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. 454 of 1999
and
C.M.P. Nos. 5511, 9677, 9678 of 1999

The Special Tahsildar (LA)
Adi - Dravida Welfare,
Udhagamandalam. ... Appellant/Respondent Land Acquisition Officer

Vs.

R.Jagannathan
S/o. Ramanna Gounder
Pudumund Post,
Ootacamund, Nilgiris ... Respondent/Appellant Land Owner

Second Appeal filed under Section 13 of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) against the judgment and Decree dated 20.7.1998 made in A.S.No.1/98 on the file of the Subordinate Judge, Udhagamandalam, Nilgris District.

For Appellant : Mr.M.Venugopal, Special Government Pleader (Civil Suit)

For Respondent : Mr. M.S.Krishnan, SC For M/s. Sarvabhauman Associates

JUDGMENT
(Judgment of the Court was made by V.RAMASUBRAMANIAN,J.)

This is an appeal filed by the acquiring authority under section 13 of the The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78). It is rather unfortunate that the matter which was admitted in July 1999 has been kept pending with this court for the last 16 years. May be this is the earliest Second Appeal filed under this Act. Though the Act was enacted in the year 1978, it was held to be ultra vires of the Constitution by a division bench of this court vide its judgment dated 9th September, 1981. The state took up the matter on appeal to the Supreme Court and it was held that the Act was constitutional (vide State of Tamil Nadu Vs. Ananthi Ammal reported in 1995 (1) SCC 519). Therefore the acquisition proceedings under the state act would have been challenged after that judgment and the present Second Appeal would have arisen thereafter.

2. We have heard Mr.M.Venugopal, learned Special Government Pleader (Civil Suit), for the appellant and Mr. M.S.Krishnan, learned Senior Counsel appearing for the respondent.

3. When the matter came up for admission before the single bench, in view of the valuation the learned judge thought fit to post the matter before a division bench. The division bench headed by R.Jayasimha Babu, J at the time of admission recorded as follows :

> "This matter has been numbered as a second appeal in view of the language employed in Section 13 of the Tamil Nadu Land Acquisition for Harijan Welfare Schemes Act 31/78 read with section 100 of the Code of Civil Procedure, though the ascertainment of the compensation payable for the land was initially does not by a Court, but by an administrative authority. Instead of using the language of the Land Acquisition Act, which permits a reference being made to the court for the purpose of determining the market value, this Act provides for an appeal against the determination made by the prescribed authority. What is termed as an appeal is in fact the very first occasion when the matter is determined judicially by a court. It would have been more appropriate to term the appeal against that decision of lower court / as to the court first appeal. However, having regard to the language used in the statute, this has been classified as a second appeal."

4. Since the appeal was stated to have been filed under Section 100 CPC also the admission bench framed the following substantial question of law also.

> "Whether the Court below was correct in law enhancing to the extent it has the amount of compensation that had been determined by the prescribed authority?"

5. However, Section 13 under which the so called Second Appeal has been filed did not contemplate any requirement to frame a question of law and the Act is also not having any restricted criteria for the appeal. Section 13 of the Act 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."

6. The state government has framed a rule prescribing the criteria for filing an appeal. The said Rule 8 of The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 reads as follows:

> "Second Appeal.- Where the amount, as determined by the prescribed authority by order under sub-section (3) of section 7 exceeds rupees fifty thousand, a second appeal shall lie to the High Court from any decision of the Court under the Act."

7. Notwithstanding the language of Section 13, whenever the matters were posted before a division bench, the learned judges have framed substantial question of law for admitting the Second Appeal. It must also be noted that under Section 54 of the Land Acquisition Act, 1894 also an appeal will lie to this court against the judgment and decree of the court which decides the matter of compensation. Depending upon the pecuniary value of the appeal, the appeals were (numbered as Appeal Suit) posted before either single judge or before division bench. Now that there is no intra court appeal against the orders of single bench in view of the amendment made to CPC it is better that these appeals (though labeled as second appeals) can be directly be posted before single benches as in the case of Central Act. Perhaps that would have avoided the matters being heard after a decade. The Registry is directed to get standing orders from the Hon'ble Chief Justice so as to post the Second Appeals under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78 before single benches. In fact more often the lands acquired under this state enactment is of small in extent and the valuation also will not exceed rupees 10 lakhs.

8. When the Second Appeal came up for admission on 20.4.1999, this court directed the Appellant to deposit the enhanced compensation with solatium and interest till the date of the order and the Respondent was permitted to withdraw 50% of the amount. It must be noted that under the state enactment only 15% as solatium and 6% interest unlike the Central Act. Subsequently the Appellant filed two applications in C.M.P. 9677 and 9678 of 1999 for extending the time limit in depositing the amount and to modify the earlier order. In C.M.P 9678 of 1999, this court on 8.7.1999 directed the Appellant to pay the Respondent 25% of the amount of enhanced compensation within 12 weeks and also deposit another 25% of the enhanced compensation. On such deposit, the amount was directed to be deposited with the Tamil Nadu Power Finance Infrastructure and Development Corporation, Chennai in the name of the Registrar of this court.

9. Once again the Appellant filed C.M.P.16603 of 1999 seeking for further extension of time of 8 weeks to deposit the amount. That request was also granted by this court on 8.11.1999.

10. The Respondent is the owner of the land in Town Survey No.4682/1 to the extent of 3 acres coming within the Udhagamandalam (known as Ooty) a well known hill station in South India. The Appellant decided to acquire the land for the purpose of providing house sites to homeless Adi Dravidars (Schedule Castes) living in Adasholai and Pudumund area. The Respondent's brother (Thimmappa Gowder) was also owing land adjacent to the land proposed to be acquired and he was attending the enquiry before the Appellant in the acquisition proceedings. Proposals were submitted under Section 4(1) of the Act to the District Collector, Nilgiris and he approved the notice under Section 4(1) on 9.10.1996. It was also published in the Nilgiri District Gazette on 1.12.1996. The lands were registered as government dry in the revenue accounts.

11. The Appellant being the acquiring authority in order to value the land, examined records relating to 85 sales that took place in that area. Out of those sale records, he discarded 70 records as they were not comparable to the land acquired. Even in the remaining 15 sales relating to agricultural lands and therefore 12 sale records were given up. The following three exemplars were considered by him for the purpose of valuation :-

(i) Document No. 593 / 96 dt. 28.8.96
In this sale, an extent of 1.00 acre of land out of the total extent of 8.10. 5/8 acres in S.No. 4682 was sold by the Pattadar of S.No.4682 at Rs.4,10,000/-

(i) Document No. 610 / 96 dt. 2.9.96
In this sales, an extent of 1.00 acre of land in the same survey field in S.No. 4682 was sold at Rs.4,10,000/-

(i) Document No. 628 / 96 dt. 11.9.96
In this sale also an extent of 1.00 acre of land in the same survey field was sold at Rs.4,10,000/-

12. According to the acquiring authority, the taram, soil, classification and assessment are similar he took into account Rs.4,10,000/- per acre as a basis for calculating the compensation. An award enquiry was conducted by the Appellant. The offer of the Respondent for an alternative land was also rejected by the authority as those lands were not suitable for the purpose of acquisition accordingly the Appellant arrived at the following amounts as compensation payable to the Respondent vide his award in 3/97-98 dated 30.9.97 :-

1) Land Value for 3.00 acres of dry land at Rs.4,10,000/- per acre	Rs. 12,30,000.00
2) 15% Solatium	Rs. 1,84,500.00
3) 12% additional amount from 1.12.96 to 30.9.97 (304 days)	Rs. 1,22,932.00
	Rs. 15,37,432.00

13. Aggrieved by the lower amount of compensation fixed by the Appellant, the Respondent filed an Appeal under Section 7 before the Sub-court, Udhagamandalam, Nilgiris Dist. The appeal was taken on file as Appeal 1 of 1998 and notice was issued to the Appellant. Before the Appellate court, the Respondent filed I.A.53 / 1998 for seeking permission to file four documents and also examined himself as AW1. The documents filed by him were marked as exhibits A1 to A4 and they are the bills issued in favour of the Respondent by one Sri Amritha Potato Traders, Mettupalayam. The Respondent did not lead any evidence before the Appellate Court. The bills relate to sale of potatoes cultivated in the said land and the total sale as per those bills came to Rs.10,07,190 / 10 paise and the calculation is made after deducting the amounts paid for labour and rent. After further making provisions for manure, pesticides, fertilizer per acre, the Respondent would have got Rs.2 lakhs as profit. He also in his deposition spoke about growing vegetables in the land. Taking into account the loss of income from the property per acre will be Rs.1,60,000/- per year and by having 10 year multiplier the loss was calculated as Rs.16,00,000/- per acre . The Sub-court placed reliance upon the judgment of division bench of this court reported in 1995 (2)

CTC 47 in K.Posayya and ors. Vs. Special Tahsildar for the purpose of arriving at the proper multiplier in valuing the land. In para 5, this court had observed as follows:

> "It is settled law that market value is to be determined either on the basis of the prevailing prices of sale and purchase between willing vendor and willing vendee or value of the crops realised applying suitable 10 years multiplier or in case of land valued of expert valuer like urban properties could be considered for determination of the compensation. Market value cannot be fixed with mathematical precision but must be based on sound discretion exercised by the reference court in arriving at just and reasonable price. It should not be based on feats of imagination or flight of fancy. Determination of compensation for compulsory acquisition involves consideration of the price which a hypothetical willing purchaser can be expected to pay for the lands in the existing use as well as relatable potentialities. The acid test is the arm chair of the willing vendor would offer and a prudent willing buyer, taking all relevant prevailing conditions of the normal market, fertility of the land, location, suitability of the purpose it was purchased, its existing potentialities and likely use to which the land is capable of being put in the same condition would offer to pay the price, as on the date of the notification……"
>
> "The nature of the land, the crops raised and the nature of the income likely to be derived from the lands, the expenditure to be incurred for raising the crops and the net profits etc., would be the relevant factors in arriving at the net market value and if evidence is produced in the behalf of its basis applying suitable 10 years multiplier, the market value need to be determined. The owner or claimant should not be put to loss by under valuation. But, at the same time public exchequer should not be put to undue burden by excess valuation. It is the statutory duty of the Court to maintain the balance between diverse interests."

14. The Sub-court also relied upon the judgment of the Supreme Court in The Special Land Acquisition Officer, Davangere Vs. P.Veerabhadarappa Etc. reported in AIR 1984 SC 774 wherein a multiplier of 15 was accepted. It was observed as follows :

"It is axiomatic that the best evidence to prove what a willing purchaser would pay for the land acquisition would be the evidence of sales of comparable properties, proximate in time to the date of acquisition, similarly situate, and possessing the same or similar advantages ad subject to the same or similar disadvantages. Market value is the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shapes of sales of similar lands i the neighbourhood at or about the date of notification under s.4(1) or otherwise, the Court has no other alternative but to fall back on the method of valuation by capitalization. In valuing land or an interest in land for purposes of land acquisition proceedings, the rule as to number of years' purchase is not a theoretical or legal rule but depends upon economic factors such as the prevailing rate of interest in money investments. The return which all investor will expect from an investment will depend upon the characteristic of income as compared to that of idle security. The main features are: (I) Security of the income; (2) fluctuation; (3) chances of increase; (4) cost of collection etc. The most difficult and yet the most important and crucial part of the whole exercise is ' the determination of the reasonable rate of return in respect of investment in various types of properties. Once this rate of return and accordingly the rate of capitalization are determined, there is no problem in valuation of the property."

15. The Sub-court found that the compensation fixed by the Appellant was on the low side. The exemplars relied on by the Appellant was inappropriate. It also observed that only a free sale between the parties can be taken into account as true reflector of the value. It also observed that when parties register sale deeds, they always undervalue the properties. Further the lands acquired was within the municipal limits of the hill station and it is already useful for using as a house site and therefore it fixed Rs.16,00,000/- per acre as a proper value for the purpose of fixing the compensation.

16. The Sub-court also noted in para 11 about the Appellant not having considered several exemplars which would have been more appropriate in the case of the Respondent. In fact the

details of the four sale transactions noted by the Sub-court as follows :

1. S.No. 4863/2A1 Sold on 24-01-96 at Rs.28,60,000/- per acre
2. S.No. 4855/2 Sold on 31-01-96 at Rs.17,90,316/- per acre
3. S.No. 4856 Sold on 30-01-86 at Rs.14,00,000/- per acre
4. S.No. 4671 & 4677 / 1 Sold on 07-08-95 at Rs.15,00,000/- per acre.

17. We are very much aware that while fixing the compensation what should be borne in mind was laid down by the Supreme Court in Karnataka Urban Water Supply and Drainage Board and Ors. Vs. K.S. Gangadharappa & Anr., reported in 2009 (11) SCC 164 wherein it was observed as follows:-

> "While determining the market value of the land acquired it has to be correctly determined and paid so that there is neither unjust enrichment on the part of the acquirer nor undue deprivation on the part of the owner. It is an accepted principle as laid down in the case of Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam (AIR 1939 P.C. 98) that the compensation must be determined by reference to the price which a willing vendor might reasonably expect to receive from the willing purchaser. While considering the market value, disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy it must be disregarded alike; neither must be considered as acting under any compulsion."

18. We also do not approve of the statement made by the Sub-court that always sale deeds are undervalued and more often the value quoted before the Registrar will be one fourth of the total value. Such sweeping statements cannot be made without any basis available either in the form of documents or oral evidence. But however, we do not find any illegality or irregularity in the calculation of the value of the land made by the Sub-court on the basis of additional evidence permitted to be let in in the appeal. No grounds were urged in this appeal regarding the admission of additional evidence at the appellate stage. Further the factors regarding the cultivation done in the land and the value of the same were not noted by the Appellant acquiring authority,. On the other hand he merely recorded that in the event of any vegetable grown in the land, the land owner can be allowed to harvest the same. That is not a method to be adopted in calculating the value of the land.

19. In Assistant Commissioner-Cum-Land Acquisition Officer Vs. S.T.Pompanna Setty reported in 2005 (9) SCC 662, the Supreme Court held that the multiplier can be 10 and should not be more than that in the following words :-

> "From the above cases, it is clear that normally in the cases where compensation is awarded on yield basis, multiplier of 10 is considered proper and appropriate. In the case on hand, multiplier of 15 has been applied which is on a higher side."

20. In Land Acquisition Officer, A. P., Vs. Kamadana Ramakrishna Rao reported in 2007 (3) SCC 526, the Supreme Court had observed as follows :

> "The computation of compensation for determination of market value may be carried out on yield basis and multiplier of 20 adopted by the Reference Court in the cases on hand is on the higher side and contrary to the well-settled proposition of law as laid down by this Court."

21. Therefore, we are of the view that the Sub-court did not take into account a higher multiplier and had kept the multiplier well within the limits indicated by the Supreme Court. Further as noted already, the lands are very much within the town limits of Udhagamandalam which is a well known hill station in South India. The purpose of the acquisition was for giving house sites to scheduled caste peoples of the local area. The records already show that it has been subdivided into smaller house sites and had already been distributed to the beneficiaries. It is only the land owner who is yet to receive his due compensation.

22. Considering the land in question was in a urban limits in a town which is increasingly getting urbanized and also the details of the data land referred to above and also the multiplier adopted by the Sub-court, we do not think that any case made out to interfere with the order passed by the Sub-court in enhancing the compensation. The Second Appeal has no merits and liable to be dismissed.

23. If the Appellant had already deposited the amount as per the interim orders, there is no impediment for the Respondent to withdraw the same from the company in which it is deposited. The Registry is directed to co-operate in Appellant getting refund of the amount. In respect of the balance amounts, the Respondent is at liberty to work out his rights under law.

24. Accordingly, the Second Appeal 454 of 1999 stands dismissed. All C.M.Ps closed. However there will be no order as to costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Udhagamandalam,
Nilgiris District.

S.A NO. 454 of 1999
and
C.M.P. Nos. 5511, 9677, 9678 of 1999

UG(CO)
CA(05/07/2016)