

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-06-2015

CORAM :

THE HON'BLE MR.JUSITCE V. RAMASUBRAMANIAN
AND
THE HON'BLE MR. JUSTICE T.MATHIVANAN

S.A NO. 1114 of 2014

AND

M.P. No. 1 of 2014

The Land Acquisition Officer and
Special Tahsildar,
Adi Dravidar Welfare,
Krishnagiri.

.... Appellant/ Referring Officer/
Respondent

Vs.

R.Murugan

.... Respondent/ Claimant/ Appellant

Second Appeal filed under Section 13 of The Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78 r/w Section 100 of CPC against the judgment and decree 11.7.14 made in CMA.No.1/2006 on the file of the Principal Subordinate Judge, Krishnagiri modifying the award in award No.16/1998-99 dt.12.4.03 passed by the Land Acquisition Officer and Special Tahsildar, ADW, krishnagiri.

For Appellant	:	Mr. Mr. M.Venugopal, Special G.P. (Civil Suit)
For Respondent	:	None (Notice not served)

JUDGMENT

(Delivered by V.RAMASUBRAMANIAN,J.)

The above Second Appeal is directed against the Judgment and decree passed by the Principal Subordinate Judge, Krishnagiri made in C.M.A.No.1/2006 dated 11.7.2014 wherein by which the compensation provided by the appellant was enhanced by that court at the instance of the respondent.

2. The above Second Appeal was admitted by a division bench on 26.11.2014 and it had also framed three substantial questions of law under a mistaken impression that the appeal was also filed under section 100 CPC. A reading of section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) will show that the admission of the second

appeal was not fettered with any rider given by the legislature. Section 13 reads as follows:

"Appeal to High Court: Subject to the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, a second appeal shall lie to the High Court from any decision of the Court under this Act, if the amount as determined by the prescribed authority exceeds such sum as may be prescribed."

3. Pending the appeal in the application for interim stay prayed in M.P.No. 1 of 2014 only notice was ordered. Though notice was sent, it was yet to be served on the sole respondent. However in the meanwhile, all the second appeals arising out of section 13 of the T.N.Act 31/78 were grouped together and common arguments were addressed by the learned Special Government Pleader. As we are not prepared to accept his contentions, we felt it is unnecessary for us to wait for the respondent to enter appearance and make submissions.

4. In order to provide housing facilities to the 47 Adi Dravidar families living in Pendarahalli - II village coming within the Pochampalli Taluk, the appellant proposed acquisition of lands belonging to the respondent situated in survey no. 572/1 and 573/1 in the same village to the extent of 0.72.5 hectares. The lands were registered as punja lands. In survey no. 572/1, there was a well and also 25 coconut trees. In survey no.573/1, there were 50 coconut trees. The proposals sent by the prescribed authority was approved by the District Collector and it was also published in the District Government Gazette. An award enquiry was conducted by the appellant on 18.3.2003. It was stated that the respondent neither appeared in the enquiry nor sent any objection.

5. In order to fix the market value, sale details were called for a period of one year prior to the date of the notification from the Office of the Sub-Registrar, Barur. The authority was able to get details of 72 sale transactions. He rejected from the consideration 15 transactions as they were situated far off. 25 transactions were rejected on the ground that they were sold as house-sites. 8 other transactions were rejected as they were nanja lands. 19 other transactions were rejected as the sale related to smaller extent of land. One transaction was rejected as the sale was between the relatives. One other document was rejected as it was a combination of both nanja and punja land. One other transaction was also rejected as it was sale after a mortgage. Another detail was also rejected as the land was sold along with the standing trees.

After rejecting 71 documents, the authority took up the data land, the land situated in survey no.662/6 punja land to the extent of 0.22.5 hectares (0.56 acres) covered by sale deed no.551 dated 1.9.95. The said land was situated 1 km from the land which was sought to be acquired. It was claimed that the said land was having the same taram, soil and levy. As per the sale, the value per acre of the land works out to Rs.35,714/- (per hectare Rs.88,214/-). Therefore the appellant fixed the compensation for the respondent's land (0.72.5 hectares) Rs.63,955/-. He fixed the value of the well at Rs.10,000/- and for the standing coconut trees Rs.1300/-. Together with a solatium of 15%, a total sum of Rs.86,543/- was directed to be paid.

6. Aggrieved by the low rate of compensation, the respondent filed an appeal under section 9 of the T.N.Act 31/78 before the Principal Sub Court, Krishnagiri. The appeal was taken on file as C.M.A 1/2006. Before the sub court, the respondent examined himself as AW1 and on his side, 3 documents were filed and they were marked as exhibits A1 to A3. On the side of the Appellant, one Tamilmani was examined as RW1 who was the Officer then holding the office of the Appellant. Through her, 6 documents were filed and they were marked as exhibits B1 to B6. The sub court on an analysis of the evidence (both oral and documentary) placed before it came to the conclusion that the data land which was taken as a basis for awarding compensation was improper and the compensation should have been paid on the basis of rate fixed per square feet. It also found that adjacent to the acquired land, there were 50 houses and it is situated very close to Tirupattur-Arasampatti Main Road. The potential value of the land is much higher. It also found that the sale deed covered by exhibit A1 was impounded due to undervaluation and finally the authority fixed Rs.38/- per sq.ft. If that was the market value of the land, then there is no reason to deny the compensation to the respondent at the same rate. However, the sub court fixed Rs.35/- per sq.ft. It did not enhance the compensation fixed for the well as well as for the coconut trees. As to the exemplar taken for consideration is of a smaller extent of land, the sub court relied upon two decisions of the Supreme Court in Radha Mudaliyar v. Special Tahsildar (Land Acquisition) T.N.H.Board A[IR 2011 SC 54] and Lucknow Development Authority v. Krishna Gopal Lahoti [2008(1) SCC 554]. It made a reference to the following passage found in the second judgment cited above which is as follows:

"It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material it may in appropriate cases be open to the adjudicating Court to make comparison of the prices paid for small plots of land. However, in

such cases necessary deductions/adjustments have to be made while determining the prices."

7. The appellant had questioned the enhancement of compensation on the ground that the court below did not give convincing reasons and also relied upon documents which are unrelated to the acquired land. We are not persuaded agree with the submission made by the Special Government Pleader. The sub court not only gave reasons for disagreeing with the data land but also made a comparative study of the two lands by looking into the sketches supplied by the appellant in exhibits B4 to B6. Further, the sub court also took note of section 7 of the T.N.Act 31/78 wherein the guideline for fixing the compensation was provided by the legislature. In fact, it was the appellant who had rejected large number of land transactions got from the Sub-Registrar's office and took note of an exemplar which cannot be compared with the acquired land.

8. In view of the above legal precedents, the decision of the Sub-court in enhancing the compensation is well within the legal norms and the factual matrix laid before it, we do not think the Second Appeal deserves any consideration. Accordingly the Second Appeal stands dismissed. However, there will be no order as to costs. M.P.No.1 of 2014 is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Special Tahsildar, Adi Dravida Welfare, Krishnagiri.

2.The Principal Sub Judge, Krishnagiri.

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