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. 294 of 2015
AND
M.P. No. 1 of 2015

1.The Land Acquisition Officer,
(Special Tahsildar ADW),
Harur Town and Post,
Dharmapuri District.

2. The District Collector,
Collectorate, Bharathipuram,
Dharmapuri - 5 .. Appellants

Vs.

1.Duraisamy,
2.Ponnusamy .. 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 Sub Court, Harur made in C.M.A.(L.A.)No.18 /2008 dated 17.8.2012.

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

For Respondents : M/s.R.Subramanian I.Abrar Md.Abdullah

JUDGMENT

(Delivered by V.RAMASUBRAMANIAN,J.)

The above Second Appeal is directed against the Judgment and decree passed by the Sub Court, Harur made in C.M.A.(L.A.)No.18 / 2008 dated 17.8.2012 wherein by which the sub court enhanced the compensation in favour of the respondents. The appeal was filed beyond limitation in order to condone the delay of 470 days. The appellant filed M.P.No.2 of 2014. The delay was condoned by a division bench on 5.3.2015 on the condition that the appellants pay Rs.1000/- as costs. Thereafter when the matter came up for admission before another division bench on 2.6.2015, it was admitted and the bench also framed three substantial questions of law even though there was no requirement for the same. A reading of section 13 of the The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) does not show that it has some fetters on admitting a Second Appeal. 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."

2. Pending the appeal in M.P.1 of 2015, the division bench passed the following interim order:-

> "There shall be an order of interim stay on condition that the petitioners-appellants deposit 50% of the award amount, with the proportionate accrued interest and costs, to the credit of LACMA No.18/2008, on the file of the Subordinate Judge, Harur, within a period of eight weeks from today, failing which, the interim order granted today would stand vacated, automatically, without further reference to this Court."

3. In order to provide housing facilities to the Adi Dravida families living in Rasalampatti Village, Harur Taluk, proposals were sent for acquiring the land of the respondents situated in survey nos. 34/B, 34/2D, 38/UC, 34/1D, 34/1A and 35/9 in the same village to the extent of 3 .61.5 hectares or 8.9 acres. The proposals were approved by the District Collector, Dharmapuri and a notification was published in the District Government Gazette. Award enquiry was conducted by the appellants and it was claimed that there was no opposition from the land owners.

4. In order to fix the market rate of compensation, details were called for from the Office of the Sub-Registrar, Morappur for a period of one year prior to the notification date. After rejecting most of the transactions, the authority took note of the transaction sale deed no.294 dated 5.5.95 wherein a land to the extent of 1.03 acres situated in survey nos. 46/3A, 46/3C and 46/3D together with 1/3rd share in the well were said to have been sold for Rs.42,000/-. The land value alone was shown as Rs.37,000/-. The land was registered as manavari punjai and it was claimed that in all respects it was comparable to the land which was sought to be acquired. Therefore the authority fixed rate of compensation as Rs.88,727/- per hectare and directed that the compensation to be paid together with a solatium @15%.

5. Aggrieved by the low rate of compensation, the two respondents herein preferred an appeal under section 9 of the T.N.Act 31/78 before the sub court, Dharmapuri. It was taken on file as C.M.A.(L.A) 1/2005 by that court. Subsequently, the matter was transferred to the Court of Sub-ordinate Judge, Harur wherein it was assigned a new number as C.M.A.(L.A.) 18/2008. Before the sub court, the two respondents had examined themselves as witnesses as CW1 and CW3 respectively and one Kullu alias Theertha Gounder was examined as CW2. On their side, 5 documents were filed and marked as exhibits C1 to C5. The witness examined CW2 was the vendor in the sale deed dated 25.10.95 marked as exhibit C3.

6. On the side of the appellants, Dharmaraj, who was the then office holder was examined as RW1 and through him the award proceedings were marked as exhibit R1. The exemplars filed and proved by the appellants contained the following details:

Ex.C1. Sale Deed dated 12.9.1996
S.No. 54/8 (24/4)
1429 sq.ft sold for Rs.31,000/-
Value per sq.ft Rs.21/-

Ex.C2. Sale Deed dt. 17.02.1995
S.No.36/6, 2520 sq.ft sold for
Rs.65,000/- Land value shown as
Rs.27,220/- @ Rs.11/- per sq.ft

Ex.C3. 25.3.1995
S.No. 36/1B
2175 sq.ft. sold for Rs.23,900/-
@Rs.10.99 per sq.ft

7. The 1st appellant who was examined as RW1 also admitted that the land which were sought to be acquired was situated abutting the Morappur-Harur Road. Taking note of these facts, the sub court fixed a compensation of Rs.4,79,600/- per acre. It also granted 10% towards escalation cost for a period of 2 years. After allowing a deduction of 30% towards development charges, the compensation came to Rs.4,02,864/- per acre. Then it was rounded off to Rs.4,00,000/- per acre.

8.It is this enhancement which is challenged in this Second Appeal and it was contended that the documents relied on by the sub court were not reliable and were of smaller extent of land. However, in Lucknow Development Authority v. Krishna Gopal Lahoti [2008(1) SCC 554], it was observed 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."

9. The sub court also referred to a judgment of the Supreme Court in Valliyammal v. Special Tahsildar (Land Acquisition) [2011 (8) SCC 91], for the purpose of granting escalation cost and also fixing the percentage of development charge to be deducted. In that judgment, it was observed as follows:-

"The second error committed by the High Court is that while fixing market value, it did not take into account the escalation in land prices. In Ranjit Singh v. U.T. of Chandigarh (1992) 4 SCC 659, Land Acquisition Officer and Revenue Divisional Officer v. Ramanjulu (2005) 9 SCC 594, Krishi Utpadan Mandi Samiti v. Bipin Kumar (2004) 2 SCC 283, Sardar Jogendra Singh v. State of U.P. (2008) 17 SCC 133, Revenue Divisional Officer-cum-L.A.O. v. Shaik Azam Saheb (supra) and Oil and Natural Gas Corporation Ltd. v. Rameshbhai Jivanbhai Patel (supra), this Court has repeatedly held that the exercise undertaken for fixing market value and determination of the compensation payable to the landowner should necessarily involve consideration of escalation in land prices. In the last mentioned judgment, the Court noticed the earlier precedents and observed as under:

"We have examined the facts of the three decisions relied on by the respondents. They all related to acquisition of lands in urban or semi-urban areas. Ranjit Singh related to acquisition for development of Sector 41 of Chandigarh. Ramanjulu related to acquisition of the third phase of an existing and established industrial estate in an urban area. Bipin Kumar related to an acquisition of lands adjoining Badaun-Delhi Highway in a semi-urban area where building construction activity was going on all around the acquired lands.

Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.

On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same.

Normally, recourse is taken to the mode of determining the market value by providing appropriate escalation over the proved market value of nearby lands in previous years (as evidenced by sale transactions or acquisitions), where there is no evidence of any contemporaneous sale transactions or acquisitions of comparable lands in the neighbourhood. The said method is reasonably safe where the relied-on sale transactions/acquisitions precede the subject acquisition by only a few years, that is, up to four to five years. Beyond that it may be unsafe, even if it relates to a neighbouring land. What may be a reliable standard if the gap is of only a few years, may become unsafe and unreliable standard where the gap is larger. For example, for determining the market value of a land acquired in 1992, adopting the annual increase method with reference to a sale or acquisition in 1970 or 1980 may have many pitfalls. This is because, over the course of years, the "rate" of annual increase may itself undergo drastic change apart from the likelihood of occurrence of varying periods of stagnation in prices or sudden spurts in prices affecting the very standard of increase." ..

"Though it may appear repetitive, we deem it necessary to mention that the acquired land is situated in the close vicinity of various residential colonies, educational institutions, hospitals etc. and is on the junction of two important roads. Therefore, it can safely be concluded that the land is semi-urban and has huge potential for being developed as housing sites and the High Court should have added 10% per annum escalation in the price specified in the sale deeds relied upon for fixing market value of the acquired land. "

"We may have sustained 20% deduction keeping in view the smallness of the plots which were sold vide sale deeds dated 4.9.1990 and 8.2.1991, but, in the peculiar facts of the case, we think that it will be wholly unjust to allow such deduction. Majority of the appellants have been deprived of their entire landholding and they have waited for 14 to 20 years for getting the compensation. It appears that in compliance of the interim orders passed by the Court, some of the appellants did get 25% and one of them get 35% of the compensation, but majority of them have not received a single penny towards compensation and at this distant point of time, it will be wholly unjust to deprive them of their legitimate right by approving the 20% deduction made by the High Court. In such matters, the Court cannot be oblivious of the fact that the landowners have been deprived of the only source of livelihood, the cost of living has gone up manifold and the purchasing power of rupee has substantially declined."

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 2015 is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gr.

To

1. The Land Acquisition Officer,
Special Tahsildar ADW Harur Town and Post,
Dharmapuri District.

2. The District Collector,
Collectorate, Bharathipuram,Dharmapuri - 5

3. The Subordinate Judge
Harur

4. The Section Officer,
VR Section,
High Court, Madras

S.A.No. 294 of 2015

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