

In the High Court of Judicature at Madras

Reserved on: 30.10.2015 and Pronounced on: 07.4.2016

Coram:

The Hon'ble Mr. Justice V. RAMASUBRAMANIAN
AND

The Hon'ble Mr. Justice T. MATHIVANAN

Appeal Suit No.512 of 2011

The Special Tahsildar,
(Land Acquisition)
Tamilnadu Road Sector Project,
Tiruvannamalai. ... Appellant/Referring Officer

Vs.

1. M. Ponnusamy
2. Amsaveni ... Respondents/Claimant

Appeal Suit filed under Section 54 of the Land Acquisition Act, against the Judgment and Decree of the Principal Sub-Court, Tiruvannamalai in LAOP No.1 of 2009 dated 09.11.2009.

For Appellant : Mr. P. Gunasekaran, AGP (Appeals)

For Respondents : Mr. G. Rajan

JUDGMENT

This appeal filed under Section 54 of the Land Acquisition Act, 1894, arises out of an award passed by the Land Acquisition Tribunal, enhancing the compensation awarded by the Land Acquisition Officer.

2. We have heard Mr. P. Gunasekaran, learned Additional Government Pleader (Appeals) and Mr. G. Rajan, learned counsel appearing for the respondents 1 and 2.

3. In order to widen and strengthen the existing State Highways Roads and for forming new bypass roads in the important towns in Tamil Nadu, the Government issued G.O. Ms. No. 174, Highways dated 25.9.2001 authorising the District Collectors to acquire lands through private negotiations. In Tiruvannamalai District, about 47 villages located in 4 taluks were chosen for

widening of roads and 18 villages in 3 taluks were chosen for forming new bypass.

4. In Tiruvannamalai Taluk itself, the lands located in 8 villages were chosen for acquisition for the purpose of forming bypass. One such village was Nochimalai village. In the said village, the lands chosen for acquisition were located in 24 sub-divisions. Out of them, the lands located in 22 sub-divisions were acquired through private negotiations. Since the land owners of the remaining two sub-divisions did not accept the valuation fixed by the Collector under G.O.Ms.No.40, Highways dated 25.2.2003 during the private negotiations held on 14.3.2005, the Government decided to acquire the lands of those two persons under the provisions of the Tamil Nadu Highways Act, 2001.

5. Thereafter, notice under Section 15(2) of the Tamil Nadu Highways Act, 2001 in Form-A was served on the two land owners namely N.Ponnusamy and P.Amsaveni, who are the respondents herein, on 18.8.2008. The notice was also published in the newspapers on 22.9.2008. Thereafter, the Government issued orders in G.O.Ms.No.57, Highways dated 3.4.2009 and the same was published in the Government Gazette on 22.4.2009.

6. The District Collector thereafter passed an award in Award No.10 of 2009 dated 19.5.2009, fixing the market value of the land as Rs.25.75 per sq.ft.

7. Aggrieved by the said award, the respondents-land owners sought a reference. The reference was taken on file as L.A.O.P.No.1 of 2009. By an Award dated 9.11.2009, the Tribunal enhanced the compensation to Rs.100/- per sq. ft. In addition, the Tribunal also awarded compensation for severance, compensation for re-settlement and rehabilitation and compensation for certain constructions, certain trees and fencing.

8. Eventually, the total compensation of Rs.6,25,716/- awarded by the Acquisition Officer was enhanced by the Tribunal to Rs.95,83,662/-. Hence, this appeal.

9. Before we get into details, we are obliged to bring on record one important development that had taken place after the Tribunal passed an award on 9.11.2009. It appears that after the Tribunal passed an award on 9.11.2009 in L.A.O.P.No.1 of 2009, the second respondent herein filed an application in I.A.No.1 of 2010 for a review of the award, on the ground that the trees, overhead water tank and barbed wire fencing have not been properly valued. This review was entertained by the Tribunal in

terms of Section 114 read with Order XLVII, Rule 1 CPC and by an order dated 3.2.2010, the Tribunal allowed the review application and enhanced the compensation further to Rs.1,25,73,662/-.

10. However, without reference to the order passed on the review application on 3.2.2010, the Land Acquisition Officer filed the above appeal under Section 54 of the Land Acquisition Act, somewhere in August, 2011, along with an application for the condonation of the delay. The delay was condoned and the appeal was numbered and it came up for hearing after 4 years. It was only when the appeal was taken up for final hearing, that it came to light that the award was modified on an application for review.

Preliminary issue:

11. In the light of the subsequent development that had taken place, a preliminary issue arose as to whether the above appeal was maintainable in law as against the original award of the Tribunal, since the same is claimed to have merged with the order passed on the review application. But an answer to this question would depend upon the most fundamental issue as to whether the Land Acquisition Tribunal had powers to entertain an application for review. If the Land Acquisition Tribunal did not have the power to entertain an application for review, the order passed on the review application, after the Tribunal had become functus officio, is a nullity.

12. But without allowing us to go into the question whether a power of review was available to the Land Acquisition Tribunal or not, the respondents filed an affidavit of undertaking. Paragraph 6 of the affidavit of undertaking reads as follows:-

"6. In the meanwhile, we have filed the review application in I.A.No.1/2010 seeking for enhancement and the same was allowed on 03.02.2010 by the tribunal which has enhanced the award from Rs.9583662/-to Rs.125,73,662/-. As for as the said order in the review is concerned the same has got merged with the order passed in reference. The appellant has only filed the appeal against the order under original reference and failed to file the appeal as against the order passed in review. However, across the bar doubts have been raised regarding the jurisdiction of the tribunal to entertain review and the same was seriously objected. After due deliberation and consultation, we decided to forego the enhanced award granted in I.A.No.1/2010 on 03.02.2010 and will be satisfied

with the original award of Rs.9583662/- with interest thereon."

13. Therefore, we are actually spared of the botheration of going into the question whether merger had taken place or whether no merger would take place with an order that is virtually a nullity. However, we have an obligation to point out one thing. The acquisition that has taken place in this case, was not under the Land Acquisition Act, 1894. If it was an acquisition under the Land Acquisition Act, 1894, the reference court may have a power of review, in view of Section 53 of the Land Acquisition Act, 1894, that makes the provisions of the CPC applicable to all proceedings before the Court under the Act.

14. But in this case, the acquisition was under the Tamil Nadu Highways Act, 2001. Therefore, the reference made by the Collector is actually under Section 20(1) of the said Act. Section 20(1) actually makes the provisions of Part-III of the Land Acquisition Act, 1894 applicable to a reference under Section 20(1). As a consequence, Sections 18 to 28A of the Land Acquisition Act, 1894, which are in Part-III, apply mutatis mutandis to the proceedings before the court under Section 20 (1).

15. Apart from making a reference in Sub-Section (1) of Section 20 only to Part-III of the Land Acquisition Act, 1894, Sub-Section (2) of Section 20 makes the decision of the court final. Therefore, it is clear that the other Parts of the Land Acquisition Act, 1894, including Part-VIII which contains Sections 53 and 54, are not applicable to the proceedings before a court under Section 20(1) of the Tamil Nadu Highways Act. There is also no other provision in the Tamil Nadu Highways Act, 2001 (similar to Section 53 of the Land Acquisition Act, 1894) which makes the provisions of CPC applicable to the proceedings before the court. On the contrary, Section 69 of the Tamil Nadu Highways Act, 2001, makes it clear that the provisions of this Act will have an overriding effect upon any other law.

16. Therefore, in a proceeding under Section 20(1) of the Tamil Nadu Highways Act, 2001, the provisions of Part-III of the Land Acquisition Act, 1894, alone would apply and the provisions of the CPC would not apply. Hence, a power of review cannot be considered to be inherent in the court to which a reference is made under Section 20(1) of the Tamil Nadu Highways Act, 2001. This view is also fortified by the finality attached to the award of the court under Section 20(2).

17. In view of the above, the affidavit filed by the respondents giving up their claim flowing out of the order

passed by the reference court on their application for review, can be accepted by us. The order passed on the application for review is without jurisdiction and hence, the plea of merger can be taken to have been given up validly.

18. That will take us to the next question as to whether the above appeal filed under Section 54 of the Land Acquisition Act, 1894 is maintainable, when the provisions of Part-III of the Land Acquisition Act, 1894, alone are made applicable to the proceedings under Section 20(1) of the Tamil Nadu Highways Act, 2001. The answer to this question is too obvious to state. Section 54 of the Land Acquisition Act is Part VIII and this Part is not made applicable. On the contrary, a finality is attached to the order of the reference court under Section 20(2). Therefore, a regular appeal under Section 54 is not maintainable.

19. But unfortunately, this court has been entertaining regular appeals under Section 54 even in such matters. This is not correct. If any person is aggrieved by an award passed by the reference court under Section 20(1) of the Tamil Nadu Highways Act, 2001, he has no right of appeal. But in view of the finality attached to such award under Section 20(2), this court would certainly have the power to entertain a revision under Article 227 of the Constitution, against such awards. In other words, a party aggrieved by the award of the reference court under Section 20(1) is not left without a remedy. The reference under Section 20(1) is liable to be made to a court, as defined in the Land Acquisition Act, 1894. The expression "Court" is defined in Section 3(d) of the Land Acquisition Act, 1894, either to mean a Principal civil court of original jurisdiction or a special judicial officer named by the appropriate government. Both of them will come under the administrative as well as judicial control of the jurisdictional High Court and hence the High Court would have supervisory jurisdiction under Article 227. Therefore, a revision under Article 227 would be the appropriate remedy in respect of orders passed by the reference court under Section 20(1) of the Tamil Nadu Highways Act, 2001.

20. The present appeal has been filed under Section 54 of the Land Acquisition Act, 1894. But, this appeal can be treated by this court as a revision under Article 227. Such an exercise may not be permissible in cases where either a question of limitation or a question of court fee may be involved. Both contingencies do not arise in this case. Therefore, we can treat this appeal as a revision and decide the issue.

21. Coming to the merits of the case, the extent of land acquired in S.No.31/2B was 0.45.0 Hectares (111.15 cents) and

the extent of land acquired in S.No.72/3B was 0.01.0 Hectares (above 2.12 cents).

22. The District Collector gathered the sale statistics for a period of one year from 23.8.2007 to 22.8.2008. There were 137 sale transactions. But the District Collector chose the transaction at serial number 103 and rejected the rest of the transactions without even furnishing any reason. As per the document at serial number 103, the District Collector arrived at the compensation as Rs.25.75 per sq.ft. for the land in S.No.72/3B.

23. But in so far as the land in S.No.31/2B is concerned, the District Collector stated that the sale transactions are not of any use as those documents were related to plots sold at special rates. On these premise the District Collector decided to accept the guideline value in so far as the land in S.No.31/2B is concerned. This guideline value was Rs.1,65,350/- per acre.

24. Before the reference court, 3 witnesses were examined on the side of the land owners as C.W.1 to C.W.3 and 29 documents were marked as Exx.C1 to C29. On the side of the Referring Officer, he was examined as R.W.1 and 7 documents were marked.

25. The reference court found that the properties covered by the sale deeds at serial numbers 40 to 43 of Ex.R6-sale statistics had been sold at the rate of Rs.57.75 per sq.ft. and that the properties covered under the sale deeds at serial numbers 71 to 89 and 99 had been sold at the rate of Rs.57/- per sq. ft. The land covered by the sale deeds at serial numbers 117 and 135 had fetched a rate of Rs.114.28 per sq. ft and Rs.158.64 per sq.ft.

26.The reference court also found on the basis of the evidence of R.W.1 that the land owners had other lands which had to be sub-divided and separated. R.W.1 also filed a sketch marked as Ex.R5. This sketch showed that the lands sold under 3 sale deeds marked as Exx.C11, C12 and C13, were adjoining the land acquired from the respondents herein. These sale deeds had been executed by the owners in favour of the Government of Tamil Nadu. They were sold at least three years before the date of notification under Section 15(2). The value indicated in these three sale deeds was Rs.54/- per sq. ft. As a matter of fact, the lands under Exx.C11 to C13 had been purchased by the Government through private negotiations in 2005. Hence, the court below held that the value of Rs.54/- per sq. ft. paid in the year 2005 had to be enhanced at the rate of 10% per year upto the year 2008. Such a logic cannot be found fault with.

27. But after having said so, the reference court unfortunately arrived at a figure of Rs.100/- per sq. ft. We failed to understand the arithmetics behind such a calculation. If Rs.54/- per sq. ft. was the rate willingly offered by the

Government for purchasing the property through private negotiations in the year 2005, an increase by 10% would make it Rs.59/- per sq. ft. in the year 2006, Rs.65/- per sq. ft. in the year 2007, and at the most Rs.72/- per sq. ft. in the year 2008. It cannot be Rs.100/- per sq. ft. The reference court has committed a serious mistake in paragraph 43 of its decision in arriving at Rs.100/- per sq. ft. as the market value, after having adopted the rate indicated in Exx.C11 to C13. Hence, the award of the reference court fixing the market value at Rs.100/- per sq. ft. is to be modified to Rs.72/- per sq. ft.

28. After fixing the market value at Rs.100/- per sq. ft., the reference court also awarded some amounts towards severance compensation, resettlement and rehabilitation and various other heads. They are as follows:

- "03. 25% for devotion (severance compensation)
: Rs.12,41,300/- (25% x Rs.49,65,200/-)
- 0.4. 9% for Re-settlement and Rehabilitation
: Rs. 4,46,868/- (9% x Rs.49,65,200/-)
05. Compensation for 63 Mango trees and
3 Palmyra trees as per expert opinion : Rs.10,00,000/-
06. Compensation for existing and proposed
Barbed Wire Fencing (Rs.20,000/- + Rs.80,000/-)
: Rs.1,00,000/-
07. Compensation for the existing proposed
construction of Overhead water tank
(Rs.20,000/- + Rs.80,000/-) : Rs.1,00,000/-"

29. But we do not know where from a severance compensation and an amount towards resettlement and rehabilitation were awarded by the reference court. Once a rate offered by the District Collector for the acquisition of land through private negotiations is taken as the base, the said amount should be taken to include all these claims. Hence, the award of Rs.12,41,300/- towards severance compensation and the award of Rs.4,46,868/- towards resettlement and rehabilitation should go. Similarly, the District Collector had awarded a sum of Rs.3,23,200/- towards cost of 59 mango trees and Rs.32,059/- towards the value of the overhead water tank put up in the property. The reference court has enhanced the value to Rs.10,00,000/- on the basis of expert evidence. This expert evidence was allegedly by C.W.3, a retired Assistant Director of Agriculture, who had issued a certificate under Ex.C22. He had indicated the expected income from all the trees to the tune of Rs.33,89,550/-. Similarly, an estimate for the barbed wire fencing was filed as Ex.C16, which showed the value at Rs.27,000/-. But Ex.C18 showed the estimated cost of barbed wire fencing as Rs.1,36,000/-. Ex.C15 is the cost of estimation of the existing overhead water tank.

30. Since the compensation awarded by the reference court for 63 mango trees and 3 Palmyra trees is less than 1/3rd of what the expert had opined, but 3 times more than the value fixed by the District Collector, we chose not to interfere with the same. Similarly, the cost of barbed wire fencing and the cost of construction of overhead water tank are also left untouched.

31. In the result, the appeal of the Special Tahsildar, treated as a Revision, shall stand allowed to the following effect:

(a) The market value of the acquired land is fixed at Rs.72/- per sq.ft.; (b) In addition to the market value arrived at the rate of Rs.72/- per sq. ft. for the land, the respondents will be entitled to (i) Rs.10,00,000/- towards compensation for the trees, as awarded by the reference court; (ii) Rs.1,00,000/- towards compensation for the barbed wire fencing; and (iii) Rs.1,00,000/- towards compensation for the overhead water tank.

(c) On the compensation so arrived at (for the land, trees and the constructions), the respondents will be entitled to solatium at 30% and the future interest as per the provisions of the Tamil Nadu Highways Act, 2001. The appeal is allowed to the above effect. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

gr/kpl

To

1. The Subordinate Judge, Thiruvannamalai.

1 cc to Government Pleader, sr.22390

1 cc to Mr.G.Rajan, Advocate, sr.22634

ksj co

kra 07.06.2016

A.S.No.512 of 2011