N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

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THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 2121 of 2004

Land Acquisition Officer (LA)
Special Tahsildar,
Adi Dravidar Welfare Department,
Land Acquisition,
Pollachi. ..Appellant/Respondent/Referring Officer

Vs.

1. Sethupathi Gounder (deceased)
2. S.Bakkiyam
3. Logeswari
4. S.Durai raj
5. S.Shenbagam
(Respondents 2 to 5 brought on record as Legal representatives of the deceased sole respondent vide order of this Court dated 05.12.2016 made in C.M.P. Nos. 6603 to 6605 of 2016) ...Respondents

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the decree and judgment dated 28.04.2003 made in C.M.A.No.19 of 2000 on the file of the learned Subordinate Judge, Pollachi modifying the award made in Award No.8/99-2000 dated 10.12.1999 passed by the Special Tashildar (L.A.), Adi Dravidar Welfare, Pollachi.

For Appellant : Mr.S.Senthilnathan
Additional Government Pleader

For Respondents: Mr.R.N.Amarnath

JUDGMENT

This appeal is preferred by the Special Tahsildar, Adi Dravidar Welfare Department, Land Acquisition, Pollachi against the enhancement of quantum awarded by the learned Subordinate Judge, Pollachi in C.M.A.No.19 of 2000.

2. The brief facts pertaining to the appeal are as under: The subject land measuring to an extent of 0.81.0

hectare (2 acres) was owned by one Sethupathi Gounder. The appellant department sought to acquire the said land for the purpose of providing house site to Harijans. Therefore, a Gazette publication was effected on 09.03.1999, claiming objection from the interested parties. Thereafter, the acquisition proceedings have been completed vide award No.8/99-2000 dated 10.12.1999. The land owner was awarded a sum of Rs.25,000/- per acre and 15% as solatium. Aggrieved by that, the land owner preferred an appeal before the learned Subordinate Judge, Pollachi, wherein, after considering the guideline value and the previous sale effected in the locality, the appellate Court has fixed the value of the property at the rate of Rs.1,50,000/- per acre and accordingly the compensation was enhanced from Rs.57,500/- to Rs.3,45,000/-.

3. Aggrieved by that, the present second appeal has been preferred by the acquisition Authority by raising the following substantial questions of law :

1. "Whether the learned Judge was correct in enhancing the amount of compensation from Rs.25,000/- to Rs.1,50,000/-?
2. Whether the Award of interest was properly done?
3. Whether there is proper apportionment in the determination of the compensation?"

4. The learned counsel for the appellant submitted that from the sketch it could be seen that the property covered under Ex.A.1 and A.2 which is located in survey No.116 in the village which is nearly half a kilometer away from the property which was acquired and therefore, the Ex.A.1 and A.2 cannot be taken as guiding factor for fixing the value. Further, it is contended by the learned counsel for the appellant that the first appellate Court has taken note of the factor which ought not to have been considered as per Section 8 of Act 31 of 1978 while enhancing the compensation. It is also contented that the development charges to an extent of 1/3rd amount of the value ought to have been deducted in the award amount, which the Subordinate Court fails to do.

5. Per contra the learned counsel for the respondents submits that the location of the property which was covered under the two sale deeds namely Ex.A.1 and A.2, pertaining to survey No.116, Natham agricultural dry land and the property acquired are close to each other. The subordinate Court, after considering the field map has clearly observed that property under acquisition is next to metal road and east of the road, the village Natham survey No. 116 is located. The documents in Ex.A.1 and A.2 pertain to house site in survey No.118. Therefore, though it appears that the property acquired is half a kilometer away from the property which was sold under Ex.A.1 and A.2, it is mere 100 meters away from the

village Natham and therefore the value shown in the Ex.A.1 and A.2 has been rightly accepted by the Subordinate Court and there is no necessity to interferer with the award passed by the appellate Court.

6. In support of his submission, the learned counsel for the respondents has also referred the judgement of the Hon'ble Supreme Court reported in (2012) 5 Supreme Court Cases 432 in "Mehrawal Khewaji Trust (Registrered) Vs. State of Punjab" wherein, the Hon'ble Supreme Court held that the claimants will be entitled to interest on solatium and additional market value in view of the excalation. The land price, in case of rural land, will increase from 5% to 7.5% per annum. Hence, these factors has to be taken into consideration while fixing compensation. Ex.A.1 is of the year of 1996 and Ex.A.2 is of the year of 1997. A perusal of both these documents, it is seen that the value of the property per acre is more than Rs.1,50,000/-. Further the Subordinate Court has fixed only Rs.1,50,000/- per acre and awarded 15% of the value towards solatium without taking note of additional market value.

7. The learned counsel for the appellant submitted that as per the observation made by the Hon'ble Supreme Court in the case in K.S.Shivadevamma and ors Vs. Assistant Commissioner and Land Acquisition Officer and Anr. (1996 (2) SCC 62), wherein 53% of the land will be used to the developmental purpose and the general rule to the tune of 33-1/3% should be deducted in the award amount.

8. This Court is unable to accept the above said submission for the simple reason that the acquisition is in the rural area and the purpose for the acquisition is for providing house sites to Adi Dravidar community people. The above said principles may be applicable in any other housing acquisition in urban area where there is strict rules on buildings. It is to be taken note, in this case that the appellant while fixing the compensation did not deduct for development charges, while so it is needless to deduct development charges at this stage for the facts and circumstances stated above.

9. Further the land around the property acquired was already developed as house sites and Exs.A.1 and A2 revels that the properties situated in survey No.116, which are near by the property acquired were sold as house sites. While so, the award enhanced by the Subordinate Court though on the face of it, appears to be without effecting any deduction on development charges, at the same time the award does carry additional market value in view of price excalation and interest on solatium, which will increase the award amount if added.

10. This Court is not inclined to interfere with the award amount since, taking into consideration the guideline of the Hon'ble Supreme Court regarding the deduction of development charge and additional market value due to excalation of land price, there is no significant change in the award amount, since both percentage of deduction and addition are more or less same.

11. Hence the second appeal is dismissed. No costs.

rts

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Pollachi.

2. The Section Officer, VR.Section, High Court, Madras

+1cc to M/s. R.N. Amarnath, Advocate, S.R.No.76186
+1cc to the Government Pleader, S.R.No.76313

RSK(CO)
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