

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. 776 of 2004

AND

C.M.P No. 6010 of 2004

1.The State of Tamilnadu,
Rep. by the District Collector,
Erode.

2.The District Collector,
Perundurai, Erode.

3. The Special Tahsildar (ADW)
Kangeyam.

.... Land Acquidator Officer/
Respondents/Appellants

Vs.

Aarappa Gounder

... Claimant/Appellant/
Respondent

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, Dharapuram made in C.M.A.18 / 98 dated 3.12.1999.

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

For Respondent : No Appearance

JUDGMENT

(Delivered by V.Ramasubramanian,J.)

The above Second Appeal was filed by the Appellant with a delay of 96 days. In the application under Section 5 of the Limitation Act, in CMP No.13820 of 2002 notice was ordered by a Division Bench on 1.11.2002 returnable by two weeks and private notice was ordered. The delay was condoned by a Division Bench on 23.10.2003. The Second Appeal was admitted on 28.4.2004

and two substantial questions of law were framed by the bench. A reading of Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) will show that there is no rider put up as a pre-condition for 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. At the time of admission in CMP No. 6010 of 2004, the following interim order was passed:-

"There shall be interim stay on condition that the petitioners / appellants deposit half of the enhanced compensation amount within eight weeks from today."

3. The 3rd Appellant in order to provide house-sites to 163 Adi Dravida families living in Thalavaipattinam and other villages in Dharapuram Taluk submitted proposal to the District Collector. It was decided to acquire land in survey no. 328 to the extent of 4.17.0 hectares from the Respondent. The lands were recorded as Ryotwari Punjai in the land register. The notification under section 4(1) was published in the Erode District Government Gazette on 10.12.1997. In order to ascertain the market value of the land, details of sale transactions for one year prior to the notification was called for from the Office of Sub-Registrar, Dharapuram. The prescribed authority selected the data land covered by the sale deed no. 4153 dated 29.10.1997 which was situated in survey no.431 to the extent of 4.16 acres. It was sold at Rs.2 lakhs and therefore the market rate was calculated per acre at the rate of Rs.28,751/-. It was also stated that the data land was also punja land and the quality of the soil and land assessment were approximately equal. The other lands covered by other records were rejected as not comparable. Therefore the authority made an Award in Award No.4/97-98 dated 11.9.1998 and fixed the following compensation:

4.17.0 hectare (10.30 acres)		
@ Rs.28,571/- per acre	:	Rs.2,94,281/-
Solatium @ 15%	:	Rs. 44,142/-

Total	:	Rs.3,38,423/-

4. Aggrieved by the low rate of compensation, the Respondent filed an appeal under section 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) before the Sub-court, Dharapuram. It was taken on file as C.M.A.18/98. The Respondent claimed an enhanced compensation and demanded that it should be fixed at the rate of Rs.2,40,000/- per acre. In that appeal, on the side of the Respondent, three witnesses were examined i.e. the Respondent as CW1 and two other witnesses M/s Venudayagak Gounder and Eswara Murthi as CW2 and CW3 respectively. On his side, he filed two documents. The first was exhibit C1 is the sale deed executed by CW3 and company in favour of the Erode District Collector dated 9.10.95. The second document was exhibit C2 which is the sale deed obtained by CW2 from CW3, dated 25.4.97. On the side of the Appellants, Ponnuraj who was then holding the office of the Appellant was examined as RW1 and on their side the Award at the details of sale transactions as well as topo plans were marked as exhibit R1 to R3.

5. The sub-court found that even in the year 1995 acquisition of land nearer to the land of the Respondent was done by the government and even at that time, the government paid a compensation at the rate of Rs.1,80,000/- per acre. The land covered by exhibit C1 is comparable to the lands which were acquired from the Respondent. As per the evidence let in the lands acquired has got good approach roads. Further, very close to the lands which were acquired, there were brick works, coco factory, spinning mill. Therefore there was no reason to pay lesser compensation than what was paid three years before for a neighbouring land by the government.

6. The sub-court also further found that CW2 purchased land situated on the northern side of the acquired land on 20.4.97 to the extent of 70 cents from CW3 for consideration and he paid Rs.1,54,000/- and he has also filed exhibit C2 the sale deed. It also found that there was not much difference in the two lands in question. The sub-court rejected the suggestion put on behalf of the appellant that the sale transaction covered by exhibit C2 was between the relatives and cannot be relied upon. The trial court recorded a finding that no evidence was let in in support of the said suggestion. The transaction covered by exhibit C2 was fully proved by the examination of the vendor (CW3) and the purchaser (CW2). The sub-court also accepted the plea of the Respondent that even the value of Rs.1,80,000/- per acre was on the low side and it has been taken note of only because it is stated in the sale deed. But the usual practice in making such transaction is that there will always be a undervaluation to avoid paying heavy stamp duty. However, the sub-court was not persuaded to accept to fix an higher value

than what was found in exhibit C2. The sub-court also placed reliance upon a judgment of the supreme court in Bhagawathulla Samanna v. Special Tahsildar And Land Acquisition Officer, Visakhapatnam [AIR 1992 SC 2298], wherein it was observed as follows :

"The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified."

7. The contentions raised by the learned Special Government Pleader that the sub-court placing reliance upon exhibit A2 dated 25.4.97 were not properly proved and hence no reliance can be placed upon the said document in the light of the judgment of the Supreme Court in 1995 (5) SCC 311. Though the Appellants raised the issue in the grounds of appeal, no proper reference of the Supreme Court decision was given. The very same question of law framed on behalf of the Appellants was reproduced by the Division Bench at the time of admission. Therefore, it took some time for this court to ascertain the correct reference of the citation given by the learned by the Special Government Pleader. The said decision was a three paragraph order of the Supreme Court arose out of the peculiar facts of that case. It is not clear as to how the learned Special Government Pleader can make a reference to that order when the facts in the present case was totally different. In that judgment, it was observed as follows :-

"We do not propose to express any opinion on merits. Suffice it to state that neither the claimants nor the Land Acquisition officer had adduced any legally admissible evidence in proof of the market value prevailing as on the date of the market value prevailing as on the date of notification or in rebuttal. The appellants-beneficiaries are entitled to a notice and participation in the award inquiry as well as in

the reference and could adduce evidence in rebuttal to the claim of higher compensation. Unfortunately, the appellants had no notice nor an opportunity to adduce evidence. Both the claimants and the Land Acquisition officer merely marked the sale deeds without examining either the vendor or the vendee to bring on record the circumstances in which the sale deeds came to be executed, the lands to the acquired lands, the nature of the respective lands and whether they would offer comparable sales to determine just and fair market value to the acquired lands. In the absence of such relevant and material evidence it would be difficult to determine compensation in respect of the acquired lands." (see : Union Of India Etc vs Sunil Chandra Saha & Anr. 1995 (5) SCC 311)

8. But in the present case, the Respondent had taken the trouble of examining CW2 and CW3 who are the purchaser and vendor of the sale transactions covered by exhibit C2. It is utterly irresponsible on the part of the person who drafted the memorandum of grounds of appeal. We expect the counsels to show more responsibility and not to make assertions totally divorced from the facts in which the Hon'ble Supreme Court rendered certain observations.

9. We are not persuaded to interfere with the well considered order of the sub-court. The sub-court had correctly relied upon an exemplar and enhanced the compensation claimed by the Respondent. The Supreme Court in its judgment in Rishi Pal Singh v. Meerut Development Authority [2006(3) SCC 205], has held that in the absence of a comparable land available, the smaller extent of lands which are comparable can also be relied upon. In this respect, 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."

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. Consequently, C.M.P.No. 6010 of 2004 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gr./kpl

To

- 1.The District Collector, Erode District. Erode.
- 2.The District Collector, Perundurai, Erode District.
3. The Special Tahsildar (ADW) Kangeyam, Erode District.

S.A.No.776 of 2004.

ad co
kra 24.08.2016