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

Second Appeal No. 352 of 2007
AND
C.M.P.No. 1 of 2007

The Land Acquisition Officer-cum-
Special Tahsildar (ADW),
Villupuram . …. Appellant/Appellant.

Vs.

1.Padmavathy,
2.Mr.Kirankumar ….Respondents/Respondents

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 Principal Subordinate Judge, Villupuram made in L.A. C.M.A.No.33/1999 dated 13.3.2006 modifying lthe award dated 25.5.1999 made in Award No.1 of 1999-2000 passed by the Land Acquisition Officer and Special Tahsildar (ADW) Villupuram.

For Appellant : Mr. Mr. M.Venugopal,
Special G.P. (Civil Suit)
for Mr.S.Babu(Govt.Advocate)
For Respondent 1 : Mr. R.Balakrishnan

For Respondent 2 : No Appearance

JUDGMENT
(Delivered by V.RAMASUBRAMANIAN,J.)

The above Second Appeal filed under section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) seeking to challenge the judgment and decree of the Principal Sub-Judge, Villupuram made in L.A.C.M.A 33/1999 dated 13.3.2006 wherein by which the Lower Appellate Court enhanced the compensation awarded by the Appellant.

2. It is seen from the records that the Second Appeal was posted before a learned single judge contrary to the standing orders issued by the Hon'ble Chief Justice earlier even though two learned judges on 9.4.2008 and 1.12.2009 pointed out that

the matter should be posted before the appropriate bench. However, when the matter was listed before a learned single judge, he while admitting the Second Appeal framed three substantial questions of law. Under section 13, there was no requirement for framing any question of law as this section providing for Second Appeal do not fetter the power of the court in admitting a matter. 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."

3. The learned single judge while admitting the Second Appeal passed the following interim order:-

> "Interim stay subject to the petitioner / appellant depositing the 50% of the award amount to the credit of Land Acquisition C.M.A.No. 33/99 on the file of the Principal Subordinate Court, Villupuram within eight weeks from the date of receipt of a copy of this order. Failing which compliance of the condition imposed, the order will stand automatically vacated."

4. It transpires that the appellant on 1.6.2007 had deposited a sum of Rs.18,64,350/- before the sub court. Even before that the 1st respondent had filed E.P.No.167 / 2006 before that court seeking to execute the decree obtained by her. In view of the conditional stay granted, she filed M.P.1 of 2008 seeking permission from this Hon'ble court to withdraw the sum deposited before the sub court. It was at that stage, the registry placed the matter before the Hon'ble Chief Justice. The learned Chief Justice, on 29.4.2008 directed the matters to be listed before a division bench and accordingly the direction M.P. was listed before a division bench. The division bench on 25.4.2008 passed the following order:

> "Hence, there will be an order in this petition permitting the petitioners / claimants to withdraw 50% of the amount deposited as per the direction of this Court dated 16.3.2007. The Principal Subordinate Court, Villupuram is hereby directed to invest the balance amount in an interest bearing account with any one of the

Nationalised Banks for a period of three years originally."

5. The appellant in order to provide house-sites to the 105 families of converted Christian Adi Dravidars living in the Kedar, Madura, Sellankuppam Village sent proposals for acquiring lands from that Village. Though the proposals required 6.07 acres, they were able to locate only 5.41 acres (2.19.0 hectares). In that village, the lands belonging to the respondent were all recorded as a punja lands. However, the appellant found that those lands were situated in a higher elevation and fit for converting into house sites. It was also found that the there were approach roads to that land. Therefore, when proposals were sent, it was approved by the District Revenue Officer on 15.2.1999. The District Collector granted approval on 23.3.1999 and a notification was published in the District Government Gazette on 26.3.1999. The lands were initially owned by one Ramamurthy, s/o. Venkatachalapathy. However the said Ramamurthy died and therefore his wife Padmavathy, R1 and his son Kiran Kumar, R2 became the owners of the land.

6. It is not clear as to how the appellant invoke the provisions of T.N.Act 31/78 for acquiring the lands in question for the purpose of an Harijan Welfare Scheme especially when the proposals submitted were admittedly for the purpose of providing house-sites to converted Christian Adi Dravidars. The term Harijan Welfare Scheme is defined under Section3(g) of the Act, which is as follows:-

> "Harijan Welfare Scheme means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans"

7. The term Harijans is also defined under section 2(f) r/w explanation which is as follows:

> "Harijans means members of the Scheduled Castes and include Scheduled Tribes;
>
> Explanation - (1) "Scheduled Castes" means the castes, races or tribes or parts of, or groups within, cases, races or tribes specified in the Constitution (Scheduled Castes) Order, 1950, made by the President under Article 341 of

the Constitution as amended by the Scheduled Castes and Scheduled Tribes Order (Amendment) Act, 1976 (Central Act 108 of 1976)”

8. The Supreme Court has held that the Christian converted Adi Dravidars do not come within the scheduled castes list notified by the President in its judgment in Soosai vs. Union of India. [1985 (Supp) SCC 590] wherein it was observed:-

> “It is apparent that for the purpose of the Constitution the constitutional provisions relating to Scheduled Castes are intended to be applied to only those members of the castes enumerated in the Constitution (Scheduled Castes) Order, 1950 who profess the Hindu or the Sikh religion. Clearly, if it can be contemplated that a Christian belongs to one of those castes, he is barred by reason of paragraph 3, from being regarded as a member of a Scheduled Caste and is, therefore, not entitled to the benefit of the constitutional provisions relating to Scheduled Castes.”

9. For the purpose of providing welfare schemes to the Christian converted Adi Dravidars, the provisions of the Tamil Nadu Act 31/78 cannot be invoked was considered by Chandru J in his judgment in M.Gopal Gounder(deceased) v. The Special Tahsildar, Land Acquisition, Adi Dravidar Welfare Scheme, Gingee [2009(4)M.L.J 1267 (mad)]. The learned judge observed as follows:-

> “The Tamil Nadu Act 31 of 1978 is intended to acquire land only for Harijan Welfare Schemes and the definition of Harijan is as listed in the Presidential notification issued under Article 341 of the Constitution. The Christian Adidravidars stood excluded from the list of castes contained in the Presidential notification. The exclusion of Christian Adidravidars from the list of Scheduled Castes was also held to be not unconstitutional by the Supreme Court in Soosai's case (cited supra). But it must be pointed out that the very issue has again taken up and being heard by a larger bench of the Supreme Court. It is yet to decide the validity or otherwise of the exclusion of the Christian Converted Adi-dravidars from availing the benefits provided under Article 46 of the Constitution.”

10. It is rather unfortunate that the authorities (including the appellant herein) who are empowered to enforce the provisions of the Act are not even aware of the legal principles involved in invoking the provisions. It is to their fortune that the respondents herein did not appear in the enquiry initiated by the appellant and only through their counsel objected to the acquisition and were willing to part with the lands provided higher compensation were given to them. If only there was a legal objection, the entire acquisition under T.N.Act 31/78 would have been nullified.

11. The appellant in order to fix the market rate of compensation called for sale data from the Office of Sub-Registrar, Alliyur for a period of three years from 26.3.1996 to 26.3.1999. They were able to gather details of 59 sale transactions. Though it was found in respect of 30 transactions, the soil, and the assessment were the same. Since the lands were located at distance, the authority rejected those details. In respect of four other transactions, the soil and assessment were different and the lands were also situated far off and hence they were rejected. In respect of 8 transactions, the sale was in respect of two different survey numbers, they were also not relied upon. In respect of one sale deed, the lands were both nanjai and punjai and they were not relied upon. In respect of 4 other transactions, the sale of the land was including a well and a motor shed and therefore they were not comparable. In respect of one transaction, though the land was situated nearer, it was of a smaller extent. In respect of the sale relating to survey no.246, which is closer to the acquired land, the transaction was between the relatives and it was undervalued. The authority also rejected the sale transaction relating to survey no.246/10 to the extent of 47 ½ cents out of a larger extent of 85 cents was sold at Rs.26,325/- as per sale deed no. 1248/98 dated 31.12.98. As per that valuation the cost of the lands works out to Rs.55,421/- per acre or Rs.1,36,980/- per hectare. He found to take note of the appropriate data land as the land covered by sale deed no.1106 dated 17.10.98 in survey no.244/11, 244/2, and 244/3 to the extent of 0.18 acres was sold at Rs.4,000/- and the rate works out to Rs.25,000/- per acre or Rs.61,750/- per hectare. Together with the 15% solatium, he fixed the compensation payable to the respondent as follows:

2.19.0 hectares (Rs.61,750/- per hectare)	:	Rs.1,35,233/-
15% Solatium	:	Rs. 20,285/-
Total		Rs. 1,55,518/-

12. The Appellant filed writ petition before this court being W.P.No. 50272/ 1999 and challenged the acquisition. The said writ petition was disposed of on 8.10.1999.

13. Aggrieved by the low rate of compensation, the respondent preferred an appeal under section 9 of the Act before the Principal Sub court, Villupuram and demanded higher rate of compensation. On the side of the respondent, the 1st respondent was examined as PW1 and through her 14 documents were filed as exhibit A1 to A14. On the side of the appellant, one Sekar who was holding the Office of the Appellant at that time was examined as RW1 and exhibit B1 was marked. The sub court on an analysis of evidence (both oral and documentary) placed before it, came to the conclusion that the compensation ordered was not proper. It also took exception to the fact that the pipeline laid in the land to the extent of 2000 feet was not taken into account. It also found that as per sale deed dated 13.3.1998, the lands on the eastern side to the extent of 6 cents were sold at Rs.30,000/-. Similar was the case of exhibit A14, 6 cents of lands were sold at Rs.30,000/-. Therefore, the value of the land works out to Rs.5,000/- per cent. It also found that in as much as exhibits A13 and A14 which were admittedly prior to the section 4(1) notification if was taken into account the market value of the lands acquired on that day would have been Rs.8,71,000/-. The sub court also noted that the guideline value prescribed by the government in that area was Rs.5,227/- per cent. It also found that the appellant did not take note of the 2000 feet pipeline laid in the land and that RW1 had accepted the same in cross-examination.

14. The sub court also placed reliance upon the judgment of the Supreme Court in the Land Acquisition Officer, Nizamabad District, Andhra Pradesh v. Nookala Rajamallu [2003 (12) SCC 334] and took note of the following passage found in the judgment :

> "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…….
>
> It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);

(ii) it should be a bona fide transaction;

(iii)it should be of the land acquired or of the land adjacent to the land acquired; and

(iv) it should possess similar advantages.

It is only when these factors are present, it can merit a consideration as a comparable case (See The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty (AIR 1959 SC 429)."

15. The sub court gave also deduction towards compensation even though it took note of the valuation found in exhibit A13 and A14. As per the valuation, the value of the land was Rs.5,000/- per cent. Whereas the sub court fixed Rs.4,250/- per cent which includes the valuation for the borewell, well motor shed. We do not find any infirmity in the judgment of the sub court. There is no uniform rule for fixing the rate for deduction towards development charges. In Kasturi & Ors. Vs. State Of Haryana reported in 2003 (1) SCC 354, the Supreme Court upheld the deduction of 20% towards development charges in the following lines:-

"Hence the claim of the appellants that there should have been no deduction out of the compensation amount determined for the entire area acquired is unsustainable. May be the acquired land with potentiality for construction of residential and commercial buildings had some advantages, which aspect is taken note of by the High Court in giving cut of only 20% as against 1/3 normal deduction."

16. Further in Tejumal Bhojwani v. State of U.P [2003 (10) SCC 525], the Supreme Court had observed as follows:-

"It is true that the deduction for development charges ought to be adequately provided for, but it varies from place to place, area to area and amount of developments which are required to be carried out and thus there cannot be any fixed amount of deduction towards development charges. In the present case, we find that the total land acquired was about 27 acres. We are, therefore, of the view that it would be appropriate if the development charges @ 25% is deducted from the compensation awarded to the claimants.”

17. The other grievance projected was that a small exemplar cannot be taken note of as a basis for fixing the rate of compensation. In fact this argument cannot be advanced by the appellant as he had fixed the compensation after rejecting several transactions and took note of a land which was only 18 cents. On the other hand, the sub court took note of a sale of 41 ½ cents of land and also the said land was having closer proximity to the land which was acquired. With reference to the fixation of compensation on the basis of smaller exemplars was concerned, 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.”

18. 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. Consequently, C.M.P.No.1 of 2007 is closed.
gr.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge, Villupuram.

2. The Land Acquisition Officer-cum-Special Tahsildar (ADW), Villupuram .

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

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