

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 31.10.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

A.S.No.138 of 2017
and
CMP.Nos.10250 and 14166 of 2017

1. V.R.Poongavanam (deceased)
 2. T.P.Kalvi, D/o.late V.R.Poongavanam
- .. Appellant/Claimant

(2nd appellant is impleaded as legal heir of the deceased sole appellant vide order dated 07.03.2017 made in CMP.No.2856 of 2017 in A.S.SR. No. 100093 of 2014)

Versus

The Land Acquisition Officer and
Special Tahsildar (Adi Dravidar Welfare)
Tirupattur, Vellore District.

.. Respondents/Referring officer

Appeal has been filed under Section 54 of the Land Acquisition Act against the order/award dated 30.07.2014 made in LAOP.No.95 of 2013 on the file of the learned Special Subordinate Judge for LAOP Cases, Vellore, Vellore District.

For Appellant : Mr.M.Balasubramanian
For Respondent : Mr.P.Gunasekaran
Additional Government Pleader

ORDER

(Order of the Court was delivered by P.VELMURUGAN.J.,)

This Appeal has been filed challenging the order/award dated 30.07.2014 made in LAOP.No.95 of 2013 on the file of the learned Special Subordinate Judge for LAOP Cases, Vellore, Vellore District.

2. During the pendency of the appeal, the appellant has filed two petitions viz.,

(i) CMP.No.10250 of 2017 praying to direct the respondent to pay or deposit a sum of Rs.40,14,952/- in the above appeal, after deducting the amount of Rs.6,05,776.35 towards the balance

court fee payable in the above first appeal; and

(ii) CMP.No.14166 of 2017 praying to receive the certified copy of the sale deed dated 29.10.1997 as Additional Evidence and mark the same as Ex.P3 in the above proceedings.

3. The facts of the case is that the land in S.No.269/4B to an extent of 0.74.5 hectares situated in Pachal village, Thirupattur Taluk were acquired for the purpose of allotment of house sites to landless poor Most Backward Community people. 4 (1) notification was effected on 29.04.1998 and possession was taken. After that the Land Acquisition Officer collected the documents relating to the lands nearby the acquired land and fixed market value of the acquired land as Rs.47,500/- per acre. In acquired land, there was one palmyra tree and two round wells were existed at the time of acquisition. Since two wells were dried, no compensation was awarded and compensation for palmyra tree was fixed at Rs.100/- and the Land Acquisition Officer awarded compensation of Rs.1,30,982/- including the statutory benefits. Being aggrieved and not satisfied with the award amount determined by the Land Acquisition Officer, the land owner made representation before the Land Acquisition Officer requested him to refer the matter to Land Acquisition Tribunal / Court for enhancement. When the matter was referred to the Special Sub Judge for LAOP Cases, Vellore, the land owner made claim application stating that even though the Land Acquisition Officer has collected 108 documents, he discarded 106 sale deeds and he has considered only the document in S.No.271/2C to an extent of 0.40 acres in document No.1893/96 dated 19.06.1996, whereas 4(1) notification was effected on 29.04.1998; The document considered was two years prior to the 4(1) notification and the Land Acquisition Officer has not given proper reason to discard 106 sale deeds; There were so many sales took place between 1997-1998 nearby the acquired land and among those sales, document No.2996/98 pertaining to S.No.250/2, the value of the land was Rs.73/- per sq.ft; The Land Acquisition Officer did not consider the said sale deed and he failed to determine the market value at Rs.75/- per sq.ft; and therefore, the claimant prayed the reference Court to fix the market value for the land at Rs.100/- per sq.ft., and to award compensation of Rs.10,000/- for palmyra tree and Rs.1,75,000/- for two wells.

4. In order to prove the case of the claimant, the claimant examined himself as PW.1 before the reference Court. On his side Exs.P1 to P2 were marked through him and Ex.C3 was marked with consent.

5. The reference Court, after considering the reference made by the Special Land Acquisition Officer, the claim application made by the claimant and also oral and documentary evidence and on considering Ex.C3 Pachal Village Map, came to the conclusion that the documents referred as Exs.C1 and C2 (Exs.P1 and P2) are not nearby the acquired land and they are

very far away from the acquired land and the document considered by the Land Acquisition Officer is adjacent to the acquired land the therefore, he has considered the said document. However, the reference Court, on considering that 4(1) notification was effected on 29.04.1998 and the date of document of data land is 19.06.1996, which is two years earlier to the date of 4(1) notification, came to the conclusion that it is proper to add 15% per annum to determine the market value of the acquired land on the date of the notification. Accordingly, by accepting the market value of the acquired land as fixed by the Land Acquisition Officer at Rs.47,500/- and by adding 15% increase per annum to determine the market value and for two years 30%, which is equivalent to Rs.47,500 X 30% = Rs.14,250/- and fixed the market value of the acquired land on the date of 4(1) notification at Rs.61,750/- (Rs.47,500 + Rs.14,250/-) per acre and Rs.618/- per cent. Since the acquired land is 1.84 acres (0.74.5 hectares), the reference Court has fixed the compensation at Rs.1,13,712/-, with statutory benefits. For palmyra tree, considering the age and potentiality of yielding, the Special Judge has fixed compensation at Rs.1,000/-. Since the two Wells are dried, the reference Court has not given any value for the Wells. Therefore, the reference Court enhanced the compensation in total at Rs.47,114/-. Aggrieved with the award passed by the reference Court, the claimant filed the present appeal before this Court.

6. During the pendency of the Appeal, the claimant died. Therefore, his only legal heir has been brought on record and during the pendency of the appeal, the legal heir has filed CMP.No.14166 of 2017 stating that the claimant/father was aged about 93 years and due to his old age, he could not produce proper documents of relevant year and the documents produced by the claimant was not accepted by the reference Court and after the death of his father, she got in the first week of August 2017, a document pertaining to document No.3754 of 1997 dated 29.10.1997 relating to the adjacent property, in and around acquired land and also the date of document is 29.10.1997, just one year prior to 4(1) notification; the value mentioned in the said document is Rs.65/- per square feet and if 15% enhancement is calculated, the value would come to Rs.75/- per square feet; Since the land was acquired for allotting house sites to landless poor, the market value has to be fixed per square feet and the aforesaid document reflects the just and fair market value, whereas the Land Acquisition Officer has fixed the value per acre and the award passed by the Land Acquisition Officer and also reference Court does not reflect the just and fair compensation; The claimant before the reference Court claimed Rs.100/- per sq.ft.; The market value as per the aforesaid document would come to Rs.75/- per sq.ft.; Due to his old age, the claimant could not produce the aforesaid document; Therefore, it is just and necessary to receive the sale deed

dated 29.10.1997 as additional evidence and mark the same as Ex.P3 in the above proceedings and consider the said document for fixing the just and fair market value.

7. Heard the learned counsel for the appellant and also perused the document and also the affidavit filed by the appellant.

8. On perusal of the legal heir certificate dated 06.06.2016, it is seen that the date of death of V.R.Poongavanam is 03.03.2016, at the age of 96. Date of award passed by Land Acquisition Officer is 13.01.2000. Date of order passed by the reference Court is 30.07.2014. Even at the time of filing first Appeal, the age of the claimant is 94 years. Therefore, the argument advanced by the present appellant is in force. In the interest of justice and considering the facts and circumstances of the case, the CMP.No.14166 of 2017 is partly allowed insofar as receiving the certified copy of the sale deed dated 29.10.1997. Since the appellant has filed certified copy of the document, it has to be proved by way of letting oral evidence and for that purpose, this Court remand back the matter to the reference Court for marking and considering the document.

9. Accordingly, the CMP.No.14166 of 2017 is partly allowed. In the said circumstances, the Appeal is partly allowed insofar as fixing of market value of the land is concerned and to that extent the award of the reference Court is set aside. The Appeal is dismissed in other aspects and the compensation fixed by the reference Court for palmyra tree and two Wells is confirmed. Insofar as fixing of the market value of the land is concerned, the matter is remanded back to the reference Court and reference Court has to consider the sale deed dated 29.10.1997 if it is proved after letting oral evidence for marking the said document, and otherwise, the reference Court can consider and pass award in accordance with law and uninfluenced by any of the observations made by this Court. Since the matter is of the year 1998, the reference Court is directed to complete the enquiry and pass the award, in accordance with law, within three months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP.No.10250 of 2017 is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

mra

To

1. The Special Subordinate Judge for LAOP Cases,
Vellore, Vellore District.
2. The Land Acquisition Officer and
Special Tahsildar (Adi Dravidar Welfare)
Tirupattur, Vellore District.
3. The Section officer
VR section, High court, Madras.

+1 CC to Govt. Pleader sr 76929.

+1 CC to Ms. M. Balasubramanian, Advocate sr 76825.

A.S.No.138 of 2017
and
CMP.No.10250 of 2017

CNR (CO)
SP (11/12/2017)



WEB COPY