

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2015 & DELIVERED ON 28.3.2016

CORAM :

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND

THE HON'BLE MR.JUSTICE T.MATHIVANAN

SECOND APPEAL NO.906 of 2010 AND M.P.No.1 of 2010

The Special Tahsildar, Adi
Dravida Welfare,
Thirupattur

... Appellant/Respondent/
Land Acquisition Officer

Vs

Dayalan, S/o. D.Janakiraman,
111, M.C.Road, Sanangkuppam,
Ambur Town, Vaniyambadi Taluk
Vellore District.

...Respondent/Appellant
/Claimant

SECOND APPEAL under Section 13 of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadi Act 31 of 1978) against the judgment and decree of the SubOrdinate Judge , Thirupattur made in L.A.A.No.16 of 2004 dated 10.2.2005, modifying the award made in Award No.2/2001-2002 (Proc.No.A1/700/97) dated 18.7.2001, passed in Special Tahsildar, Adi Dravidar Welfare, Tiruppathur.

For Appellant : Mr.M.Venugopal, SGP (CS)

For Respondent : M/s.P.S.Kothandaraman
& A.Kamesh Kumar

JUDGMENT

V.RAMASUBRAMANIAN, J

The above second appeal is directed against the judgment and decree passed by the Subordinate Court, Thirupattur made in L.A.A.No.16 of 2004 dated 10.2.2005. The above appeal was filed beyond limitation. A condone delay petition was filed in M.P.1 of 2007 to condone the delay of 636 days in filing the appeal. Though it is stated that the delay was condoned, in the bundle circulated to us, the order copy is not found. However, contrary to the standing orders, the matter was posted for admission

before a learned Single Judge and the same was admitted on 9.8.2010. The learned Judge, who admitted the matter, also framed four substantial questions of law for admitting the matter. The learned Special Government Pleader apparently filed a second appeal under Section 13 of the Tamil Nadu Act 31 of 1978 and not under Section 100, CPC. Under Section 13, the admission was not subject to the availability of substantial questions of law for determination by this Court.

2. Pending the second appeal, the learned Judge granted the following interim order:

"There shall be an order of interim stay on condition that the petitioner deposits the entire amount as decreed in L.A.A.No.16 of 2004, dated 10.02.2005, on the file of the Sub-Court, Tirupattur, Vellore District, along with the interest at the rate of 6% to the credit of L.A.A.No.16 of 2004, on the file of the Sub Court, Tirupattur, Vellore District, within a period of twelve weeks from today, failing which this order would stand cancelled automatically without further reference to this Court."

3. In order to provide house-sites to the 280 homeless families of the Adi Dravida people in Sanangkuppam village, proposals were made to acquire the lands owned by the respondent in town survey No.17/1 to the extent of 2.73 acres and other land owners. After following due procedure, to fix the market rate for compensation, details were called for from the Office of the Sub-Registrar, Ambur for a period of two years from 30.3.1998 to 24.10.2000. During this period, there were 5 sale transactions. The Authority rejected 4 transactions on the ground that the sold lands were not comparable. He took into account the sale deed covered by registered document in document No.1046 dated 4.5.1998. It relates to town survey No.18/2 and the land to the extent of 0.97 acres of nanja land was said to have been sold at Rs.42,000/-. If that rate was taken into account as the data land, then the land value per acre works out to Rs.43,299/-.

4. However, the registration officials questioned the undervaluation in fixing the value of the land and sent it for valuation by the Special Deputy Collector, Stamps under Section 47A of the Stamp Act. Thereafter, the deficit stamp duty was paid for that document. By virtue of the same, the value of the land was fixed at Rs.780/- per cent and by that, per acre rate works out to Rs.78,000/-. That was taken as a data land for fixing the compensation and on that basis, the value for the respondent's land to the extent of 2.73 acres was fixed at Rs.2,12,940/-. Together with solatium of Rs.31,941/-, the total compensation in

respect of the respondent's land in town survey No.17/1 was fixed at Rs.2,44,881/-.

5. Aggrieved by the low rate of compensation, the respondent preferred an appeal under Section 9 claiming a higher rate of compensation. The said appeal was taken on file as L.A.A.No.16 of 2004. In the memorandum of valuation appended to the grounds of appeal, court fee was paid as follows:-

"PARTICULARS OF VALUATION

Land acquired measuring 2.73 acres or 1,19,028 sq.ft.
1/3 deduction towards improvement measuring 0.91 acres of 39,676 sq.ft.
Balance 1.82 acres (i.e. 79,352 sq.ft)
For 79,352 sq.feet
X Rs.87 per sq.ft : Rs.69,03,624/-
Amount already received by the Appellant
(Less) : Rs. 2,44,881/-
Compensation Claimed : Rs.66,58,743/-
Court Fee paid Under Sec.51 of TNCF
Act thereon : Rs. 4,99,406.25"

6. From the above, it can be seen that the respondent, even while filing appeal, made a discount for 1/3rd amount towards development charges and claimed the balance of 2/3rd amount in the appeal and accordingly, paid proportionate court fees. Before the Subordinate Court, the respondent examined himself as C.W.1 and on his side, marked a sale deed dated 30.10.1998 between one Manivannan and Dakshinamurthy as Ex.C.1. On the side of the appellant, one Kothandapani, the then office holder of the appellant was examined as R.W.1 and on his side, 3 documents were marked as Ex.R.1 to Ex.R3.

7. The Subordinate Court, on an analysis of the evidence (both oral and documentary) placed before it, came to the conclusion that the acquired land was very close to the bus stop in Sanangkuppam village and nearer to the land, there is a post office, land development bank, petrol bunk, co-operative shops, electricity office. Within 50 feet, two wedding halls and two theatres are situated. Nearer to the land, there is a tape deck factory as well as DAW and Shoe units. The Subordinate Court also found that appreciation of land value was not considered and the compensation fixed was very low. As per Ex.C.1, the land was sold at Rs.87/- per sq.ft. Notwithstanding the acceptance of the value at Rs.87.02 paise per sq.ft, the Subordinate Court, after deducting Rs.47.02 per sq.ft, fixed the compensation only at Rs.40/- per sq.ft. The land of the respondent, as noted already, was to the extent of 2.73 acres and if calculated on the basis of sq.ft., the total extent comes to 1,19,028 sq.ft. After

deducting 1/3rd (39,676 sq.ft) the Subordinate Court fixed the compensation for the remaining extent of 79,352 sq.ft. and if calculated at this rate, the compensation worked out to Rs.31,74,080/-. Together with the solatium, it fixed the total compensation at Rs.36,50,192/.

8. We find that the Subordinate Court adopted a strange course of action. After accepting Ex.C.1 wherein the land value was shown as Rs.87.02 paise per sq.ft, the Court below reduced the value by half and fixed Rs.40/- per sq.ft. The Court below thereafter deducted 1/3rd amount allegedly towards development charges.

9. The Supreme Court in Valliyammal v. Special Tahsildar (Land Acquisition) [2011 (8) SCC 91] took exception to the court below in granting huge deduction towards development charges and also in not fixing escalation cost, if the land has potential value. In that judgment, the Supreme Court observed as follows:-

"The first error committed by the High Court relates to deduction of 40% towards development charges. While doing so, the High Court ignored its own finding that the acquired land was situated in the vicinity of the residential colonies developed by the Board and other establishments as also the fact that the respondents had not produced any evidence to show that they will have to start the development work from scratch. Therefore, the High Court could have, at best, applied 1/3rd deduction towards development cost.....

Though it may appear repetitive, we deem it necessary to mention that the acquired land is situated in the close vicinity of various residential colonies, educational institutions, hospitals etc. and is on the junction of two important roads. Therefore, it can safely be concluded that the land is semi-urban and has huge potential for being developed as housing sites and the High Court should have added 10% per annum escalation in the price specified in the sale deeds relied upon for fixing market value of the acquired land....

We may have sustained 20% deduction keeping in view the smallness of the plots which were sold vide sale deeds dated 4.9.1990 and 8.2.1991, but, in the peculiar facts of the case, we think that it will be wholly unjust to allow such deduction. Majority of the appellants have been

deprived of their entire landholding and they have waited for 14 to 20 years for getting the compensation. It appears that in compliance of the interim orders passed by the Court, some of the appellants did get 25% and one of them get 35% of the compensation, but majority of them have not received a single penny towards compensation and at this distant point of time, it will be wholly unjust to deprive them of their legitimate right by approving the 20% deduction made by the High Court. In such matters, the Court cannot be oblivious of the fact that the landowners have been deprived of the only source of livelihood, the cost of living has gone up manifold and the purchasing power of rupee has substantially declined."

10. In this case, it must be noted that the land was situated in an urban area, which was already developed. On the basis of evidence, the Subordinate Court correctly arrived at the value of the land covered by Ex.C.1 that it should have been the correct data land and found that the value was Rs.87/- per sq.ft. After arriving at the market value, it suddenly reduced it by 50% without any reason and also committed grave error in not adhering to the correct method in fixation of the value.

11. The learned counsel for the respondent placed reliance upon the judgment of the Supreme Court in Special Deputy Collector v. Kurra Sambasiva Rao [1997 (6) SCC 41] for the proposition that the court, while deciding the request for enhanced compensation, must sit in the arm chair of the bona fide willing and prudent purchaser in the open market and must seek an answer to the question whether in the conditions prevailing in the market, he would offer the same market value as the court has proposed. The following passage from the judgment was pressed into service :-

"The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of the notification under Section 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The Judge should sit in the arm chair of the said willing buyer and seek an answer to the

question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions. The court is therefore, enjoined with the bounden duty of public function and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition."

12. The learned counsel for respondent also referred to the judgment of the Supreme Court in Dollar Company, Madras Vs Collector Of Madras [1975 (2) SCC 730] and relied upon the following passage for the purpose of understanding as to what is the term market value meant in these transactions :-

"It is true that compensation for compulsory acquisition, as governed by Section 23, gives high priority to the market value of the land at the date of the publication of the notification under Section 4, Sub-Section (1). But what is market value? It is a common place of this branch of jurisprudence that the main criterion is what a willing purchaser would pay a willing vendor. Ordinarily a party will be entitled to get the amount that he actually and willingly paid for a particular property, provided the transaction be bona fide and entered into with due regard to the prevalent market conditions and is proximate in time to the relevant date under Section 23. We may even say that the best evidence of the value of property is the sale of the very property to which the claimant is a party. If the sale is of recent date, then all that need normally be proved is that the sale was between a willing purchaser and willing seller, that there has not been any appreciable rise or fall since and that nothing has been done on the land during the short interval to raise its value"

13. A further reference was made to the judgment of the Supreme Court in Ravinder Narain v. Union of India [2003 (4) SCC 481] and contended that in that case, the Supreme Court laid down the guidelines for determining the market value in cases of land acquisition and reliance was placed upon the following passage:-

"It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

(i) when sale is within a reasonable time of the date of notification under Section 4(1);
(ii) it should be a bona fide transaction;
(iii) it should be of the land acquired or of the land adjacent to the land acquired; and
(iv) it should possess similar advantages.
It is only when these factors are present, it can merit a consideration as a comparable case (See The Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty (AIR 1959 SC 429))."

14. We are not persuaded to accept the contentions of the learned Special Government Pleader in so far as the Subordinate Court placing reliance upon Ex.C.1.

15. However, the counsel for the respondent contended that the Subordinate Court has committed a grave error in first deducting 50% of the value from Ex.C.1, though the sale transaction was accepted as truly reflecting the market value. Having accepted Ex.C.1 as the data land, the value per sq.ft should have been fixed at Rs.87/- and not as Rs.40/-. The Subordinate Court further committed another error in deducting 1/3rd towards development charges in the appeal whereas the appeal itself has been preferred by the respondent only in respect of 79,352 sq.ft. of land after deducting 1/3rd towards development charges (39,676 sq.ft) out of the total extent of land acquired such as 1,19,028 sq.ft. He submitted that this Court must invoke the power under Order XLI Rule 33, CPC and grant relief to the respondent, even though he has not filed any appeal against the order of the Subordinate Court.

16. The said provision under CPC (Order 41 Rule 33) reads as follows:

"33. Power of court of appeal.- The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection, and may, where there have been decrees in cross suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the Appellate Court shall not make any order under section 35A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order"

17. In applying the principle underlying in the said provision, the Supreme Court in *Prahlad v. State Of Maharashtra* [2010 (10) SCC 458], in relation to a land acquisition case, held as follows:-

"Now, the only question which remains is whether the landowners, without filing an appeal before the High Court from the order of the Reference Court, are entitled to the aforesaid benefit on the basis of their application under Order 41 Rule 33 of CPC.

The provision of Order 41, Rule 33 of CPC is clearly an enabling provision, whereby the Appellate Court is empowered to pass any decree or make any order which ought to have been passed or made, and to pass or make such further or other decree or order as the case may require. Therefore, the power is very wide and in this enabling provision, the crucial words are that the Appellate Court is empowered to pass any Order which ought to have been made as the case may require. The expression 'order ought to have been made' would obviously mean an Order which justice of the case requires to be made. This is made clear from the expression used in the said Rule by saying 'the court may pass such further or other Order as the case may require.' This expression 'case' would mean the justice of the case. Of course, this power cannot be exercised ignoring a legal interdict or a prohibition clamped by law."

18. Even earlier, the Supreme Court upheld the power of the court to invoke Order XLI Rule 33 in favour of a non-appellant and granted relief vide its judgment in *Bhag Singh & Others vs Union Territory Of Chandigarh* [1985 (3) SCC 737] in the following lines :

"It must be remembered that this was not a dispute between two private citizens where it

would be quite just and legitimate to confine the claimant to the claim made by him and not to award him any higher amount than that claimed though even in such a case there may be situations where an amount higher than that claimed can be awarded to the claimant as for instance where an amount is claimed as due at the foot of an account. Here was a claim made by the appellants against the State Government for compensation for acquisition of their land and under the law, the State was bound to pay to the appellants compensation on the basis of the market value of the land acquired and if according to the judgments of the learned single Judge and the Division Bench, the market value of the land acquired was higher than that awarded by the Land Acquisition Collector or the Additional District Judge, there is no reason why the appellants should have been denied the benefit of payment of the market value so determined. To deny this benefit to the appellants would tantamount to permitting the State Government to acquire the land of the appellants on payment of less than the true market value. There may be cases where, as for instance, under agrarian reform legislation, the holder of land may, legitimately, as a matter of social justice with a view to eliminating concentration of land in the hands of a few and bringing about its equitable distribution, be deprived of land which is not being personally cultivated by him or which is in excess of the ceiling area with payment of little compensation or no compensation at all, but where land is acquired under the Land Acquisition Act, 1894, it would not be fair and just to deprive the holder of his land without payment of the true market value when the law, in so many terms, declares that he shall be paid such market value. The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the state Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen. We are, therefore, of the view that, in the present case, the Division Bench as well as the learned single Judge should have allowed the appellants to pay up the deficit court fee and awarded to

them compensation at the higher rate or rates determined by them."

19. In the light of the above and the request of the counsel for the respondent being fair and just, we propose to invoke the power under Order XLI Rule 33 and modify the order of the Subordinate Court and grant relief to the respondent. In this case, admittedly Ex.C.1 was accepted as a data land and the value found in the said document was Rs.87/- per sq.ft. The Subordinate Court has no justification in reducing to Rs.40/- per sq.ft. Accordingly, the valuation of the land of the respondent should also be Rs.87/- per sq.ft. The respondent had filed an appeal under Section 9 only for enhancing the value in respect of 79,352 sq.ft and had given up the claim in respect of 1/3rd area i.e. 39,676 sq.ft. and has paid court fee only for that relief. Therefore, there is no justification in ordering any deduction towards development charges in respect of the lands, for which, the appeal was filed. Hence, it is held that the respondent is entitled to get the following compensation :

"79352 sq.ft x 87 =Rs. 69,03,624/-"

The respondent is also entitled to get 15% solatium on the said amount. 20. There was yet another grievance projected by the learned Special Government Pleader and he has also raised the same as one of the substantial questions to be determined in this case, which is as follows :

"Whether the Court below is correct in awarding interest at the rate of 9%, 12% and 15% for different periods, when the Act 31 of 1978 prescribed only 6% interest?"

21. The Subordinate Court, in the appeal before it, decreed the following interest on the amount directed to be paid :

- (i) From 25.10.2000 to 24.10.2001 @ 9% p.a
- (ii) From 25.10.2001 to 24.10.2002 @12% p.a
- (iii) From 25.10.2002 till date of the order (10.2.2005) @ 15% p.a
- (iv) If the amounts are not paid within 3 months, then 15% p.a on the total amount from the date of the order (11.2.2005) till the date of realization.

22. The learned counsel for the respondent fairly accepted that such an interest cannot be ordered in the light of Section

12 of Tamil Nadu Act 31 of 1978 wherein a uniform interest rate of 6% p.a has been prescribed.

23. Section 12 reads as follows:

"Section 12: Payment of Interest : When the amount is not paid or deposited on or before taking possession of the land, the prescribed authority shall pay the amount with interest thereon at the rate of six percent per annum from the time of so taking possession until it shall have been so paid or deposited and such interest shall be paid or deposited by the prescribed authority in the same manner as provided for the amount."

24. However, we have our own doubts with reference to the interpretation placed by the learned counsel regarding payment of interest under the Act. We are of the view that the application of Section 12 regarding payment of interest is only about the proceedings initiated by the prescribed authority and the resultant payment of compensation by the authority. It cannot be stretched to cover the proceedings either of the Lower Court or this court exercising power under Section 33 in a Second Appeal. In this case, the compensation fixed by the prescribed authority has already been paid and received by the respondent. The only dispute is regarding the enhanced compensation and the Appellate Court can fix a reasonable interest untrammelled by Section 12 of the Act, which applies only to the initial proceedings. Be that as may, since the counsel for respondent himself has conceded and is willing to receive a uniform six percent (6%) interest, we accordingly modify the judgment and decree of the Subordinate Court in L.A.A.No.16 of 2004 dated 10.2.2005 and direct that the appellant shall pay 6% interest on the amount awarded in this appeal from the date of the judgment of the Subordinate Court till the date of realization.

25. In the result, the second appeal is disposed of with the following directions:-

- (i) The respondent is entitled to receive compensation from the appellant in a sum of Rs.69,03,624/- (Rupees sixty nine lakhs three thousand six hundred and twenty four only).
- (ii) The appellant is also directed to pay solatium @15% in terms of Section 7(2) of the Act.
- (iii) The appellant is also directed to pay 6% per annum as interest on the amounts covered by (i) and (ii) @ 6% per annum from 10.2.2005 till the date of payment.

(iv) The respondent is directed to pay court fee on the enhanced amount of compensation fixed by this Court. The appellant is directed to deposit the amount towards the court fee with the Subordinate Court, Thirupattur from out of the amount payable to the respondent and

(v) Parties are allowed to bear their own costs.
Consequently, the above MP is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

To

The Subordinate Judge,
Thirupathur.

+1cc to M/S.P.S.Kothandaraman, Advocate sr.19499
+1cc to the Special Government Pleader Sr.19359

S.A.NO.906 of 2010
AND M.P.No.1 of 2010

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