

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.945 of 2014
and
M.P.No.1 of 2014

The Land Acquisition Officer &
The Special Tahsildar, A.D.W (Aadi Dravidar Welfare),
Coimbatore. .. Appellant/Referring
Officer

- Vs -

G.Jothimani .. Respondent/Claimant

Prayer:- Second Appeal filed under Section 100 of C.P.C.,
against the Decree and Judgment dated 09.01.2012 made in
L.A.O.P. C.M.A. No.104 of 2004 on the file of the learned I
Additional Subordinate Judge, Coimbatore modifying the Award
No.1/1997-98, in Ref.No.2538/96A, dated 26.09.1997 on the file
of Land Acquisition Officer and Special Tahsildar (LA) Adi
Dravidar and Tribal Welfare, Coimbatore.

For Appellant : Mr.T.Jayaramaraj
Government Advocate (C.S.)

For Respondent : Mr.P.Saravana Sowmiyan

J U D G M E N T

This second appeal has been filed challenging the decree
and judgment in L.A.O.P. C.M.A. No.104 of 2004 on the file of
the learned I Additional Subordinate Judge, Coimbatore
modifying the Award No.1/1997-98, in Ref.No.2538/96A, dated
26.09.1997 on the file of Land Acquisition Officer and Special
Tahsildar (LA) Adi Dravidar and Tribal Welfare, Coimbatore.
An extent of 6.61 acres of dry land comprised in S.F.No.424/A2
and 424/B3 of Odanthurai Village, Mettupalayam Taluk was
acquired by the Government to provide house site to Adivasis.
The respondent herein was the owner of 4.86 acres of land
comprised in S.F.No.424/A2. The land acquisition Officer cum
Special Tahsildar (LA) Adi Dravidar and Tribal Welfare,
Coimbatore after holding necessary enquiry under the
provisions of the Land Acquisition Act, passed an Award
directing the Government to pay Rs.25,000/- per acre as
compensation with 15% of solatium and 12 % of additional

compensation. Not satisfied with the same, the respondent filed an appeal in L.A.O.P. C.M.A. No.104 of 2004 on the file of the learned I Additional Subordinate Judge, Coimbatore. According to the respondent, the value of the land as on the date of notification would be around Rs.4,01,500/- per acre, whereas, the Land Acquisition Officer had awarded a paltry sum of Rs.25,000/- per acre. During trial before the lower Court, on the side of the respondent herein he was examined as P.W.1 and as many as 30 documents were marked on his side. On the side of the Government, one Mr.K.Mohankumar was examined as R.W.1 and as many as 4 documents were exhibited. Having considered all the above, the lower Court awarded compensation at the rate of Rs.2,75,000/- per acre with 15 % solatium and 6 % interest. Challenging the same, the Government is before this Court with this second appeal.

2. I have heard the learned Government Advocate (C.S.) appearing for the appellant and the learned counsel appearing for the respondent as well as perused the records carefully.

3. Having considered the same, I find the following substantial questions of law :

(i) Whether the lower Court was right in fixing the market value based on Exs.P5 and P6 which are pertaining to sale transactions which took place subsequent to the notification ?

(ii) Whether the Court below was right in not making 1/3 deduction towards development cost ?

4. The learned Government Advocate (C.S.) would submit that Exs.P5 and P6 are documents relating to the transactions which took place subsequent to the notification and therefore they should not have been taken into account by the lower Court to fix the market value. He would point out that the notification is dated 24.12.1996, whereas, Exs.P5 and P6 are dated 26.08.1997 and 29.08.1997 respectively. But a perusal of the judgment of the lower Court would go to show that Ex.P3, yet another sale deed relating to the property situated on the eastern side of the property in question has also been considered. Admittedly, Ex.P3 is dated 01.12.1995 and according to the said sale transaction, the market value of the property was Rs.3,19,986.50 but the lower Court has not even given much weightage for this transaction for which no reason has been assigned. Admittedly, Exs.P5 and P6 are subsequent to the date of notification and in these two documents the market value of the property has been mentioned as Rs.2,21,287.39/- and Rs.2,26,666.66/- per acre respectively. If these three documents were taken into

consideration, Exs.P5 and P6 can be given preference, the reason being that Exs.P5 and P6 would not have been created for the purpose of getting enhanced compensation for the property in question. Had it been the said intention, in Exs.P5 and P6 the market value of the property would have been mentioned at more than Rs.3,19,986.50, as the market value mentioned in Ex.P3. Thus there is a vast difference between Ex.P3 on the one side and Exs.P5 and P6 on the other side in respect of the value of the property. It is for these reasons, the trial Court has not given weightage for Ex.P3 but instead gave weightage for Exs.P5 and P6.

5. In my considered opinion, though Exs.P5 and P6 are subsequent to the notification and since Ex.P3 which is long before the notification which shows higher market value, Exs.P5 and P6 can be taken as guidance to fix the market value. As I have already pointed out, the market value of the property mentioned under Exs.P5 and P6 are Rs.2,21,287.39 and Rs.2,26,666.66 respectively per acre. Considering all these three documents cumulatively, I am of the view that fixing the compensation at Rs.2,20,000/- per acre can be appropriate and the same represents just compensation.

6. The learned Government Advocate would submit that as per the judgment of the Hon'ble Supreme Court in Sabhia Mohammed Yusuf Abdul Hamid Mulla Vs. Special Land Acquisition Officer reported in 2012 (6) SCALE 34 1/3 amount out of Rs.2,20,000/- per acre should be deducted towards development cost.

7. In my considered view, in the instant case, such deduction cannot be made at all. In a case where the market value of the land is calculated based on the potentiality of the land, then only 1/3 of the compensation has to be deducted. In a case where if the market value is fixed based on developed land whereas the acquired land is not developed, since there is a need to develop the acquired land, 1/3 amount is deducted towards development cost. Here, the lands in Exs.P3, P5 and P6 are undeveloped lands. In all respects these lands are on par with the land which has been acquired, which belongs to the respondent. The market value at the rate of Rs.2,20,000/- per acre is fixed based on the market value of an undeveloped land. Therefore, there is no question to give 1/3 deduction for development cost. No where it is stated in the Award or in the counter that the land in question requires development. The records reveal that these are dry waste which are fit for house sites. There is no need for any development, as I find no evidence at all that the land requires development. In such view of the matter, I reject the argument of the learned Government Advocate that 1/3 deduction should be made out of the compensation amount.

8. So far as the first substantial question of law is concerned, I answer the same partly in favour of the appellant and accordingly I modify the Award at the rate of Rs.2,20,000/- per acre, besides 15% solatium and 6% interest. So far as the second substantial question of law is concerned, I answer the same against the appellant.

9. In the result, the appeal is partly allowed and the decree and judgment of the lower Court is modified and there shall be a decree directing the appellant herein to pay compensation to the respondent at the rate of Rs.2,20,000/- per acre and to pay 15% solatium and 6% interest from the date of possession till the date of realisation. Consequently, the connected miscellaneous petition is closed. There shall be no order as to cost.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kk

To

1. The I Additional Subordinate Judge,
Coimbatore.
2. The Land Acquisition Officer and
Special Tahsildar, ADW (Adi Dravidar Welfare),
Coimbatore.
3. The Section Officer, सतयमेव जयते
V.R. Section, Madras High Court.

+1 cc to Mr.P.Saravanasowmiyan, Advocate, sr.3568

+1 cc to The Special Government Pleader(CS), sr.3293

S.A.No.945 of 2014
and M.P.No.1 of 2014

jvs co
kra 08.02.2016