

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3699 of 2011
and
M.P.No.1 of 2011**

The Land Acquisition Officer-cum-
Special Tahsildar,
Adi Dravidar Welfare,
Tindivanam.

.. Petitioner

Vs.

1.Jayakannan (Deceased)

2.Baskaran

..Respondents

Prayer: Civil Revision Petition filed under Section 13 of Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78 read with Section 115 of C.P.C., against the order and decretal order dated 30.06.2009 made in C.M.A.No.6 of 2003, on the file of Principal Subordinate Judges Court, Tindivanam, modifying the Award No.4/2002-3, dated 06.02.2003 passed by the Special Tahsildar (ADW) / Land Acquisition Officer, Tindivanam.

For Petitioner : M/s.M.Jayasree
for Mr.M.Venugopal, Special Government Pleader

For Respondents : Mr.A.K.Kumarasamy (for R2)

R1 - Died

ORDER

The above said civil revision petition is filed by the Land Acquisition Officer cum Special Thasildar, Adi-Dravidar Welfare, Tindivanam challenging the Quantum of compensation awarded in C.M.A.No.6 of 2001 by the Learned Principal Subordinate Judge Court, Tindivanam dated 30.06.2009.

2.It is seen from the records that the Land covered in this civil revision petition was acquired by the petitioner herein on 06.02.2003. The Land Acquisition Officer in his award proceeding fixed compensation of Rs.35,075/- for 78 cents (Rs.406.76 per cent). Not being satisfied with the amount fixed by the Land Acquisition Officer, the land owner took the matter to the Principal Subordinate Court, Tindivanam under section 9 of the Tamilnadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, which resulted in C.M.A.NO.6 of 2011 seeking fixation of compensation at the rate of Rs.3,000/- per cent. Pending appeal the Land owner namely Jeyakanan, the 1st

respondent in this CRP died and therefore his son Baskaran, the 2nd respondent herein was impleaded to succeed his estate as per the Will executed by his father under Ex-C1. In respect of their claim for higher compensation the 2nd respondent herein viz., Baskaran was examined as CW1 and on his side CW2 one Rangaraj was examined. They also produced documents Ex.CW1 and CW2. On the side of the referring Officer, the Special Thasildar, Aadi-Diravidar was examined as RW1 and documents vide exhibits R1 and R2 were marked. On consideration of oral and documentary evidence, the Learned Principal Subordinate Judge, Tindivanam, held that the amount arrived at by the Land Acquisition Officer is not just and reasonable, whereby enhanced the compensation amount from Rs.406.76 per cent to Rs.1,500/- per cent for the Land Acquired by the revision petitioner. Aggrieved over the same, the revision petitioner filed the present civil revision petition.

3.I have heard M/s.M.Jayasree, for Mr.M.Venugopal, learned Special Government Pleader (CS) and Mr.A.K.Kumarasamy, learned counsel appearing for the 2nd respondent and perused the entire materials available on record.

4.It is seen from the records that the 1st respondent is the owner of the land comprised in S.No.146/6 measuring extent of 0.31.5 hectare (78 cents) in Therkunam Village. The said land was acquired by the government for the purpose of providing free house site to the Aadi Dravidians. The land acquisition officer has fixed the market value of the land at Rs. 404.76 per cent and awarded the total compensation of Rs.35,075/- for 78 cent by award dated 06.02.2003. The claimant/ the 1st respondent received the above said amount with objection.

5.Aggrieved over the quantum of compensation fixed by the Land Acquisition Officer, the deceased 1st respondent herein filed appeal in C.M.A.No.6 of 2003 on the file of the Principal Subordinate Judge Court, Tindivanam. According to the claimant/ Land owner the acquired land is situated in a developed area and it has some advantages, nearby the acquired land houses are situated and the acquired land is suitable to built houses. Further the Land Acquisition Officer has not fixed the compensation as per the prevailing guideline value of the government for the acquired land. The owner of the land had purchased 3 cent of land under Ex.C2 dated 23.09.1996 from one Purusothaman for a sum of Rs.5,886/- which is situated nearby the

acquired land. The claimant placed reliance upon Ex.C2 for fixing compensation to his acquired land. However, the trial Court rejected Ex.C2 on the ground that Ex.C2 is of the year 1996, but the land acquisition proceedings is of the year 2003 and therefore the market value cannot be arrived at on the basis of Ex.C2 sale deed for fixing compensation. Apart from that the claimant failed to prove that the land purchased under Ex-C2 is situated nearby the acquired land. In any event, the compensation awarded by Land Acquisition Officer was not adequate compared to the potentially of the land acquired. Hence, the trial Court enhanced the compensation from Rs.407.76 per cent to Rs.1500/- per cent and fixed 30% solatium for the compensation amount with 6% interest.

6. Aggrieved over the quantum of compensation, the Land Acquisition Officer filed this appeal and questioned the enhancement of compensation awarded by the trial Court.

7. The main contention urged on the side of the appellant is that no document was produced by land owner before the lower Court to enhance the award amount from Rs.407.76 per cent to Rs.1500/- per cent. There is no basis for the Court below to arrive at Rs.1,500/- towards compensation per cent for the land acquired. Further, as per

Section 7 of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, 15% solatium only prescribed, whereas the trial Court has granted 30% solatium which is against law. Hence the Learned Special Government Pleader prayed this Court to allow this appeal.

8. Section 7 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 states as follows:

"7.Determination of amount.-(1) The amount payable in respect of any land acquired under this Act shall be the market value of such land on the date of publication of the notice under sub-section (1) of section 4.

(2) In addition to the market value of the land as provided above, the prescribed authority shall, in every case, award a sum of fifteen per centum on such market value as solatium in consideration of the compulsory nature of the acquisition.

(3) The prescribed authority shall, after holding an inquiry in the prescribed manner, determine, by order, the amount payable under sub-section (1). A copy of the said order shall be communicated to the owner of such land

and every person interested therein.”

9. On facts and in the light of the above discussion, it is not possible for me to accept the solatium fixed at 30% by the trial Court, when the statute itself allowed 15% solatium only for the compensation amount awarded to the acquired land. Hence, I do not find any justification of the order of the trial Court granting 30% solatium and the same is modified and reduced to 15% as per Section 7 of the said Act.

10. The next question is to be decided that whether the enhancement of compensation amount fixed by the lower Court is required to be interfered with by this Court or not?. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant notification. For deciding the case, it is useful to consider the value paid for similar land at the material time under genuine transactions. The land value can differ depending upon the extent and nature of the land sold. The transaction in regard to smaller property cannot, therefore, be taken as a real basis for fixing the compensation for larger extent of property. In the present case, for deciding compensation, the claimant has produced Ex.C2 sale deed is of the

year 1996 under which 3 cent was sold for Rs.5,886/-. The said document can't be suspected as it was created for the purpose of producing as evidence in this case. But, as rightly held by the trial Court the claimant has not proved that the land covered under Ex.C2 is just abutting the acquired land. That apart, the land acquired was a cultivable land at the time of acquisition.

11.By considering over all circumstances of the case, I am of the considered opinion that the quantum of compensation arrived at by the trial Court is liable to be reduced. It is just and reasonable to fix the compensation for the acquired land at the rate of Rs.1,200/- per cent. To that extent this appeal is liable to be allowed partly.

12.In the result:

a)This Civil Revision Petition is partly allowed, by reducing the amount from Rs.1,500/- to Rs.1,200/- per cent and calculate the amount for one cent, Rs.1,200/-i.e., $(78 \times 1,200 = 93,600/-)$;

b)The petitioner is entitled for a sum of Rs.58,525/- (Rs.93,600- Rs.35,075) with 15% solatium, with interest 6% per annum from the date of 4(1) notification;

c)The said exercise shall be completed within a period of three months, from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

24.11.2016

Note:Issue order copy on 21.04.2017

Internet:Yes

Index:Yes

vs

To

1.The Principal Subordinate Court,
Tindivanam.

2.The Special Tahsildar (ADW) /
Land Acquisition Officer,
Tindivanam.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(NPD)No.3699 of 2011
and
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<http://www.judis.nic.in>