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

SA NO. 1575 of 2008
AND
M.P No. 1 of 2008

The Special Tahsildar
Adi Dravida Welafare,
Thirupattur. …. Appellant/Land Acquisition Officer.

Vs.

R.Subramani …. Respondent/Claimant.

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 of the Sub-court, Thirupathur made in L.A.A.No.12 of 2004 dated 02.03.2005 against the award No.24/1998-99 dated 13.2.2009 passed by the Special Tahsildar cum Land Acquisition Officer, Adi Dravidar Welfare, Tirupathur.

For Appellant : Mr. Mr. M.Venugopal,
Special G.P. (Civil Suit)

For Respondent : M/s. V.Raghavachari
V.Srimathi
V.Lakshminarayanan

JUDGMENT

(Delivered by V.RAMASUBRAMANIAN,J.)

The Second Appeal was filed by the Appellant beyond limitation. He filed M.P.No. 1 of 2007 to condone the delay of 672 days in filing the appeal. Though the standing order requires the second appeals filed under section 13 of T.N.Act 31/78 were to be posted before a Division Bench, in this case the matter was listed before a Single Bench. When the application came up on 24.10.2007, notice was ordered to the Respondent by a learned single judge. On notice, the Respondent through his counsel filed a counter affidavit resisting the condonation of delay. However the delay was condoned by a learned single judge on terms provided the Appellant pay

Rs.1000/- to the Respondent. Thereafter when the main appeal came up on 17.12.2008, a learned single judge passed the following order:-

> "Notice to the respondent returnable in four weeks. There shall be an order or interim stay on condition that the petitioner deposits a sum of Rs.18,88,923/- (Rupees Eighteen lakhs eighty eight thousand nine hundred and twenty three only) to the credit of L.A.A.No.12 of 2004 on the file of the sub court, Thirupattur, Vellore within a period of 12 weeks from the date of receipt of a copy of this order failing which the stay granted shall stand automatically vacated without any reference to this court."

2. It is not clear whether the Appellant has complied with the above self working order. No memo was called for to the effect from the learned Special Government Pleader. The result is that an order of the sub court of the year 2005 was kept pending with this court for the last 10 years. The Registry which listed the matter before a learned single judge however thought fit to include it in the list before this bench when this bench directed all the section 13 Second Appeals to be listed before us immediately.

3. The Appellant sent proposals for acquiring the land of the respondent for the purpose of providing house sites to the Adi Dravida families living in the Natham Village. The respondent owned 0.83.0 hectares in survey no. 174/3A1 in the same village. The respondent is himself a scheduled caste and his entire holding was sought to be acquired for the purpose of providing welfare schemes for the very same people. The proposals under section 4(1) was sent to the District Collector, Vellore and after his acceptance was published in the Vellore District Government Gazette on 3.8.98. After an Award enquiry, the market value of the land per acre was fixed at Rs.27,160/- and for the land of the respondent which was 0.83.0 hectares (2.05 acres), a compensation of Rs. 55,678/- was fixed for one standing Palmyrah tree Rs.100/- was fixed. Adding a solatium @ 15%, Rs.8,367/- was given additionally.

4. The prescribed authority in order to fix the market rate of compensation called for details of sale transactions from the Office of the Sub-Registrar, Tirupattur for the period from 4.8.97 to 3.8.98. There were 11 transactions during the aforesaid period out of which one transaction relating to survey no.97 was rejected as the taram and levy of the land were different. Six transactions relate to lands which were situated far off and they were rejected. Three transactions were rejected on the ground that the lands in question were all Nanja

lands. The authority took note of the transaction relating to survey no. 97/6 and 97/7 to the extent of 0.81 acre land wherein it was sold for Rs.22,000/-. If calculated the rate per acre can be arrived at Rs.27,160/- and therefore that land was taken as a data land.

5. Aggrieved by the low rate of compensation, the respondent filed an appeal under section 13 of the T.N.Act 31/78. He demanded the market rate to be fixed on square feet basis and he had prayed for Rs.25/- per sq.ft to be fixed for the land. The appeal filed by the respondent was taken on file as L.A.A.12/2004 before the sub-court, Tirupattur. The respondent examined himself as AW1 and marked three documents which were taken on file as exhibits C1 to C3. On the side of the Appellant, the officer who was holding the office of the Appellant was examined as RW1. On his side, three documents were filed and marked as exhibits R1 to R3.

6. The sub court found that the land in question was situated in the road leading from Natham to Sundarampalli . On its eastern side, there were 50 houses and in its northern side, Nathan village was situated. Transport buses with route no.31.7 and route no.3 were passing through the village road. Apart from that there is also an high school, hospital, post office, State Bank of India branch and vetnary hospital were situated. The lands were fit for constructing houses. On the other hand, the data land does not have any such facilities. Exhibit C2 dated 17.8.93 was a sale deed in which the vendor was one Singaram and it was sold to M/s.Rangan and Vanaja. Similarly exhibit C3 was a sale deed dated 16.9.98 which was sold to one Gunasekaran by Rajeswari. As per those documents, the price of the land was fixed on square feet basis and the going rate was Rs.25/- per sq.ft. The Appellant though cross examined AW1 could not elicit that those lands were not comparable. While being cross-examined as RW1, he admitted that the land acquired was suitable for constructing houses and he also admitted the proximity of the facilities noted above being available. He also admitted that between the data land and the land that is acquired, will be at the distance of 1 kilometre. In view of the same, the sub court found that the block sale fixed by the authority was not correct and it should be fixed on the basis of per sq.ft. rate. It also found that even in 1993, the lands in that area were sold per sq.ft. @Rs.17.20 paise and the acquired land has already situated in a developed area. The sub court also placed reliance upon the judgment of the Supreme Court in The Special Land Acquisition Officer, BTDA, Bagalkot Vs. Mohd. Hanif Sahib Bawa Sahib reported in AIR 2002 SC 1558 for the purpose of holding that the lands were situated in a developed area with all facilities around in market value should be arrived at by adding 10% increase every year.

7. This principle was also upheld by subsequent judgments. It is necessary to refer to the judgment of the Supreme Court in Valliyammal v. Special Tahsildar (Land Acquisition) [2011 (8) SCC 91]. In that case, it was held as follows:-

> “We have considered the respective arguments and carefully perused the record. At the threshold, it will be useful to notice some of the judgments in which the Court has laid down guiding principles for determination of market value of the acquired land.
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> 14.In Shaji Kuriakose v. Indian Oil Corporation Limited (2001) 7 SCC 650, this Court held:
>
> "It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by

sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."
(emphasis supplied)

15. In Viluben Jhalejar Contractor v. State of Gujarat (supra), this Court laid down the following principles for determination of market value of the acquired land:
"Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification under sub- section (1) of Section 4. One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not. Market value is ordinarily the price 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 shape of sales of similar lands in the neighbourhood at or about the date of notification under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-`-vis the land under acquisition by placing the two in juxtaposition. The positive and negative factors are as under:

Positivefactors	Negative factors
(i) smallness of size	(i) largeness of area
(ii) proximity to a road	(ii) situation in the interior at a

	distance from the road
(iii) frontage on a road	(iii) narrow strip of land with very small frontage commpared to depth
(iv) nearness to developed	(iv) lower level rerquiring the area depressed portion to be filled up
(v) regular shape	(v) remoteness from developed locality
(vi) level vis-a-vis land under acquisition	(vi) some special disadvantageous factors which would deter a purchaser

(vii) special value for an owner of an adjoining property to whom it may have some very special advantage Whereas a smaller plot may be within the reach of many, a large block of land will have to be developed preparing a layout plan, carving out roads, leaving open spaces, plotting out smaller plots, waiting for purchasers and the hazards of an entrepreneur. Such development charges may range between 20% and 50% of the total price."

16. In Atma Singh v. State of Haryana (supra), the Court held:

"In order to determine the compensation which the tenure-

holders are entitled to get for their land which has been acquired, the main question to be considered is what is the market value of the land. Section 23(1) of the Act lays down what the court has to take into consideration while Section 24 lays down what the court shall not take into consideration and have to be neglected. The main object of the enquiry before the court is to determine the market value of the land acquired. The expression "market value" has been the subject-matter of consideration by this Court in several cases. The market value is the price that a willing purchaser would pay to a willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities when led out in most advantageous manner excluding any advantage due to carrying out of the scheme for which the property is compulsorily acquired. In considering market value disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. The guiding star would be the conduct of hypothetical willing vendor who would offer the land and a purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions but not an anxious dealing at arm's length nor facade of sale nor fictitious sale brought about in quick succession or otherwise to inflate the market value. The determination of market value is the prediction of an economic event viz. a price outcome of hypothetical sale expressed in terms of probabilities. See Kamta Prasad Singh v. State of Bihar, Prithvi Raj Taneja v. State of M.P., Administrator General of W.B. v. Collector, Varanasi and Periyar Pareekanni Rubbers Ltd. v. State of Kerala.

For ascertaining the market value of the land, the potentiality of the acquired land should also be taken into consideration.

Potentiality means capacity or possibility for changing or developing into state of actuality. It is well settled that market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. See Collector v. Dr. Harisingh Thakur, Raghubans Narain Singh v. U.P. Govt. and Administrator General, W.B. v.

Collector Varanasi. It has been held in Kausalya Devi Bogra v. Land Acquisition Officer and Suresh Kumar v. Town Improvement Trust that failing to consider potential value of the acquired land is an error of principle."

17.In fixing market value of the acquired land, which is undeveloped or under-developed, the Courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In Kasturi v. State of Haryana (2003) 1 SCC 354, the Court held: "...........It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land

> where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

8. The sub court for the purpose of arriving at the rate of development charges to be deducted placed relied upon in judgment of the Supreme Court in Kiran Tandon vs Allahabad Development Authority .reported in AIR 2004 SC 2006 wherein the court permitted 20% deduction towards development charges. In the case on hand also, the sub court allowed a deduction of 20%. It held that the per square feet rate the area in question will come to Rs.25.80 paise per sq.ft. and after deducting 20% towards development charges, which is a sum of Rs.5.16 paise per sq.ft. It arrived at Rs.19.64 paise as the market rate of compensation. After rounding off the amount, it fixed Rs.19/- as the per sq.ft rate of compensation and accordingly allowed the appeal filed by the respondent by judgment dated 2.3.2005. The court also gave interest at different rates for different amounts.

9. Though the Appellant had raised several grounds in their memorandum of appeal before this court, the contention raised was that a small extent of land cannot be relied for the purpose of fixing compensation for the large extent of land. This contention has no merits. The Supreme Court in Rishi Pal Singh v. Meerut Development Authority [2006(3) SCC 205] held as follows :

> "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 for taking the exemplars of smaller plots into consideration. It appears that the attention of the High Court was not drawn to this part of the judgment of the Reference Court which has resulted in the High court completely overlooking the relevant discussion in the judgment of the Reference Court. Regarding the second point that exemplars of the appellant before us were not taken into consideration, again, the High Court is factually wrong and this mistake appears to have resulted from the fact that the judgment of the Reference Court was not properly brought to the notice of the High Court. The Reference Court has referred to the exemplars of the acquiring authority but has observed that since they have not been proved on record, they cannot be looked into. The learned counsel for the acquiring authority was unable to say that this observation of the Reference Court was factually incorrect nor he could show that the exemplars filed by his client had been proved on record. In fact we requested him to show these exemplars to us.

10. 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 2008 is closed.
gr.

s/d-
Assistant Registrar(CS-VI)

True Copy

Sub-Assistant Registrar

To

1. The Special Tahsildar
Adi Dravida Welafare.
Thirupattur
Vellore District.

2. The Sub Court,
Thirupathur,
Vellore District.

3. The Section Officer,
V.R.Section,
High Court, Madras.

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