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. 137 of 2011
AND
M.P.No. 1 of 2011

The Special Tahsildar,
Adi Dravida Welfare,
Krishnagiri. … Appellant/Land Acquisition Officer/Respondent

Vs.

1.M.Ramachandran
2.S.Rathinammal … Respondent/Claimants/Appellant

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 Sub Court, Krishnagiri made in C.M.A LACMA(L.A)No. 1/2000 dated 24.1.2005.

For Appellant : Mr.M.Venugopal,
Special G.P. (Civil Suit)
for S.Babu Government Advocate

For Respondents: Mr. K.Sasindran

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 Court, Krishnagiri made in C.M.A (L.A)No. 1/2000 dated 24.1.2005.

2. The above Second Appeal was filed beyond the period of limitation and accordingly an application in M.P.1 of 2008 was filed to condone the delay of 728 days. After notice a division

bench of this court by an order dated 16.12.2009 condoned the delay on the following condition:

> "However, taking note of the fact that the impugned judgment came to be passed exparte and as we are convinced with the reasons adduced on behalf of the petitioner explaining the delay involved, we condone the delay. However, to offset any prejudice caused to the respondents, such condonation of the delay is ordered subject to the condition that the petitioner / appellant deposits a sum of Rs.6,00,000/- (Rupees Six Lakhs only) to the credit of L.A.C.M.A.1 of 2000 within six weeks from the date of receipt of a copy of this order. Failing compliance of the condition imposed, the benefit conferred under this order shall automatically cease to operate."

3. It was claimed by the appellant that the order copy was received by them on 2.2.2010 and accordingly they deposited two cheques each for Rs.3,00,000/- with sub court, Krishnagiri on 15.3.2010. But since the registry felt the appellant had not complied with the order, the Second Appeal was automatically dismissed even at the unnumbered stage in view of the self working order passed by the division bench noted earlier. Therefore the appellant filed M.P.1 of 2010 to set aside the earlier self working order. The division bench on that application passed the following order:-

> "Having considered the above facts and in as much as the petitioner complied with the condition imposed within the stipulated time limit of six weeks by making the deposit, we are convinced that the benefit granted in the order dated 16.12.2009 should continue to accrue to the benefit of the petitioner. The Registry shall therefore accept the cost memo now filed by the petitioner and number the second appeal and post it for admission. Accordingly M.P.No.1 of 2010 is disposed of."

4. Subsequently the matter came up for admission before another division bench on 1.3.2011. The division bench framed four substantial questions of law under the impression that the second appeal arose 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) does not show that it is fettered by any riders. 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."

5. Pending the appeal in M.P.1 of 2011, the court granted the interim stay with the following conditions:-

> "There will be an order or interim stay on condition that the petitioner/appellant deposits a sum of Rs.16,00,000/- (Rupees Sixteen Lakhs only) to the credit of L.A.C.M.A. No.1 of 2000 on the file of Sub Court, Krishnagiri. We are informed that a sum of Rs.6,00,000/- (Rupees Six lakhs only) has already been deposited before the Sub Court, Krishnagiri at the time when the application for condonation of delay was considered by this court.
>
> In view of the above, the petitioner / appellant is directed to deposit the remaining amount of Rs.10,00,000/- (Rupees ten lakhs only) within a period of eight weeks from the date of receipt of a copy of this order or on production of the same by the respondents. On such deposit, the Sub Court, Krishnagiri shall permit the respondents to withdraw a sum of Rs.10,00,000/- (Rupees ten lakhs only) on an application is made by the respondents before the said court. If the amount, as directed in this order, is not deposited, the interim stay shall stand automatically vacated and the respondents are entitled to pursue their remedy in accordance with law, for implementation of the order of the Sub Court."

6. The appellant in order to provide house-sites to the 60 Adi Dravida families living in Kattiganappalli-Devasamudhiram Village in Krishnagiri Taluk sent proposals to acquire lands belonging to the respondent. It was decided to acquire lands in survey nos. 275/1, 275/3, 277/5 and 275/2 to the extent of 0.94.0 hectares. In that excepting the 4^{th} survey number, the other 3 survey numbers were manavari punjai lands. The last survey number was rocky land kept as waste land. Initially, proposal for acquisition was made on 14.12.1994 under the Central Act 1/1894. An enquiry under section 5A was conducted by the appellant on 30.1.95. The objections of the land owners were rejected. When a declaration under section 6 was sent to

the state government, approval was granted in G.O.(3D) No.806, Adi Dravida and Scheduled Tribe Welfare Department dated 6.7.95. A gazette notification was also published in the State government Gazette.

7. In the meanwhile, the State Government issued G.O.Ms.No.143 Adi Dravida and Scheduled Tribe Department stating that the provisions of the T.N.Act 31/78 should be invoked for any scheme involving Harijan Welfare. Therefore, the District Collector, Dharmapuri was given the proposal under section 4(1) of the State Act. The proposals were accepted and published in the District Government Gazette. In the further enquiry, the land owners did not appear.

8. In order to fix the market rate of compensation, the appellant called for details of the sale transactions available with the Joint Sub-Registrar-II, Krishnagiri for the period from 12.10.94 to 11.10.95. They were able to get details of 107 land sale. The prescribed authority rejected 82 transactions as they were situated near the Krishnagiri Municipality whereas the lands sought to be acquired was within the Panchayat areas. 7 transactions were also not taken into account as they were nanja lands. 5 transactions were lands situated within the municipal limits. In respect of 6 transaction there were lands sold while under mortgage. 6 other transactions were situated in far off places. After rejecting 106 transactions, the authority shortlisted the transaction relating to survey no.312/1B to the extent of 0.46.0 hectare punja land covered by registered sale deed no. 702 dated 25.7.95. It was sold for Rs.49,000/- and it was taken as a data land. The land sought to be acquired and the data land was of the same type with reference to soil, taram. Therefore, based upon the rate calculated as per the data land, the authority decided to provide compensation at the rate of Rs.87,133/- per hectare together with a solatium of 15%.

9. Aggrieved by the low rate of compensation, the respondents preferred an appeal under section 9 of the T.N.Act 31/78. The appeal was taken on file as C.M.A.(L.A.) 1 /2000. Before the Appellate Court, the 1st respondent examined himself as PW1 and on his side 3 documents were filed relating to 3 sale deeds and they were accordingly marked as exhibits C1 to C3. The appellant despite notice did not appear and hence exparte proceedings were initiated. No steps were taken to set aside the exparte order and no opportunities were asked for to lead evidence on the side of the appellant. The sub court found that the lands sought to be acquired were situated near the Krishnagiri town and the lands covered by exhibit C3 was sold at Rs.25,000/- which had an extent of 1800 sq.ft. Therefore the market rate per acre of the land at that time Rs.11,24,600/- per acre.

10. Even before this court, the appellant did not explain as to why they had remained exparte and also the steps taken by them to get the exparte order set aside in the manner known to law. Therefore it is not open to them to raise any contentions with reference to the exemplar preferred by the sub court and also the market rate of compensation arrived at by the court below. The contentions raised that the smaller exemplars cannot be taken note of for fixing the compensation cannot be accepted in the light of the judgment of Supreme Court in Rishi Pal Singh v. Meerut Development Authority [2006(3) SCC 205], it was 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."

11. One other contention was with reference to payment of different rates of interest is concerned, reliance is placed upon section 12 of the Act wherein uniform rate of 6% has been prescribed. But that rate will apply only to the amount fixed by the prescribed authority not to the court which is to decide the enhanced rate of compensation.

12. The last contention with reference to the denial of deduction towards development charges by the court below and a reliance is placed upon the judgment of the Supreme Court reported in [2003(12) SCC 334] wherein 53% deduction towards development charges was provided. In this case, appellant never appeared before the court below. Secondly, the case referred to by the appellant , the development charges were based upon the facts of the case as can be seen from the said judgment and it reads as follows:

> "On applying the principles of law as set out in various decisions referred to above to the facts of the case we feel that deduction at the rate of 53% from the value indicated in Ex.B/4 would bring the rate per square yard to be around Rs.40/-."
>
> (see : The Land Acquisition Officer, Nizamabad, Andhra Pradesh Vs Nookala Rajamallu And Ors. 2003 (12) SCC 334)

13. In the present case, the evidence let in by the respondents clearly show that the lands were situated very near the Krishnagiri town and they can be used as a house-site. It is not in every case the court should fix the compensation after providing for development charges. Even otherwise the demand for the same will have to come from the acquiring authority by making proper request. In fact, courts have gone to the extent of insisting upon the provision for escalation on an annual basis. In the judgment in Valliyammal v. Special Tahsildar (Land Acquisition) [2011 (8) SCC 91], it was held 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."

14. 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.

15. It must be noted that in the present case, the acquisition proceedings were initiated as early as from the year 1994 under the Central Act. Thereafter the provisions of the State Act was invoked. Thus the proceedings have been kept pending for the last 20 years. If one has to award escalation cost to the land owners, the compensation will be much higher. The appellants will have to blame themselves for remaining exparte in the proceedings before the sub court.

16. 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. MP closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//
Sub Assistant Registrar

gr/kpl

To:
1. The Special Tahsildar, Land Acquisition Officer,
Adi Dravida Welfare, Krishnagiri.

2. The Principal Sub Judge, Krishnagiri.

+1 cc to M/s.P.Mani, Advocate, sr.31169
+1 cc to M/s.Ramya Reddy, Party in Person, sr.16228

S.A.No.137 of 2011

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