

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE M.S.RAMESH**

A.S.No.1224 of 2015

Mrs.Anna Joseph

.... Appellant

Vs.

1.Special Tahsildar,
Land Acquisition Officer,
Chennai Unit-II,
Harini Towers,
No.7, Conron Smith Road,
Gopalapuram, Chennai-600 086.

2.Chennai Metro Rail Limited,
Harini Towers,
No.7, Conron Smith Road,
Gopalapuram,
Chennai-600 085.

.... Respondents

Prayer: Appeal Suit has been filed under Section 96 r/w Order 41 Rule 1 of C.P.C., against the judgment and decree dated 16.07.2015 made in L.A.O.P.No.50 of 2012 on the file of the learned VI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.S.Doraisamy, Senior Counsel
for M/s.Nishtiaq Ahmed

For Respondents : Mr.P.Gunasekaran, APG (AS) (For R1)
Mr.Jayesh B.Dolia (For R2)

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JUDGMENT

(Judgment of the Court was delivered by R.Subbiah, J.)

Not being satisfied with the enhancement of compensation from Rs.1,568/- per sq/ft to Rs.5,000/- per sq ft, awarded by the learned VI Assistant Judge, City Civil Court, Chennai, in L.A.O.P.No.50 of 2012, vide order dated 16.07.2015, for the land acquired in Koyambedu Village under the Notification issued under Section 17(1) of the Land Acquisition Act, 1984, the appellant/claimant has filed the present appeal.

2.Brief facts of the case are as follows_

2-1.The claimant is the absolute owner of the land in Block No.3 in T.S.No.7, Koyambedu Village, measuring to an extent of 1017 sq.ft

. While so, the 1st respondent issued a notice to the claimant to acquire the said land, along with other lands owned by other land owners, under 4(1) Notification issued in G.O.142, dated 6.11.2009, for the purpose of laying Metro Rail Track. Since the lands of the claimants were compulsorily acquired under Section 17 of the Act, Section 5A enquiry was dispensed with. According to the appellant/claimant, she received notice from the 2nd respondent for proper negotiation and when the proper negotiation was half way, they communicated Section 17 of the Act and compulsorily acquired the land of the claimant. The claimant has claimed Rs.12,000/- per sq.ft, whereas the 1st respondent fixed the compensation

at Rs.1,568/- per sq.ft. On objection raised by the claimant/land owner, reference under Section 18 of the Act was made.

2-2.Before the Court below, one Arun Kurian Joseph, who is the son of the claimant, was examined as C.W.1 and 35 documents were marked as Ex.C.1 to Ex.C.35. On the side of the Referring Officer, two witnesses were examined as R.W.1 & R.W.2 and five documents were marked as Ex.R.1 to Ex.R.5. The Court below by considering the documents marked on either side fixed a sum of Rs.5,000/- per sq.ft. Not being satisfied with the same, the appellant/claimant has filed the present appeal.

3.When the matter was taken up for consideration, the learned counsel for the appellant submitted that in the appeals filed by the other land owners covered under the same Notification under Section 4(1) r/w Section 17(1) issued G.O.Ms.No.142, dated 06.11.2009, a Division Bench of this Court has enhanced the compensation from Rs.5,000/- to Rs.6,150/-, by judgment dated 29.11.2015 in A.S.Nos.678 & 775 of 2014; hence, the appellant herein is also entitled for the same benefit. The learned counsel for the appellant has also produced a copy of the judgment passed by the Division Bench of this Court in A.S.Nos.678 & 775 of 2014, which was filed by the adjacent land owners, covered under the same Notification.

4. But, the learned Additional Government Pleader appearing for the 1st respondent as well as the learned counsel for the 2nd respondent opposed the same stating that as against the order passed in A.S.Nos.678 & 775 of 2014, review petitions have been filed and the same are pending.

5. We have carefully heard the submissions made on either side and perused the materials available on record.

6. Though very many contentions had been raised by the learned counsel for the appellant seeking enhancement of the compensation from Rs.5,000/- to Rs.8,000/- per sq ft, now the learned counsel for the appellant submitted that since in respect of the adjacent land covered under the same Notification, the compensation has been enhanced from Rs.5,000/- to Rs.6,150/- by the Division Bench of this Court in A.S.Nos.678 & 775 of 2014, the appellant herein also restricted her claim to the said amount of Rs.6,150/- per sq.ft. But, it is opposed by the learned counsel for the respondents stating that the review application is pending as against the said order.

7. But, We are of the opinion that as on date, the enhanced amount of Rs.6,150/- was not set aside by the Division Bench in the review. Therefore, the appellant herein, whose land is also covered under the

same Notification, is also entitled for the benefit of the Judgment dated 29.11.2015 in A.S.Nos.678 & 775 of 2014. In this regard, a reference could be placed in the judgment relied upon by the learned counsel for the appellant, reported in **1985(3) SCC 737 [Bhag Singh Vs. Union Terriotry of Chandigarh]**, wherein the Hon'ble Supreme Court has held as follows_

"3.....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 Judgement 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."

A reading of the dictum laid down in the above said decision would show that the State Government is bound to pay the compensation amount on the basis of the market value of the land acquired. In the instant case, the Division Bench of this Court by considering the various factual aspects has enhanced the compensation amount from Rs.5,000/- to Rs.6,150/- per

sq.ft. We do not find any valid reason to deny the same benefit to the appellant herein, who is the adjacent land owner and whose land also covered under the same Notification. Hence, the compensation amount fixed by the Court below shall be further enhanced from Rs.5,000/- to Rs.6,150/- per sq.ft.

8. Therefore, following the said judgment of the Division Bench of this Court, the compensation amount of Rs.5,000/- awarded by the Court below is hereby enhanced to Rs.6,150/- per sq.ft. Except this enhancement, in other aspects the impugned order of the Court below shall remain unaltered. The appellant/land owner is entitled for costs. The respondents are directed to pay the enhanced compensation amount, within a period of 12 weeks from the date of receipt of a copy of this order.

With the above terms, the Appeal is disposed of. No costs.

(R.P.S.J.,) (M.S.R.J.,)
21.03.2017

Internet : Yes / No
Index : Yes / No
ssv

To,
1. The VIth Additional Judge,
City Civil Court, Chennai.

**R.SUBBIAH, J.
AND
M.S.RAMESH, J.**

(SSV)

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