

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Appeal Suit Nos.882, 532 & 537 of 2012

The Special Tahsildar (Land Acquisition)

Tamil Nadu Road Sector Project

Tiruvannamalai

... Appellant in all the appeals/
Referring Officer

-vs-

Rajagopal

S/o Pachappa Konar

.. Respondent in A.S.No.882 of 2012/
Claimant

Natesan

S/o Munusamy Konar

.. Respondent in A.S.No.532 of 2012/
Claimant

Lakshmana Konar

..1st Respondent in A.S.No.537 of 2012/
Claimant

Rama Konar

S/o Annamalai Konar

..2nd Respondent in A.S.No.537 of 2012/
Claimant

Memorandum of Grounds of Regular Appeals under Section 54 of the Land Acquisition Act, against the judgments and decrees dated 28.08.2009 made in L.A.O.P.Nos.3, 1 & 2 of 2008 on the file of the learned Principal Subordinate Judge, Tiruvannamalai.

For Appellant : Mr.P.Gunasekaran
Addl.Government Pleader (AS)

For Respondents : Mr.G.Rajan

COMMON JUDGMENT

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

All these appeals are purportedly filed by the Special Tahsildar (Land Acquisition), Tiruvannamalai, under Section 54 of the Land Acquisition Act, 1894 questioning the correctness of the three awards passed by the Sub Court, Tiruvannamalai in L.A.O.P.Nos.1, 2 & 3 of 2008.

2. Heard Mr.P.Gunasekaran, learned Additional Government Pleader (AS) appearing for the appellant and Mr.G.Rajan, learned counsel appearing for the respondents/land owners.

3. The Government of Tamil Nadu decided to widen and strengthen the existing State roads and to form new bye-pass roads in important towns under Phase-I, from Cuddalore to Tuticorin and under Phase-IA from Arcot to Tiruvarur, with World Bank loan assistance. The District Collectors of various districts were authorised by the Government under G.O.Ms.No.174, Highways Department dated 25.9.2001 for acquiring the lands through private negotiations.

4. Insofar as Tiruvannamalai district is concerned, the Government approved the acquisition of lands from 47 villages in four taluks for widening of the existing roads and the acquisition of lands in 18 villages located in three taluks for forming the new bye-pass.

5. Insofar as the formation of bye-pass road was concerned, the lands located in 8 villages were involved in the acquisition. Vengikkal village is one of those eight villages from which a vast extent of land was proposed to be acquired. The lands were located in two sub-divisions of the village. The District Collector was successful in acquiring the lands located in 13 sub-divisions of the said village through private negotiations.

6. However, the land owners of the lands located in 7 sub-divisions refused to accept the value fixed by the Collector as per G.O.Ms.No.40, Highways Department dated 25.2.2003.

7. As a consequence, notices under Section 15(2) were served on the pattadars of the lands in 7 sub-divisions, on 11.10.2005. Form 'B' notices were published in the newspapers on 19.3.2006. Thereafter the Government issued G.O.Ms.No.133, Highways Department dated 15.5.2007 and the same was published in the Government Gazette on 6.6.2007. The acquisition was proposed to be done in terms of the provisions of the Tamil Nadu Highways Act, 2001.

8. By an award bearing Award No.1 of 2007 passed on 27.8.2007, the Land Acquisition Officer fixed the compensation at Rs.500/- per cent. Aggrieved by such fixation, the land owners sought a reference under Section 20(1) of the Tamil Nadu Highways Act, 2001.

9. Since there were different land owners, the references were taken up by the Tribunal, namely, the Principal Sub Court, Tiruvannamalai in L.A.O.P.Nos.1, 2 & 3 of 2008. By separate awards passed on the same date, namely, 28.8.2009, the Tribunal enhanced the compensation to Rs.65/- per square feet, from Rs.500/- per cent. Aggrieved by such exorbitant enhancement, the Land Acquisition Officer has come up with the above three appeals.

10. At the outset, we have our own doubts about the very maintainability of these appeals. The Tamil Nadu Highways Act, 2001 is a complete code in itself. It makes a reference to the provisions of the Land Acquisition Act, 1894, only for the purpose of determining the quantum of compensation and also for the purpose of making a reference to the Court, if the land owners are aggrieved by the quantum fixed by the Collector.

11. Section 19 of the Tamil Nadu Highways Act, 2001 prescribes the procedure for determination of compensation. Sub-section (6) of Section 19 stipulates that in determining the amount of compensation, the Collector shall be guided by the provisions of Sections 23 and 24 and other relevant provisions of the Land Acquisition Act, subject to the modification that in the said Sections 23 and 24, the reference to the date of publication of the notification under Section 4(1) and the date of publication of the declaration under Section 6 shall be construed as reference to the date of publication of the notices under sub-sections (2) and (1) of Section 15. This is the first area in which the Tamil Nadu Highways Act, 2001 borrows from the provisions of the Land Acquisition Act, 1894.

12. The next reference to the Land Acquisition Act, 1894 is to be found in Section 20(1) of the Tamil Nadu Highways Act, 2001. Sub-section (1) of Section 20 of the Tamil Nadu Highways Act, 2001 states that a person aggrieved by a decision of the Collector, may seek a reference within sixty days, for the determination by the Court of the compensation. But sub-section (1) of Section 20 makes it clear that whenever an application for a reference to a Court is made, the provisions of Part III of the Land Acquisition Act, 1894 would apply. Part III of the Land Acquisition Act, 1894 comprises of Sections 18 to 28A.

13. The right of a person to file an appeal as against the award of the Tribunal, stems out of Section 54 of the Land Acquisition Act, 1894, which is found in Part VIII of the Land Acquisition Act, 1894. There is no provision in the Tamil Nadu Highways Act, 2001 which makes the provisions of Part VIII of the Land Acquisition Act, 1894 applicable to the Tamil Nadu Highways Act, 2001. That apart, sub-section (2) of Section 20 declares that the decision of the Court on such a reference, shall be final. In other words, a finality is attached to the award of the Land Acquisition Tribunal under Section 20(2) of the Tamil Nadu Highways Act, 2001. Therefore it appears that a regular appeal under Section 54 of the Land Acquisition Act, 1894 may not be maintainable as against an award passed by the referring Court under Section 20(1) of the Tamil Nadu Highways Act, 2001. The only remedy open to the Land Acquisition Officer and to the land owner, may perhaps be to file a revision under Article 227 of the Constitution, as against the award passed by the Land Acquisition Tribunal.

14. Since the matter has come up before this Court, which has plenary jurisdiction as well as supervisory jurisdiction, which is both administrative and judicial, we thought it fit to deal with the matters on merit, despite the doubts that we have

raised with regard to the maintainability of the appeals. This is in view of the fact that in any case we have a supervisory jurisdiction under Article 227.

15. As a matter of fact, the Tamil Nadu Highways Act, 2001 contains a provision in Section 69, which declares that the provisions of this Act will override the provisions of any other law. Therefore the invocation of Section 54 of the Land Acquisition Act, 1894 may not be appropriate. But we would treat the appeals nevertheless as revisions under Article 227.

16. Having resolved the doubt with regard to the maintainability of the appeals, we shall now turnover to the question of quantum of compensation. As we have indicated earlier, the notice under Section 15(2) was published on 19.3.2006. The Land Acquisition Officer took note of the fact that during the period of one year from 19.3.2005 to 20.3.2006, a total of 152 sale transactions had taken place. Out of them, the Land Acquisition Officer took into account only one sale deed wherein a land in Survey No.22/4 measuring an extent of about one acre was sold for Rs.58,900/-. But the sale consideration included 1/6th share of the owners in a well and 1/6th share in a 5 Horse Power electric motor. Therefore the Land Acquisition Officer segregated the land value alone as Rs.50,000/- per acre and consequently arrived at the compensation as Rs.500/- per cent.

17. Before the Reference Court, one land owner was examined as C.W.1 and the Referring Officer was examined as R.W.1. Two sale deeds were filed as Exhibits C-1 and C-2. They were dated 26.5.2005 and 6.6.2005 respectively.

18. The copy of the award, an eye-witness sketch and statistics of data sales were marked as Exhibits R-1 to R-3 on the side of the Referring Officer.

19. On the basis of Exhibits C-1 and C-2, the Land Acquisition Tribunal came to the conclusion that the market value of the land in the year 2005 came to Rs.54/- per square feet. Since the Tribunal took the date of notification under Section 15(2) to be 6.6.2007, the Tribunal gave an escalation in the price at the rate of 10% per year and arrived at the compensation of Rs.65/- per square feet.

20. Assailing the correctness of the award, it is contended by Mr.P.Gunasekaran, learned Additional Government Pleader that the increase was exorbitant and that the lands of a smaller extent, covered by Exhibits C-1 and C-2, ought not to have been taken as the guiding factor.

21. We have carefully considered the above submissions. Keeping in mind the fact that Section 20(2) of the Tamil Nadu Highways Act, 2001 attaches finality to the award of the Tribunal and that as a consequence, our powers are not equal to that of a regular appellate Court but equal only to that of a revisional Court, we shall examine the correctness of the awards in question.

22. Interestingly, Exhibits C-1 and C-2 are not the sale deeds created by individuals. As observed in the award of the Land Acquisition Officer himself, the Government issued G.O.Ms.No.40, Highways Department dated 25.2.2003, accepting the compensation arrived through negotiations between the land owners and the District Collector in the meeting held on 25.1.2005 at the collectorate during the district level private negotiation talks. As we have indicated earlier, the lands in 20 sub-divisions of 8 villages were taken up for acquisition through private negotiation. Out of them, the owners of the land in 13 sub-divisions accepted the rate offered in the negotiation held on 25.1.2005. Unfortunately the respondents in these three appeals were those who did not accept the rate offered in the district level private negotiation meeting held on 25.1.2005.

23. Exhibits C-1 and C-2 were the sale deeds executed by the land owners in those 13 sub-divisions, in favour of the Tahsildar, Tiruvannamalai Taluk, conveying the lands of the extent of 27 cents and 8 cents in new Survey Nos.66/4 and 66/3, respectively. The rate as per Exhibits C-1 and C-2 admittedly works out to Rs.54 per square feet. If the respondents had accepted the offer made during negotiations, they would have got Rs.54/- per square feet. For not being satisfied with the rate offered in the negotiations, the respondents were penalised by the Land Acquisition Officer with an offer of Rs.500/- per cent that works out to little more than Re.1/- per square feet.

24. Therefore the Tribunal was correct in going by the value reflected in Exhibits C-1 and C-2. Though the lands covered by Exhibits C-1 and C-2 were measuring 27 cents and 8 cents respectively, the district level negotiation committee has offered Rs.54/- per square feet. The survey numbers in which those lands were located are 66/3 and 66/4.

25. The lands acquired from the respondents herein are the lands located in Survey Nos.63/1, 63/3, 64/2, 64/3 and 64/8. These lands are obviously located adjoining the lands covered by Exhibits C-1 and C-2. Therefore the Tribunal was justified in going by the Exhibits C-1 and C-2, which were the sale deeds in favour of the Collector himself, executed pursuant to the negotiation.

26. That takes us to the next question as to whether the escalation given by the Tribunal was correct or not. The Tribunal has taken the date of notification as 6.6.2007. But it appears that the date of notification under Section 15(2) was actually 19.3.2006. This is why the Land Acquisition Officer, in his award, has taken note of the 152 sale transactions that had taken place from 19.3.2005 to 20.3.2006. Therefore the Tribunal could have awarded only one escalation for the year 2006 and not an escalation for the year 2007. This mistake on the part of the Tribunal needs to be corrected.

27. Similarly, the Tribunal committed one more mistake, namely, that of awarding interest at 12% per annum on the compensation amount from the date of the notification for acquisition till the date of the award. This was in addition to interest at the rate of 9% for a period of one year from the date of taking possession, namely, 14.9.2007 and thereafter at the rate of 15% till realisation. While the grant of interest at 9% per annum from the date of taking possession is as per Section 24 of the Tamil Nadu Highways Act, 2001, which reads as follows,

24. Payment of interest.--When the amount is not paid or deposited on or before taking possession of the land, the Government shall pay the amount determined with interest thereon at the rate of nine per cent per annum from the time of so taking possession until it shall have been so paid or deposited,

the grant of interest at 12% per annum from the date of notification till the date of award, cannot be traced to any provision contained in the Act. Therefore this mistake also needs to be corrected.

28. In the result, we find that the market value arrived at by the Land Acquisition Tribunal needs a small correction and the interest awarded for one particular period requires to be set at naught. Accordingly, the appeals are treated as revisions and they are allowed modifying the awards passed by the Tribunal in L.A.O.P.Nos.1, 2 & 3 of 2008 to the following effect:-

- (i) The Compensation is fixed at Rs.60/- per square feet (Rs.54/- as fixed by the district level negotiation committee in the year 2005 enhanced by 10%, in correlation to the date of the notification in March, 2006).
- (ii) The respondents will be entitled to interest at 9% per annum as per Section 24 from the date of taking possession insofar as the enhanced compensation is concerned.

(iii) The appellant shall deposit the amounts as calculated, within a period of eight weeks from the date of receipt of a copy of this order.

Consequently, M.P.Nos.1 & 2 of 2012 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Subordinate Judge
Tiruvannamalai

2. The Special Tahsildar (Land Acquisition)
Tamil Nadu Road Sector Project
Tiruvannamalai

+ 3ccs to the Additional Government Pleader SR.56634 to 56636

+ 3 ccs to M/s. G. Rajan, Advocate Sr.56333 to 56335

A.S.Nos.882, 532 & 537 of 2012

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