

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

Coram:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

A.S.Nos.992 and 842 of 1996

1.R.Maruthamuthu (died)

2.V.Balu (Died)

3.Periyasamy (Died)

4.Andalammal

5.P.Kalaivanan

6.Tmt.Sellammal (died)

7.R.Vasanthan

8.P.Raju (died)

(8th appellant has been brought on record as LR of the deceased 3rd appellant as per order of Court dated 17.9.2001 in CMP No.4686 of 2000)

9.Mlliga

10.M.Gopinathan

11.E.Chitra

12.M.Navaneetham

13.K.Lakshmi

(Appellants 9 to 13 brought on record as LRs of deceased 1st appellant vide order of Court dated 17.09.2009 made in CMP.No.123 to 128 of 2009)

14.Lakshmi

15.Nirmala

16.Parthiban

17.Narasimhan (died)

18.Velavan

19.Raja

20.Venkatesan

(Appellants 14 to 20 brought on record as LRs of deceased 2nd Appellant vide order of Court dated 17.09.2009 made in CMP. No.123 to 128 of 2009)

21.V.Raja
(21st appellant brought on record
as LR of deceased 6th appellant
vide order of Court dated 7.2.2014
made in CMP No.1224 of 2011 in AS No.992/96

22.Tmt.R.Devi
23.Thiru R.Ganesh
24.Tmt.Indira

(Appellants 22 to 24 brought on record
as LRs of deceased 8th appellant vide
order of Court dated 14.10.15 made
in CMP No.485 of 2015)

25.Tmt.Dhanalakshmi
26.Thiru.Venkatesh
27.Selvi.Durga Devi
(Appellants 25 to 27 brought on record
as LRs of deceased 17th appellant vide
order of Court dt.28.10.2015 made in
CMP No.504 of 2015 in A.S.No.992 of 96) ... Appellants in
A.S.No.992 of
1996/Claimants

vs.
1.Land Acquisition Officer and
Special Tahsildar(L.A.)
Neighbourhood Scheme, Salem. Appellant in
A.S.No.842 of 1996/
Referring Officer
..... 1st respondent in
A.S.No.992 of 1996/Respondent

2.The Executive Engineer
and Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Salem
... 2nd Respondent in
A.S.No.992 of 1996/Respondent
..... 8th respondent
in A.S.No.842 of
1996/Referring Officer

1.R.Marudamuthu
2.V.Balu
3.Periasamy (died)
4.Andalamma
5.P.Kalaivanan
6.Sellammal

7.R.Vasanthan

8.P.Raju

... Respondents 1 to 7
and 9 in A.S.No.842 of
1996/Claimants

Respondent 9 have been brought on record as C.R of the deceased
3rd Respondent as per order of Court dated 17/9/01 in CMP
4685/2000

Appeals preferred against the judgment and decree dated
12.09.1995, passed by the Additional Subordinate Judge, Salem,
in L.A.O.P.No.8 of 1990.

For Appellants in A.S.No.992/96

and

For R1, R2, R4 to R7 and R9 : Mr.P.Jagadeesan
in A.S.No.842 of 1996

For R1 in A.S.No.992 of 1996

For the appellant in A.S.No.842/96: Mr.P.Gunasekaran,
A.G.P. (AS)

For 2nd respondent in both the
appeals

: Mr.J.Venugopal for R2

COMMON JUDGMENT

(Judgment of the Court was delivered by

V.RAMASUBRAMANIAN, J.)

Both the appeals, one filed by the land owners and the
other filed by the land acquisition officer, are under Section
54 of the Land Acquisition Act, 1894 (hereinafter referred to as
the Act in short).

2. Hard Mr.Gunasekaran, learned Additional Government
Pleader, appearing for the Land Acquisition Officer and
Mr.P.Jegadeesan, learned counsel appearing for the
respondents/land owners.

3. By a Notification issued about 32 years ago, on
2.11.1983 the lands belonging to the parties were acquired. The
lands were located in certain Survey Numbers in Attur Village,
Salem District.

4. An award in Award No.15/86-97 was passed on
19.9.1986. By the said award, the land acquisition officer
fixed the compensation payable at Rs.0.56 per sq. feet, treating
the lands as house sites. On a reference under section 18 of
the Act, in L.A.O.P.No.8 of 1990, the Additional Sub Court

enhanced the compensation to Rs.6/- per square feet. As against the said award, the land acquisition officer filed A.S.No.842 of 1996.

5. In the award passed by the Tribunal, the interest under Section 28 was directed to be calculated from the date of the award of the Tribunal and not from the date of taking possession. As per the judgment of the Supreme Court in State of Himachalpradesh vs. Shri Dharam Das (AIR 1996 SC 127) the Tribunal is not competent to award interest in any manner other than how it is provided for in Section 28 of the Act. Though Section 28 has been construed to be discretionary, in two decisions of the Supreme Court in (i) Union of India vs. Pramod Gupta (2005(12) SCC 1) and (ii) Commissioner of Income Tax vs. Ghanshyam (2009(8) SCC 412) the discretion is only to grant or not to grant interest. The discretion is not to change the date of commencement of the period for which interest could be awarded. Therefore, the land owners have come up with another appeal in A.S.No.992 of 1996.

6. Due to the pendency of the above appeals for the past 19 years, some of the land owners died. Their legal representatives were impleaded. Some of the legal representatives also died and the third generation is now on record.

7. The land Acquisition Officer, in his award bearing No.15/86-87 dated 19.9.1986, took note of the fact that a total of 642 sale transactions had taken place in the area concerned in the three years preceding the date of Notification under Section 4(1) of the Act. Out of those lands, the land Acquisition Officer took into account a data land in Survey No.146/1, in Narasingapuram Village, measuring an extent of 1080 sq.ft., sold for Rs.1080/-, under document dated 16.12.1980. Therefore, the rate actually works out to Rs.1/- per sq. feet. But in paragraph No.6 of the award, the land acquisition officer took the rate as Rs.0.56/- per sq. feet, presumably after deducting development charges.

8. Before the Tribunal, the land owners were examined as C.W.1 and C.W.2. The land owners filed ten documents viz., Exs.C1 to C10. The Referring Officer was examined as R.W.1. The referring officer filed five documents. Ex.R1 was an award, Ex.R2 was topo-sketch, Ex.R3 was the sales Statistics and Exs.R4 and R5 were sale deeds dated 14.6.1983 and 25.5.1982.

9. Even as per the guideline value of the land in the year 1983, filed as Ex.C6, the value was more. Ex.C4 reflected a rate of Rs.16/- per sq. feet. Ex.C5 reflected a rate of

Rs.8/- per sq. feet. Ex.C6, which is the guideline valuation, showed that the rate in 1983, as per the Government Guideline, was Rs.8/- per sq. feet.

10. Taking the above factors into account cumulatively, the Tribunal arrived at the market value of Rs.9/- per sq. feet. However, after deducting 1/3rd towards development charges, the Tribunal fixed the compensation at Rs.6/- per sq. feet.

11. We do not think that the Tribunal is at fault. The Referring Officer himself agreed that what was acquired was only house sites. After having agreed that they were house sites, the Referring Officer took note of the smallest value sale deed, which is not permissible in law. Therefore, we are of the view that the amount of Rs.6/- per sq.ft. fixed by the Tribunal on the basis of Exs.C4 to C6, after taking note of the topo-sketch, marked as Ex.R2, does not call for any interference. Hence, the appeal filed by the Referring Officer in A.S.No.842 of 1996 is liable to be dismissed and accordingly it is dismissed. No costs.

12. Coming to the appeal of the land owners, it is seen from the decretal portion of the award passed by the Tribunal that the Tribunal awarded interest under the proviso to Section 28 of the Act at 15% per annum only if the Referring Officer did not deposit the excess amount within one year from the date of the award. In other words, if the amount is deposited within one year from the date of the award, the interest at the rates stipulated in the proviso to Section 28 is deprived. The Supreme Court has held in State of Himachalpradesh vs. Shri Dharam Das (AIR 1996 SC 127) that the award of interest under Section 28 of the Act, though discretionary, cannot be in deviation from what is prescribed in Section 28 of the Act. Paragraph No.6 of the award of the Tribunal reads as follows:

"6. In the result, the reference is ordered, awarding enhanced compensation at Rs.6.00 per sq.ft. less the amount awarded earlier with 30% solatium and 12% additional amount and with 9% interest per annum on such excess till the payment of such excess into court. Time for deposit is one year from this date with proportionate cost in the event of the failure to deposit such enhanced compensation or any part thereof within one year, the amount has to be deposited with interest at 9% per annum for one year from the date of taking possession and thereafter at the rate of 15% till the date of deposit into court. The Government Pleader is entitled to get his fees as per rules."

13. Giving one year time to the Referring Officer to deposit the excess amounts and directing him to pay interest as per the proviso to Section 28 of the Act only in case of failure to make such deposit, is not in accordance with the proviso to Section 28 of the Act. However it is reported that the Referring Officer did not deposit the amount within one year. Therefore, the interest at 15% from the date of expiry of one year after taking possession has become payable now. Hence, the question is only one of academic importance.

14. However, A.S.No.992 of 96 is allowed clarifying that the appellants are entitled to interest as per Section 28 and the proviso thereto respectively from the date of taking possession and from the date of expiry of one year from the date of taking possession. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Hosur.

+7cc to M/S.P.Jagadeesan, Advocate Sr.58882
+1cc to the Additional Government Pleader Sr.59133

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A.S.Nos.992 and 842 of 1996

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