

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 03.07.2015 & DELIVERED ON 28.3.2016

CORAM :

THE HON'BLE MR.JUSITCE V. RAMASUBRAMANIAN

AND

THE HON'BLE MR. JUSTICE T.MATHIVANAN

SECOND APPEAL NO.1771 of 2003 AND C.M.P.No.16208 of 2003

1.Special Tahsildar, Adi Dravidar Welfare,
Pollachi.

2.District Adi Dravidar Welfare Officer,
Coimbatore.

3.District Collector, Coimbatore.Appellants/Referring
Officers/Respondents

Vs.

1.Kandaswamy Gounder,

2.Palaniammal,

3.Periaswamy,

4.Nataraj,

5.Nachammal

...Respondents/Claimants/
Appellants

(R1 to R5 rep. by Power Agent
K.Kuppusamy)

SECOND APPEAL under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N.Act 31/78) against the judgment and decree of the Subordinate Court, Udumalpet made in C.M.A. No.8 of 2001 dated 13.1.2003 modifying the award dated 23.03.2001 made in Award No.19/2000-2001 by the Special Tahsildar (ADW), Pollachi.

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

For Respondents : Mr.S.Saravanan

JUDGMENT

The above second appeal is directed against the judgment and decree passed by the Subordinate Court, Udumalpet made in C.M.A.No.8 of 2001 dated 13.1.2003, by which, the Court below granted enhanced compensation.

2. At the time when the matter came up for admission before a Division Bench on 16.10.2003, after admitting the second

appeal, the Division Bench framed five substantial questions of law, though there was no requirement for the same.

3. A reading of Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) does not show that the admission of the second appeal is fettered with any rider. Section 13 reads as follows:-

"Appeal to High Court: Subject to the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) applicable to appeals from original decrees and notwithstanding anything to the contrary in any enactment for the time being in force, a second appeal shall lie to the High Court from any decision of the Court under this Act, if the amount as determined by the prescribed authority exceeds such sum as may be prescribed."

4. On the same day i.e on 16.10.2003, in C.M.P.No.16208 of 2003, the Division Bench granted the following interim order :-

"There shall be interim stay on condition of appellants depositing half of the enhanced compensation within eight weeks from today. On such deposit, within the stipulated time, the respondents/claimants are permitted to withdraw half of the deposited amount without furnishing any security and the remaining half on furnishing either bank guarantee or third party immovable security at the choice of the respondents/claimants."

5. It was recorded on 7.1.2010 that the appellants have complied with the conditional order and the respondents have also withdrawn the amount of the deposit made before the lower court.

6. In order to provide house-sites for the Adi Dravida people living in Poolavadi village, the first respondent proposed acquisition of land belonging to the third respondent to the extent of 3.98 acres in survey Nos.3/11, 5/A2, 5/A3 and 5/A4 in the same village. The District Collector, Coimbatore approved the notice under Section 4(1), which was published in the District Government Gazette on 2.3.2001. For the purpose of fixing the market value, sale transaction details were gathered from the Office of the Sub-Registrar, Udumalpet for a period of one year prior to the date of Notification. There were 8 sale transactions. The Authority took note of the transaction found in document No.4634 dated 10.11.2000. In that transaction, the lands in survey Nos.51/2, 51/3, 51/4 and 51/7 to the extent of 0.44 acres were sold for Rs.53,000/-. Based upon the same, the land value was fixed at Rs.1,20,455/- per acre. Based on the rate

found in the said data land, the respondents were directed to be paid Rs.4,79,411/- together with a solatium at the rate of 15%, which was Rs.71,912/-.

7. Aggrieved by the low rate of compensation, the respondents through their power agent filed an appeal under Section 9 of the Tamil Nadu Act 31 of 1978 before the Subordinate Court, Udumalpet. It was taken on file as C.M.A.No.8 of 2001. Before the Subordinate Court, the power agent examined himself as C.W.1 and two other witnesses M/s.Velliyangiri and Arivazhagan were examined as C.W.2 and C.W.3 respectively. On the side of the respondents, 8 documents were marked as exhibits Ex.C.1 to Ex.C.8. On the side of the first appellant, one Jaikumar was examined as R.W.1 and on their side 9 documents were marked as Ex.R.1 to Ex.R.9.

8. The Subordinate Court found from the cross-examination of R.W.1 that the data land was situated 1 km away from the land sought to be acquired. He also admitted that the land adjacent to the acquired land was a house-site recorded as ka.sa.20 and the land was sold at Rs.11,08,500/-. Further, the data land was purchaser's agricultural land. He also admitted that the guideline value for the lands in that area was fixed by the Deputy Inspector General of Registration, Coimbatore at Rs.15/- per sq.ft. The Subordinate Court also found that instead of taking the land in survey No.20, the data land was taken as some other land and therefore, the Authorities have not fixed the proper market rate of compensation. It also found that as per Ex.C.6, in ka.sa.No.20, 864 sq.ft was sold at Rs.17,500/- (per sq.ft. Rs.20.25 paise). However, the Subordinate Court reduced Rs.3/- per sq.ft and fixed the rate of compensation at Rs.17/- per sq.ft. It is in that view of the matter, by adding the solatium @ 15%, the Subordinate Court fixed Rs.33,92,472/- as compensation. Challenging the same, the appellants have filed the second appeal contending that the Court below was not right in fixing the market value and no proper deduction towards development charges was given.

9. We are not persuaded to accept the said contention advanced by the learned Special Government Pleader. On the other hand, the Supreme Court has held that a small exemplar can also be taken note of provided proper discounts are given.

10. The learned counsel for the respondents placed reliance upon the judgment of the Supreme Court in Sagunthala (dead) through LRs Vs. Special Tahsildar (L.A) [AIR 2010 SC 984] and pressed into service the following passages found in the judgment :-

"35. It has been further held in Atma Singh (Supra) that the market value of a property has to be determined having due regard to its existing condition with all its existing advantages and its potential possibility when let out in its most advantageous manner. The question whether a land has potential value or not, is primarily one of facts depending upon its condition, situation, user to which it is put and whether it is reasonably capable of being put and proximity to residential, commercial or industrial areas or institutions. The existing amenities like water, electricity, possibility of their further extension, whether near about town is developing or has prospect of development have to be taken into consideration. [See para 5]"

36. Following those principle laid down by this Court, we hold that the High Court and the Land Acquisition Officer failed to take into consideration the advantages and facilities, as discussed above, which were available in the acquired land. Moreover, the very purpose for which the land was being acquired is also a relevant factor."

11. The learned counsel also referred to the another judgment of the Supreme Court in Bhagwathula Samanna v. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality [AIR 1992 SC 2298] and drew the attention of this Court with the following passages found in the judgment for the proposition that in a given circumstances, there need not be any deduction towards development charges :-

"The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. In applying the principle it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition, the only relevant factor. Even in the vast area there may be land which is fully developed having all amenities and situated in an advantageous position. If smaller area within the large tract is already developed and suitable for building purposes and have in its vicinity roads, drainage, electricity, communications etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.....

The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances, it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land, because of advantageous position, is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances, it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs.10/- per sq.yard to Rs.6.50 paise per sq.yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed".

12. We have carefully considered the contentions; so also the decisions of the Apex Court.

13. In the present case, the Court below found that the land that was sought to be acquired was in a developed area surrounded by residential houses. After fixing the market value at the rate of Rs.20.25 paise, it reduced the amount and fixed the compensation payable at the rate of Rs.17/- per sq.ft. which works out to 16%. When there are judgments to show that for a developed area, there need not be any deduction towards development charges, in this case, the Subordinate Court had given 16% deduction from the market value.

14. We are not persuaded to accept the submission made by the learned Special Government Pleader. In view of the above legal precedents, the decision of the Subordinate Court enhancing the compensation is well within the legal norms and the factual matrix laid before it and we do not think that the second appeal deserves any consideration.

15. Accordingly, the second appeal stands dismissed. However, there will be no order as to costs. Consequently, the above CMP is also dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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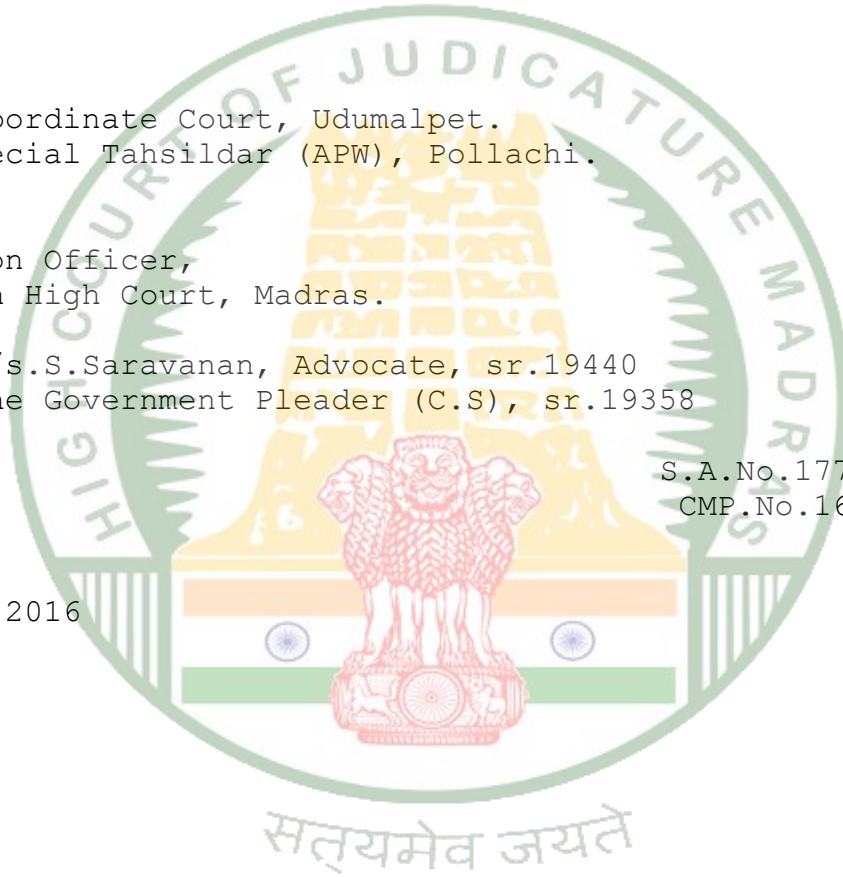
1. The Subordinate Court, Udumalpet.
2. The Special Tahsildar (APW), Pollachi.

Copy to:
The Section Officer,
VR Section High Court, Madras.

- 1 cc to M/s.S.Saravanan, Advocate, sr.19440
1 cc to The Government Pleader (C.S), sr.19358

S.A.No.1771 of 2003 &
CMP.No.16208 of 2003

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