IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Appeal Suit Nos.247 to 252 of 2013

M/s Chokkani Investments Ltd.,
No.16, Whites Road
Chennai 600 014 ... Appellant in all the appeals/Claimant

-Vs-

1. The Special Tahsildar (LA)
SIPCOT Unit-4
Irungattukottai/Sriperumbudur Scheme
Irungattukottai
Sriperumbudur Taluk

2. The Chairman and Managing Director
SIPCOT
No.19-A, Rukmani Lakshmipathy Road
Egmore
Chennai 600 008 ... Respondents in all the appeals /Referring Officer & Requesting Body

Memorandum of Grounds of Regular Appeals under Section 54 of the Land Acquisition Act, against the common judgment and decree dated 25.01.2008 made in L.A.O.P.Nos.961 to 966 of 2007 respectively on the file of the learned Subordinate Judge, Kanchipuram.

For Appellant : Mr.G.Kalyan Jhabakh for M/s Surana & Surana

For Respondents : Mr.P.Gunasekaran Addl. Government Pleader (AS) for R1
Mr.P.H.Arvindh Pandian Additional Advocate General assisted by Mr.Ramesh Venkatachalapathy for R2

JUDGMENT

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

These appeals are filed by the land owner under Section 54 of the Land Acquisition Act, seeking enhancement of compensation.

2. Heard Mr.G.Kalyan Jhabakh, learned counsel for the appellant, Mr.P.Gunasekaran, learned Additional Government Pleader appearing for the first respondent/Special Tahsildar and Mr.P.H.Arvindh Pandian, learned Additional Advocate General assisted by Mr.Ramesh Venkatachalapathy, learned counsel appearing for the second respondent/requisitioning body.

3. Under G.O.Ms.No.61, Industries dated 24.2.97, the Government granted approval for the acquisition of large extent of land in several villages, namely, Sriperumbudur, Pondur, Mambakkam, Tirumangalam and Sandavellore, for the purpose of promoting an industrial complex, at the instance of the Small Industries Promotion Corporation of Tamil Nadu, which is the second respondent herein. Notification under Section 4(1) of the Act was issued in G.O.Ms.No.398, Industries dated 17.7.98.

4. The Land Acquisition Officer gathered statistics of the sales transactions that took place during the period from 6.8.97 to 5.8.98. After rejecting a majority of the data sales on various grounds, the Land Acquisition Officer fixed the compensation payable at Rs.350/- per cent.

5. On a reference made by the Referring Officer, the Tribunal enhanced the compensation to Rs.5,300/- per cent. As against the common award passed by the Tribunal on 25.1.2008, neither the Special Tahsildar nor the requisitioning body has come up with any appeal. However, the land owner has come up with the above appeals, seeking further enhancement.

6. It is seen from the award passed by the Tribunal that on the side of the claimant, the representative of the appellant company was examined as C.W.1. On the side of the respondents, the Special Tahsildar was examined as R.W.1 and the Manager of the second respondent Corporation was examined as R.W.2. Two sale deeds respectively dated 13.12.96 and 26.3.97 were marked as Exhibits C-1 and C-2.

7. The Tribunal found that the Land Acquisition Officer took note of 150 sale transactions which had taken place during the period of one year preceding the date of the Notification under Section 4(1). Out of them, 65 transactions were rejected by the Land Acquisition Officer as being boosted sales. 21 transactions were rejected on the ground that the properties covered thereby are either housing sites or of different types

of land. Eventually the sale deed dated 27.1.98, whereunder a land was sold for Rs.350/- per cent alone was taken into account by the Land Acquisition Officer.

8. The sale deed document No.3508 of 1996 dated 13.12.96 filed as Exhibit C-1 on the side of the appellant showed that the land of an extent of about 10 cents had been sold for Rs.69,053/-. Under the sale deed dated 26.3.97, filed as Exhibit C-2, the land of an extent of 8,729 sq.ft., had been sold for Rs.1,35,299/-. Therefore the Tribunal found that the market value of the land would work out to Rs.6,905/-. But the Tribunal went by Exhibit C-2, under which the land of an extent of about 8,729 sq.ft., was sold for Rs.1,35,299/-. As per Exhibit C-2, the value per cent worked out to Rs.6,758/-. The Tribunal took the market value as Rs.6,700/- (by rounding off) and deducted 20% towards development charges. This led to the market value being arrived at as Rs.5,360/- per cent. It was again rounded off to Rs.5,300/- per cent and the Tribunal accordingly fixed the market value at Rs.5,300/- per cent.

9. The contention of Mr.G.Kalyan Jhabakh, learned counsel for the appellant is that even as per the deposition of the Special Tahsildar, examined as R.W.1, the lands in question were located in between the Chennai-Bangalore Highway and Walajabad Highway. R.W.1 further admitted that the soil is of the same nature and that the lands had both fertility as well as water resources. One important admission made in the course of cross examination of R.W.1 was that 90% of the lands in the area where the acquisition took place, had already been converted into house sites.

10. The Manager of the requisitioning body examined as R.W.2, admitted even in the proof affidavit filed in lieu of chief examination that the area was already a developed area, inasmuch as roads, communication facilities as well as electricity had already been provided at a cost of about Rs.80 crores to Rs.90 crores. In the cross examination, he also admitted that the nature of the land in respect of all the villages from which the lands were acquired was just the same. Additionally R.W.2 admitted that in respect of the lands situate in Mambakkam village, a compensation of Rs.4,000/- per cent was paid.

11. Therefore, drawing our attention to the above details, it was contended by the learned counsel for the appellant that the Tribunal ought to have awarded at least Rs.25,000/- per cent. The learned counsel further contended that the acquired land is just abutting the Chennai-Bangalore National Highway and it is only about two kilometres away from Sunguvarchatram. According to the appellant, when a similar type of acquisition

was made at Irungattukkottai,which is just seven kilometres away from the acquired land, the lands were sold at Rs.25,000/- per cent even on the date of the Notification under Section 4(1).

12. Relying upon a decision of this Court in The Special Tahsildar, Adi-dravidar Welfare, Sivagangai v. Muthu Konar, 2004 (5) CTC 56, the learned counsel also contended that the Tribunal ought to have taken note of the pattern of rate, pattern of escalation and escalation of price. Moreover, the deduction made by the Tribunal at the rate of 20% towards development charges,is also taken exception to by the appellant.

13. In response to the above contentions, the learned Additional Government Pleader as well as the learned Additional Advocate General submitted that in one batch of appeals filed by the Special Tahsildar in A.S.Nos.80 to 104 of 2008, this Court passed an award on 8.12.2009, fixing the compensation at Rs.3,100/- per cent together with 30% solatium. Therefore the learned Additional Government Pleader as well as the learned Additional Advocate General contended that even the compensation awarded by the Tribunal is on the higher side.

14. We have carefully considered the above submissions.

15. It is true that in a batch of appeals, A.S.Nos.80 to 104 of 2008, that arose out of an award passed by the Additional District Judge (Fast Track Court No.V), Chengalpattu, Tiruvallur in a batch of cases, L.A.O.P.Nos.29 of 2003 etc., dated 31.3.2006, a Division Bench of this Court was concerned with the enhancement of compensation awarded by the Tribunal. The lands involved in those cases were located in Santhavelur village, Kancheepuram District. The Land Acquisition Officer fixed the compensation at Rs.350/- per cent. But relying upon Exhibit C-2, dated 26.3.2007, which is the very same document relied upon in this case also, the Tribunal arrived at the market value at Rs.6,764/- per cent. However, after applying a deduction of 40%, the Tribunal fixed the compensation at Rs.4,000/- per cent. But this Court, without interfering with the findings, increased the development charges from 40% to 53% and fixed the market rate at Rs.3,100/- per cent.

16. It appears that one of the land owners, who was the first respondent in A.S.Nos.81 and 90 of 2008, took the matter on appeal to the Supreme Court in S.L.P.(C) No.24832 and 24833 of 2010, as against the judgment dated 8.12.2009 passed by this Court reducing the compensation to Rs.3,100/- per cent. By a judgment dated 12.9.2011 reported in Sanath Kumar v. Special Tahsildar, (2011) 12 SCC 404, the Supreme Court set aside the judgment of this Court dated 8.12.2009 and restored the order passed by the Reference Court in entirety. In other words, the

fixation of compensation by the Tribunal at Rs.4,000/- per cent after applying a deduction of 40%, was upheld by the Supreme Court in Sanath Kumar.

17. But we are of the considered view that in an appeal filed by the land owner, it is not possible for us to reduce the compensation as awarded by the Tribunal. As we have indicated earlier, the Tribunal came to the conclusion that the market value would be Rs.6,700/- per cent on the basis of the very same sale deed dated 26.3.97 filed as Exhibit C-2 even in this case. Perhaps the requisitioning body or the reference officer had come up with an appeal, it would have been possible for us to follow the decision in Sanath Kumar, (2011) 12 SCC 404. They have not challenged the decision of the Tribunal.

18. The principles of Order XLI, Rule 33 of the Code could be applied on the reverse. But not for the purpose of reducing the compensation. When the referring officer and the requisitioning body are not aggrieved by the quantum of compensation, we do not propose to reject it. From the decision in Sanath Kumar v. Special Tahsildar, (2011) 12 SCC 404, it is clear that the adoption of the market value on the basis of the Exhibit C-2 dated 26.3.97 had received the seal of approval of the Supreme Court. Therefore the only question that is left for consideration is whether the development charges should be applied at the rate of 20% as done in this case or at 40% as ordered by the Tribunal in the first instance or at the rate of 53% as ordered by the Division Bench in a previous batch, but which came to be reversed by the Supreme Court.

19. At the time when Sanath Kumar was decided, as rightly contended by the learned counsel for the appellant, the new enactment, namely, Central Act 30 of 2013 had not come into force. The rights of the land owners today have received a different perspective after the advent of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Therefore we are of the considered view that while the appellant cannot persuade us to increase the compensation, the respondents cannot ask us to reduce the compensation by applying the higher development charges. Hence the appeals are dismissed. Consequently, M.P.Nos.1 of 2014 are also dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Subordinate Judge,
Kanchipuram.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+7cc's to M/s.Surana & Surana, Advocate, S.R.Nos.54197,54466
+6cc's to Mr.Ramesh Venkatachalapathy, Advocate,
S.R.Nos.54504 to 54509
+1cc to the Additional Government Pleader(AS), S.R.No.54253

A.S.Nos.247 to 252 of 2013

KSJ(CO)
CA(29/12/2015)