

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

S.A NO. 1756 of 2003

AND

C.M.P.Nos. 16035 of 2003 and 4990 of 2004

The Special Tahsildar,
Harijan Welfare,
Cuddalore. Appellant/Respondent/Referring Officer.

Vs.

Kalaiselvi Respondent/Claimant/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 Sub-ordinate Judge, Cuddalore made in L.A.C.M.A.8/99 dated 19.4.2002, to modifying the award dated 30.6.99 made in Award No.1 of 1999-2000 by the Special Tahsildar, ADW, Cuddalore.

For Appellant : Mr. M.Venugopal,
Special G.P. (Civil Suit)
For Respondent : M/s. P.Mathivanan,

JUDGMENT

(Delivered by V.RAMASUBRAMANIAN,J.)

The above Second Appeal is directed against the judgment and decree passed by the Sub-court, Cuddalore in L.A.C.M.A.8/99 dated 19.4.2002 in as much as it has enhanced the compensation awarded by the Appellant in Award No.1/99-2000 dated 30.6.1999.

2. The appeal was filed beyond limitation and the delay of 286 days in filing the Second Appeal was sought to be condoned by filing CMP No.14124 of 2003. When the matter came up before a Division Bench on 16.9.2003, notice was ordered to the Respondent. On the Respondent appearing through their counsel delay was condoned on 9.10.2003. Thereafter the Respondent filed Caveat in Caveat no.4783 of 2003. The Second Appeal was admitted on 18.11.2003 and the Division Bench had framed 8 substantial

questions of law. This was under the impression that the Second Appeal was filed not only under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) but also under Section 100 CPC. A reading of Section 13 of the T.N.Act 31/78 clearly shows that the condition for filing a Second Appeal was not restricted. 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."

3. Pending the Appeal by an order dated 18.11.2003, the Division Bench passed the following interim order in CMP No.16035 of 2003 :

"We are not inclined to grant any stay in this case, but we want to impose some conditions. The entire enhanced compensation shall be deposited within a period of two months from the date of receipt of a copy of this order. On such deposit, the Claimant shall be entitled to withdraw half of the deposited compensation without furnishing any security and the other half in furnishing either bank guarantee or immovable property security at the option of the Claimant."

4. The Appellant thereafter filed an application in CMP No.4990 of 2004 seeking for extension of 10 weeks time to comply with the order and also to condone the delay in filing the application as admittedly the said application was filed after the time limit fixed by this court had expired. However, no orders were passed in the said application. It is also not clear whether the Appellant has complied with the order or not as no memo of compliance was filed by him into this court.

5. In order to provide house sites to the Adi Dravida people in the Pallipattu Village, Cuddalore Taluk, proposals were initiated for acquiring lands under the Central Act 1/1894. The lands identified were situated in Pallipattu Village in Resurvey No. 46/2, 46/3A and 46/3B (total extent 2.70.0 hectares), all belonging to the Respondent. An Award was passed in Award No.9/94-95 dated 10.2.1995. However, even before the

passing of the Award under the Central Act, the Supreme Court on 22.11.1994 upheld the validity of Tamil Nadu Act 31/1978 in the case relating to the State of Tamil Nadu & Ors. Vs. Ananthi Ammal [1995 (1) SCC 519]. In that case, after upholding the Act, the Supreme Court held that any acquisition for Harijan purpose will have to be taken under the State Act and not under the Central Act. The only safeguard was that in case Awards which were made before the judgment of the Supreme Court, were not to be disturbed. In Ananthi Ammal Case, the Supreme Court observed as follows:

"We have held the provisions of the said Act to be valid legislation except in so far as they provide for payment of the compensation amount in instalments. The said Act being valid legislation, its provisions preclude the State from acquiring land for the purpose of a Harijan Welfare Scheme under the Land Acquisition Act. The appeal is allowed and the proceedings under the Land Acquisition Act to acquire the appellant's land for the purpose of a Harijan Welfare Scheme are, therefore, quashed and set aside."

6. Taking advantage of the fact that in this case, the Award under Central Act was passed only on 10.2.1995 and the Supreme Court even as early as 22.11.1994 had upheld the validity of T.N. Act 31/78, the Respondent filed writ petition before this court in W.P.15214 of 1994. That writ petition came to be allowed by a learned judge on 22.3.1996. But even before the acquisition proceedings were struck down, the compensation in respect of resurvey nos. 46/2 and 46/3A, the compensation as per the Award was deposited with the Sub-court. In respect of resurvey no. 46/3B, the Respondent land owner had received the compensation from the Office of the Respondent. As against the compensation paid in resurvey no. 46/2, the Respondent filed L.A.O.P. 45/95 and as against the other land for enhanced compensation, L.A.O.P. 130/95 was filed. But however since the Award under the Central Act was set aside by this court on 22.3.1996, the L.A.O.P. was withdrawn. In the meanwhile, as there was a dispute as to who should receive the compensation between the Respondent herein and one Velayudham a suit was filed on O.S.No.94/89 but the suit was ended in favour of Velayudham. The Respondent filed A.S.No.273/92 before this court and by a judgment and decree dated 13.12.1995 it was held that the present Respondent is the owner of the land. Since the reference about the ownership was also referred in L.A.O.P. 44/95 and pending before the Sub-court, the reference was closed on 20.1.1997 in view of the quashing of the Award in the writ petition referred to above. The deposit amount was directed to be refunded to the state.

7. Thereafter the Appellant started the fresh proceedings for acquiring the land under the Tamil Nadu Act 31/78. The proposals were revised as there was need to acquire lands for 130 beneficiary families and they were in need of 3.25.5 hectares. A notice under section 3(1) was issued asking the land owners to submit their objections if any, an enquiry was conducted on 4.5.98. The District Revenue Officer accepted the proposals and accordingly published a notification in the District Government Gazette on 19.8.98. In survey no.46/3B, 46/5 and 47/10, there were standing trees. The Respondent was allowed to cut and remove the trees and therefore no compensation was fixed separately for the trees. Similarly, in survey no.46/3B, there was a borewell and unused motor as well as a motor shed. No separate compensation was awarded in respect of the bore well as per the government directives. In order to fix the compensation and to arrive at the market value, details were called for the sale transactions for a period of 3 years (from 14.9.95 to 15.9.98) from the Office of Sub-Registrar, Cuddalore. The prescribed authority found that there were 44 sale transactions in that area within the radius of 1.6 kilometers. The authority found that in respect of 16 transactions, the lands were nanja lands, 2 transactions, the lands were both a combination of nanja and punja lands. In respect of 2 transactions, they were natham poramboke and vacant house-sites. In respect of 11 transactions, they were vacant house-sites and were having smaller extents. In respect of 9 transactions, they were all lands far away from the lands to be acquired. In respect of 2 transactions, though the lands were sold within one year from the date of acquisition, there was a wide disparity in the sale price, and it was felt that they are not truly reflecting the market sale. In respect of one sale, there was a bore well and it was a joint sale. Thus the prescribed authority after discarding 43 transactions, held that the transaction in respect of resurvey no.35/5 was taken as a data land. In that land, the market price was found as Rs.1 lakh per acre and if the rate was calculated for an hectare of land, it came to Rs.2,47,000/-. Therefore the authority fixed the following compensation at the same rate:-

For 3.25.5 hectares	:	Rs.8,03,985.00
Solatum @15%	:	Rs.1,20,597.75

Total		Rs.9,24,582.75

8. Aggrieved by the low rate of compensation, the Respondent filed an Appeal under Section 9 of the T.N.Act 31/78 before the Sub-Judge, Cuddalore and sought for an enhanced compensation. In construing the scope of section 9 under the State Act, the Supreme Court in Ananthi Ammal, held as follows :

"The court in appeal under section 9 would also, in appropriate cases, have the right to call for additional evidence."

9. Therefore, with the permission of the court, the Respondent examined three witnesses as AW1 to AW3 and through them three documents were filed which were marked as exhibits P1 to P3. On the side of the Appellant, Ramanathan, Deputy Collector was examined as RW1 and through him, the Award proceedings which were under challenge were marked as exhibit R1. It was the evidence of AW1 who deposed that under exhibit A1 he purchased the land at the rate of Rs.1.6 lakhs per acre and the land was in the close proximity to the land sought to be acquired. In this evidence, RW1 admitted that the lands were acquired only for the purpose of house-sites. It was also proved that the data land which was taken as a basis was acquired three years before the notification and it was not having any irrigation facility whereas the Respondent lands were having irrigation facilities. Similarly the transaction exhibit P3 dated 6.6.96 was an extent of 1879 sq.ft which was sold at Rs.1,20,000/-. The land was also nearer to the land sought to be acquired. On the basis this evidence and on the basis of certain legal precedents, the sub-court decided to place reliance upon the sale transaction covered by exhibit P1 to P3 and considering exhibit P3 must be taken as a data land, the market rate was fixed at Rs.8.40 paise per sq.ft., but however it granted a deduction of Rs.2/- roughly providing 24% deduction towards development charges. In that view of the matter, the sub-court granted a compensation of Rs.22,46,272/- for the 3,30,980 sq.ft of land acquired together with a solatium @ 15% of Rs.3,36,940/-. It also granted an interest @6% p.a from 30.6.1999 i.e. the date of Award.

10. It is against this judgment and decree the present Second Appeals were filed. It was contended that the evidence cannot be allowed to be let in, at the appellate stage, without any application. Such an argument is not open to the Appellant in view of the power vested on the Appellate Court under Section 9 and as interpreted by the Supreme Court in the case of Ananthi Ammal. It was further contended that the exemplar in exhibit P3 was not to be taken into account as it was having a smaller extent of land. Such an argument is not available to the Appellant in the light of the judgment of Supreme Court in Rishi Pal Singh Vs. 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. Under the very same Act, in respect of lands acquired for similar purpose, a Division Bench of this court presided by F.M.Ibrahim Kalifulla, J (as he then was) vide its judgment in Land Acquisition Officer Vs. Radhakrishnan Chetty [2010 (1) CTC 527] upheld the valuation calculated based upon per sq.ft and it was in para 29, the Division Bench observed as follows:

"The claimants have produced the sale deed dated 11.4.1997 before the Courts below in which 1800 square feet of land bearing Plot No.23 was sold for Rs.21,500/-. Another sale deed dated 2.5.1997 was produced under which 900 sq.ft of Plot No.11 has been sold for Rs.11,500/-. Therefore, according to the claimant, based on the two sale deeds, the value of the property in question can be fixed at Rs.13/- per sq.ft., which was rightly done by the Courts below."

12. The Supreme Court in Lucknow Development Authority Vs. Krishna Gopal Lahoti [2008 (1) SCC 554] has laid down the following guidelines for arriving at the market rate of compensation.

"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."

13. In this case, the sub-court had taken into account all these factors and correctly arrived at the valuation on the basis of rate per square feet. It also gave a deduction of nearly 24% towards development charges.

14. The sub-court also referred the following judgments of the Supreme Court and quoted relevant passages as found below and followed those precedents:-

"13.1 "The determination of market-value of a piece land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market-value of a piece of property, for purposes of Section 23 of the Act, is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market-value, as one author put it, is the prediction of an economic event. viz, the price- outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market- value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available."

(see : Administrator General Of West Bengal Vs Collector, Varanasi, AIR 1988 SC 943)

13.2 "if the purpose for which the land was acquired, i.e., for the construction of staff quarters in connection with the doubling of the railway line by the South-Eastern Railway, has no bearing on the question of valuation, the future possibilities of the land, which admittedly was agricultural land, lying in the vicinity of Raigarh if applied to the most lucrative use, having regard to its then condition, was very little as a building site...

But as I have already said, the land could be put to a better use provided it was fully developed as a building site. The claimants were, therefore, entitled to the evaluation of the land as agricultural land with an additional allowance being made for its future potentiality as a building site.

(see : Collector, Raigarh vs Dr. Harisingh Thakur & Anr. And ...1979(1) SCC 236)

13.3 "an assessment of compensation payable for land acquired must take into account several factors, including the nature of the land, its present use and its capacity for a higher potential, its precise location in relation to adjoining land, the use to which neighbouring land has been put and the impact of

such use on the land acquired and so on"

(see : Adusumilli Gopala Krishna Vs. Spl. Deputy Collector (Land Acquisition) AIR 1980 SC 1870)

13.4. "in estimating the market value of the land, the proper principle is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the land namely, its proximity to developed urbanized areas"

(see : Suresh Kumar, Appellant Vs. Town Improvement Trust, Bhopal, AIR 1989 SC 1222)

15. 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, connected miscellaneous petitions are also dismissed.
kpl./gr.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge, Cuddalore.
2. The Special Tahsildar, Harijan Welfare, Cuddalore.

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