave Petition (Civil) No.
6309/04.

9 Hectares 75 Ares and 12 Ca of land situated in Keezhaveli Village at Karaikal, Pondicherry, in Ward No. G, Block No. 3, spread over 11 town survey numbers was sought to be acquired for the construction of a stadium to provide playground facilities for the students of Schools and Colleges situated at Karaikal. Notifications under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), were published in the Official Gazette on 26th December and 28th December, 1989, respectively, upon receipt of the approval of the government.

The market value of the lands was fixed by the Collector at Rs.2,550/- per Are upon treating the same as 'Wet' lands. Several claimants whose lands were involved in the acquisition proceedings asked for references to be made under Section 18 of the aforesaid Act and the references were all taken up for consideration by the Additional District Judge, Pondicherry, as the Reference Court. By its Award dated 24th January, 1994, the Reference Court classified the lands in question as having potential value as house sites and fixed the market value thereof at Rs.13,500/- per Are.

The Union of India and the Referring Officer filed separate appeals in the High Court of Judicature at Madras against the findings and order dated 24th January, 1994, passed by the Reference Court. Three of the appeals were numbered as AS 591/94, 594/94 and 573/2003. AS No.591 of 1994 filed by the Union of India against one Jayaraman and Appar was disposed of on 23rd February, 2001, by the High Court of Judicature at Madras by reducing the market value of the lands fixed at Rs.13500/- per Are by the Reference Court to Rs.7000/- per Are. Aggrieved by the said decision the respondent filed a review petition No. 69 of

2001 which was dismissed on 6th September, 2002. Civil Appeal No. 1501 of 2004 is directed against the judgment of the High Court of Judicature at Madras in the said review petition.

A separate appeal by way of special leave, being Civil Appeal No. 1502 of 2004, has been filed by the said respondents in AS No. 591 of 1994 against the judgment and order passed by the High Court of Judicature at Madras on 23rd February, 2001, against the judgment and decree of the Reference Court.

Civil Appeal No. 1500 of 2004 has been filed by another set of claimants (Pattammal & Ors.) against the judgment and order of the High Court of Judicature at Madras dated 23rd February, 2001, in AS No. 594 of 1994 preferred by the Union of India and the Referring Officer.

The other appeal by way of special leave petition (Civil) 6309 of 2004 has been filed by S. Bavani against the judgment and order dated 18th September 2004 passed by the High Court of Judicature at Madras in AS No. 573 of 1994.

By virtue of the impugned judgment, in respect of all claims concerning the acquisition of the lands for construction of the stadium at Karaikal, the market value of the acquired lands which had been fixed at Rs. 2,550/- per Are by the Land Acquisition Officer and had been enhanced to Rs.13500/- per Are by the Reference Court, was reduced to Rs.7000/- by the High Court. These separate appeals have been preferred by the claimants and since they all involve the lands acquired for the aforesaid purpose by Notification published under Section 4(1) the Act on 26th December and 28th December, 1989, respectively, the same have been taken up for hearing and disposal together. For the sake of convenience the Award passed by the Reference Court in LAOP No. 42 of 1993, being the reference of Smt. Pattamal and two others, is taken up for consideration as the leading case, which will also govern the other appeals.

As initially mentioned hereinbefore, the Land Acquisition Collector classified the acquired lands as 'Wet' lands and fixed the market value thereof at Rs.2550/- per Are. The Reference Court took note of the fact that the petitioners before him had been doing business in real estate of purchasing land and developing them into housing sites. It also took note of the fact that the acquired lands are situated at a place, which had tremendous potential value and had been wrongly classified as 'wet' lands. It was noted that the said lands are situated just behind Joseph Colony abutting Meetu Street, which links the lands with Thomas Arul Street and is very near to the junction of Thomas Arul Street and By-Pass Road. It was noticed further that the By-Pass is the broadest road in Karaikal connecting the new bus stand to Thomas Arul Street and that important Government Offices like the Administrative Office, Court, General Hospital, Municipal Office, Schools and colleges are located very near to the acquired lands. It appears that there is a residential colony called Bharat Nagar Extension situated within 200 meters from the acquired lands and the beach road is situated within 500 meters where there are a number of Government and Private buildings. It was further noted that Government had acquired large tracts of land along the beach road for

various public purposes like construction of Excursion center, Automatic Telephone Exchange, Postal Employees quarters, etc. It was the finding of the Reference Court that the acquired lands are potential house sites which were ideal for house construction and that but for the acquisition the petitioners could have sold a portion of the acquired lands as house sites.

The Reference Court thereafter went on to consider some of the contemporaneous conveyances and sale deeds executed and registered at about the same time as the publication of the notification under Section 4(1) of the Act.

The first sale deed to be taken into consideration was one dated 17th October, 1988 which was marked as A-12, whereby 0.2 Ares 07 Centiares was sold at the rate of Rs.6739/- per Are. The second sale Deed also dated 17th October, 1988 and marked as Exhibit A-13, was in respect of 0.2 Ares 37 Centiares of land situated in the same area which was sold at the rate of Rs. 8937.34 per Are. The third deed dated 7th December 1988 was also in respect of land situated in the same area measuring 0.1 Are 71 Centiares sold at the rate of Rs.11,695.90 per Are. The fourth sale deed dated 3rd May, 1989 was one executed in respect of 01 Are 70 centiares of land situated in the same area as the acquired lands at the rate of Rs.14,705/- per Are.

As will appear from the Award of the Reference Court, by a subsequent sale deed dated 2nd August, 1989 a nearby plot was sold at the rate of Rs.13,450/- per Are.

Considering the location of the acquired lands and their high potential for commercial exploitation the Reference Court recorded the fact that there had been a steep escalation in the land value in the area in question within a short interval which fact was also admitted by the Land Acquisition Officer. Accordingly, placing reliance on Exhibit A-15, the Reference Court fixed the market value of the acquired property at Rs. 13,500/- per Are, together with 30 percent solatium and 12 percent additional market value in terms of Section 23(1A) of the Act.

As mentioned hereinbefore, the same enhancement was made in respect of the lands covered by the other reference cases with which we are concerned.

A.S. Nos. 591 of 1994 and 504 of 1994 were both disposed of by two separate judgments both dated 23rd February 2001 passed by the Division Bench of the Madras High Court. The reasoning in both the judgments are identical. Before the High Court it was sought to be contended on behalf of the appellants-Union of India that the Reference Court had wrongly fixed the market value of the acquired lands at Rs.13,500/- per Are on the basis of Exhibit A-15 dated 3rd May, 1989, since none of the parties to the document had been examined as required under Section 51 A of Act. In support of such contention reliance was placed on the decisions of this Court in Meharban and Ors.etc. vs. State of U.P. and Ors. reported in A.I.R. 1997, SC 2664; A.P. State Road Transport Corporation, Hyderabad vs. P. Venkaiah and Ors. reported in 1997 (1) SCC 128 and State of U.P. and Anr. Vs. Rajendra Singh, reported in AIR 1996 SC 1564.

In view of the aforesaid decisions of this Court, the Madras High Court came to a finding that Exhibit A-15 which had been relied upon by the Reference Court to fix the market value of the acquired lands could not be considered in the absence of examination of the parties to the documents. In other matters involving some of the lands acquired for the construction of the stadium, the Division Bench of the Madras High Court had fixed the market value of the lands acquired at Rs. 7000/- per Are. On the basis of the above, the Madras High Court reduced the market value of the acquired lands from Rs.13,500/- per Are to Rs.7,000/- per Are.

Aggrieved by the said decision of the Madras High Court in reducing the market value of the lands as awarded by the Reference Court from Rs.13,500/- per Are to Rs.7,000/- per Are, the respondents in the said two appeals have preferred CA 1500 of 2004 and CA No. 1501 of 2004. As mentioned hereinabove, CA 1502 of 2004 was filed against the order dismissing the review petition of the appellants in CA 1501 of 2004.

The fourth appeal is by way of Special Leave Petition (Civil) No. 6309 of 2004 against the judgment and order of the Division Bench of the Madras High Court dated 18th September 2004 in A.S. No. 573 of 1994 also reducing the market value of the acquired lands fixed by the Reference Court at Rs. 13,500/- per Are to Rs.7000/- per Are.

On behalf of the appellants it was sought to be urged that the impugned judgments of the Madras High Court were based on an erroneous appreciation of the law relating to the fixation of market value of lands acquired for public purposes. It was urged that the law as explained in the case of Meharban and Ors. and the two other judgments of this Court on which reliance had been placed by the High Court had, in fact, been reversed by a Constitution Bench of this Court in the case of Cement Corporation of India Limited vs. Purva and Ors., reported in 2004 (8) SCC 270. In the said decision it was emphasized that the view expressed in Meharban's case was not the correct interpretation and that under Section 51A of the Act, a presumption as to the genuineness of the contents of document is permitted to be raised without examination of the parties thereto, if the said presumption is not rebutted by other evidence. In the said case this Court reiterated the views expressed by this Court in the case of Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, reported in 2001(3) SCC 530, wherein it was held, inter alia, as follows:-

"14, The words "may be accepted as evidence" in the section indicate that there is no compulsion on the court to accept such transaction as evidence, but it is open to the court to treat them as evidence. Merely accepting them as evidence does not mean that the court is bound to treat them as reliable evidence. What is sought to be achieved is that the transactions recorded in the documents may be treated as evidence, just like any other evidence, and it is for the court to weigh all the pros and cons to decide whether such transaction can be relied on for understanding the real price of the land concerned."

Apart from the above, it was also contended that the Madras High Court had failed to consider the potential value of the lands for commercial exploitation, having regard to the location of the lands sought to be acquired as had been commented upon by the Reference Court. It was urged that the Land Acquisition Officer had himself admitted the steep escalation in the market value of lands in the locality in a span of one year and that the market value was much higher than what was fixed by the Madras High Court and had been paid for similar sites even more than one year prior to the Notification under Section 4(1) of the Act.

In addition to the above, it was sought to be contended, that, in any event, the Madras High Court had erred in reducing the market value which had been fixed by the Reference Court after due consideration of all the cogent materials available on record.

It was submitted that the Madras High Court had reduced the market value of the lands in question in complete disregard of the methods to be employed for fixation of market value and instead of relying upon the comparable method had chosen to adopt the average method which was without any evidentiary basis and also upon an erroneous construction of the law as contained in Section 51A of the Act.

It was urged that the judgments of the Madras High Court were liable to be set aside and the Awards of the Reference Court were liable to be restored.

Appearing for the respondents in all the appeals Mr. T.L.V. Iyer, Senior Advocate, firstly urged that the Reference Court had failed to take into consideration the fact that by the sale deed dated 15th July, 1988, being Exhibit A-I, some of the appellants had purchased 2 Hectares 9 Ares and 14 Ca of land, which comprised a part of land which had been acquired, at the rate of about Rs.377.90 per Are and in respect of same land compensation was now being sought for at the rate of Rs.13,500/- per Are.

Mr. Iyer also referred to Exhibits A-12, A-13 and A-14 where the price of certain small house plots was fixed at Rs.6,739/- per Are and upto a maximum of Rs.11,695.90 per Are. As to Exhibit A-15, Mr. Iyer submitted that the same could not be taken as a yardstick, inasmuch as, by the said sale deed, the appellants in CA No. 1500 of 2004 had sold a small house plot, for the purpose of creating evidence. Mr. Iyer submitted that the High Court of Madras had rightly chosen not to rely on Exhibit A-15, although on a reasoning which had subsequently been dissented from by this Court in a later judgment.

Mr. Iyer also contended that merely because of the potential value of the acquired land for commercial exploitation, it could not be said that the character of the said lands had changed, and that they continued to be 'Wet' lands as had originally been classified by the Land Acquisition Collector. As to what would be the value after development was a matter of conjecture and could not be the basis for fixation of the market value of the lands when acquired.

In support of his aforesaid submissions, Mr. Iyer referred to the decision of this Court in the case of Printers House Pvt. Ltd. vs. Saiyadan (Deceased) by Lrs. and Ors. reported in 1994 (2) SCC 133, wherein

the manner in which the comparable sale method was to be applied in determining the market value had been explained. It was explained that it is the price reflected in the sale or award pertaining to a land closest or nearest to the acquired land in all its features and under the average price reflected in such comparable sales or awards which form the basis. Mr. Iyer submitted that since some of the lands had been acquired by the appellants in CA No. 1500 of 2004 in July 1988 at the rate of Rs.377.90 per Are, the same in keeping with the subsequent sale deeds dated 17th October, 1988 and 7th December 1988 had been taken by the Madras High Court as comparable units for fixing the market value.

The aforesaid decision of this Court was also relied upon by Mr. Iyer in support of his contentions that in determining the market value the Court has to mark the location and the features, which include both advantages and disadvantages, of the land covered by the Award, involving the location, size, shape, potentiality and tenure etc. thereof.

Mr. Iyer contended that in applying the comparable method, the Court also has to take into account the size and the area of the land acquired and those forming the basis of the comparable units. It was urged that the market value of large tracts of the land could certainly not be the same as a small house site. It was urged that the Reference Court had erred in relying on the sale deeds pertaining to small house sites when the area under acquisition comprised large tracts of land to be converted into a stadium. In support of the said submission Mr. Iyer referred to and relied on a decision of this Court in H.P. Housing Board vs. Bharat S. Negi and Ors, 2004 (2) SCC 184, wherein the said principle has been explained.

Mr. Iyer concluded his submissions by referring to G.O. M.S. No. 14 dated Pondicherry, 8th February, 1989 in which instructions had been given in regard to the procedure to be followed for the purpose of site selection under the Act. From the said Government Order Mr. Iyer pointed out that the market value was required to be assessed after taking into account the potential value of the land, thereby meaning all the reasonable properties which the land was likely to possess in respect of its user. The potential value was also required to be assessed after taking into consideration the purpose for which the land is acquired. While deciding upon the nature of land, the classification shown in the revenue records should not alone be relied upon but the potential use to which the land can be put should also be taken into account. Mr. Iyer placed special emphasis on sub-para (iii) of Paragraph 2 wherein it was explained that in acquiring vast extent of land for urban purposes, the land should be valued as an urban land, diminishing 20 to 33 1/3 percent of the assessed value towards improvement and amenities. Furthermore, in assessing the market value only the sale data, prior to the date of notification under Section 4(1) should be taken into account, even though, the post notification sales could be taken note of for knowing the rise in the price trend. The said Government Order also referred to size and location of the land to be acquired for determining the market value of the acquired lands.

Mr. Iyer urged that the judgments and orders

of the Madras High Court had been based on the aforesaid principles and did not require any interference by this Court.

Having carefully considered the submissions made by Mr. Iyer on behalf of the respondents, and by the different sets of counsels for the appellants in these four appeals, we are unable to agree with the views expressed by the Madras High Court and the submissions in respect thereof made by Mr. Iyer. In fact, Mr. Iyer's submissions, in our view, only strengthen the case of the appellants since the Madras High Court has decided the matters in a manner, which is contrary to established principles of fixation of market value for acquisition purposes, which have been explained in detail in the aforesaid Government Order dated Pondicherry, 8th February, 1989, referred to by Mr. Iyer.

Apart from the above, the Madras High Court in making the impugned judgments relied on the earlier decisions of this Court requiring proof of documents for the purposes of Section 51A of the Act, which view had been overruled subsequently firstly in V. Narasaiah's case (supra), and was later reiterated by the Constitution Bench in Cement Corporation of India Ltd.'s case (supra). In fact, in the Printers House Pvt.Ltd. case (supra), relied upon by Mr. Iyer, it has been indicated that the determination of market value of the acquired plot on average basis was incorrect in that it overlooked the comparable method.

In our view, the Reference Court had adopted the correct procedure upon examination of the location and potential value of the acquired lands in its detailed award, as also the contemporaneous sale deeds which indicated that there had been a steep escalation of the price of lands in the immediate vicinity of the acquired lands, which fact had also been admitted by the Land Acquisition Officer.

In our view, there was no justification for the Madras High Court to have reduced the market value of the acquired lands which had been fixed at Rs. 13,500/- per Are by the Reference Court.

All these appeals must therefore be allowed. The Judgments and orders of the Madras High Court impugned in these appeals are all set aside and the Awards as made by the Reference Court out of which these appeals arise are restored.

Before parting with these appeals it will be necessary to indicate that on 24th August, 2001 when notice was issued on SLP(C) No. 3476 of 2001 which was subsequently converted into CA No. 1500 of 2004, an order was made that notice be issued on condition that the excess amount collected would be refunded to the State within a month from the date of the order. In other words, since the appellants had obtained compensation at a higher rate from the Reference Court, which had been reduced by the Madras High Court, the appellants were directed to deposit the difference in the two amounts as a condition precedent for issuance of notice. Similarly, on 14th August, 2003, when notice was issued in connection with SLP (Civil) No. 11579 of 2003, a similar order was made. Along with the above, the appellants were also directed to deposit their title deeds of the acquired lands, which directions had been duly complied with by the appellants in the first three appeals. As far as the

fourth appeal is concerned, leave is being granted by the present judgment.

Since, we have chosen to restore the valuation as fixed by the Reference Court, the appellants will be entitled to return of the difference amount deposited by them in terms of the order passed in these appeals together with their title deeds which they had deposited.

Such reimbursement and return of the title deeds are to be effected expeditiously, but positively within one month from the date of the communication of this Judgment.

The appeals are disposed of accordingly. The parties will bear their respective costs.

JUDIS