

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.06.2017

Pronounced on : 14-06-2017

CORAM:

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

Appeal Suit Nos. 222 to 224 of 2016

Land Acquisition Officer and
The Special Tahsildar (LA)
CMRL, Chennai

.. Appellant in all the
Appeal suits/1st respondent

Versus

1. Paneerselvam ...1st Respondent/Claimant
2. Managing Director
Chennai Metro Rail Limited ...2nd respondent/Claimant
Harini Towers No.7
Conron Smith Road ...Respondents in all
Gopalapuram, Chennai - 600 086 the Appeal suits

Appeals filed under Section 54 of The Land Acquisition Act, 1894 against the Judgment and Decree dated 30.04.2015 passed in L.A.O.P. Nos. 30, 31 and 32 of 2013 respectively on the file of VI Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr. R. Muthukumarasamy, Advocate General
assisted by Mr. P. Gunasekaran
Additional Government Pleader
(Appellate side)

For Respondents : Mr. T. Viswanatha Rao for R1
Mr. R. Thiagarajan, Senior Advocate
for Mr. Jayesh B. Dolia for R2

COMMON JUDGMENT

R. SUBBIAH, J

All these three appeals arise out of a common Judgment dated 30.04.2015 passed in L.A.O.P. Nos. 30, 31 and 32 of 2013 respectively on the file of VI Assistant Judge, City Civil

Court, Chennai, whereby the Reference Court has enhanced the compensation payable to the first respondent for acquisition of his lands from Rs.1,568/- to Rs.5,500/- per square feet. The Reference Court also directed the appellant to pay to the first respondent 30% solatium on the aggregate enhanced compensation amount determined by it, 12% additional market value on the enhanced compensation from the date of issuance of notification under Section 4 (1) of the Land Acquisition Act till the date of passing of the award together with 9% interest on the aggregate enhanced compensation amount from the date of taking possession of the acquired lands for one year and thereafter at the rate of 15% per annum till the award amount is deposited. Aggrieved by such enhancement of compensation, government has come forward with these appeals.

2. As all the three appeals arise out of a common judgment, the parties to the appeals are also one and the same, all the appeals are taken up together and are disposed of by this common judgment.

3. The first respondent in these appeals is the owner of the lands. The second respondent is the requisitioning body. The lands of the first respondent situate in Survey Nos. 2/3 measuring 11,366.68 square feet; 3/2 measuring 6431.82 square feet and Survey No. 4/2 measuring 1184 square feet in Koyambedu Village were sought to be acquired for the purpose of laying Metro Rail track. In this context, a notification under Section 4 (1) of the Land Acquisition Act was published in Tamil Nadu Government Gazette No.285, Part-II, Section 2 dated 06.11.2009 for acquisition of various lands, including the lands of the petitioner and after complying with the formalities, an award in Award No.1 of 2011 dated 12.01.2011 was passed by the appellant herein determining the compensation payable to the first respondent herein at Rs.1,568/- per square feet..

4. According to the appellant, before passing the award, for the purpose of fixation of just compensation for the lands proposed to be acquired, the appellant has verified 2512 sale transactions for the relevant period in the Village out of which 1487 sale transactions have been discarded on the ground that they are house sites with building. Similarly, 224 sale transaction relating to mortgage transaction, 2167 transaction relating to execution of settlement deeds, 3 transactions with reference to partition deeds, 482 transactions relating to UDR sales were also discarded by the appellant. Thus, out of 2512 sale transactions, the appellant has considered the remaining 147 sale transactions and after discarding the transactions which have taken place on various grounds, the appellant zeroed in on 2 sale transactions, one in respect of the land situate in AKR street and the other in Poonamallee High Road and based on

the value of the data lands, the appellant has determined the compensation payable to the acquired lands at Rs.1,568/- per square feet. According to the appellants, the data land is identical and similar with that of the lands proposed to be acquired and therefore, the sum of Rs.1,568/- per square feet awarded is a fair and reasonable compensation.

5. The first respondent, not satisfied with the sum of Rs.1,568/- per square feet fixed as compensation for the lands acquired, filed LAOP Nos. 30, 31 and 32 of 2013 before the Reference Court inter alia sought for enhanced compensation for the acquired lands.

6. Before the Reference Court, the claimant/first respondent herein examined himself as CW1 and Exs. C1 to C4 were marked. On the side of the respondent/ appellant herein, two witnesses were examined as RW1 and RW2 and Exs. R1 to R7 were marked.

7. The Reference Court, taking into consideration the value of the lands indicated in Exs. C1 to C4 filed on behalf of the claimant/first respondent herein and the communication dated 25.11.2008 said to have been given by the second respondent to the claimant/first respondent, has enhanced the compensation amount from Rs.1,568/- to Rs.5,500/- per square feet.

8. The learned Advocate General appearing for the appellant as well as the learned Senior counsel appearing for the second respondent/requisitioning body, in unison, submitted that on behalf of the respondents, 7 documents were marked before the Reference Court. According to the learned Advocate General, during the course of trial, the appellant was unable to secure a sketch drawn to scale which was in the possession of the Survey Department. However, a rough sketch not drawn to scale was produced and marked as Ex.R5 before the Reference Court, which was not objected to by the claimant. It is the vehement contention of the learned Advocate General that for all practical purpose, the rough sketch can be relied on inasmuch as it does not affect or alter the geographical location of the acquired land or the data land. While so, the Reference Court has erroneously observed that the appellant failed to produce any sketch to show that the data land and the acquired land are situate very nearer to each other in the same locality. According to the learned Advocate General, now the appellant has obtained a copy of the sketch drawn to scale from the Survey Department. The copy of the sketch drawn to scale obtained by the appellant, if produced before the Reference Court, would enable the Reference Court to ascertain the exact location where the acquired land and data lands are situate, it's potentiality or value it may fetch which would enable the Reference Court to

award a just and reasonable amount as compensation. The sketch discloses that the acquired land is unfit for human habitation and therefore, the enhanced compensation awarded by the Reference Court is improper. The learned Advocate General therefore prayed this Court to permit the appellant to mark the sketch drawn to scale as additional document before this Court for determination of a just compensation.

9. The learned Advocate General as well as the learned Senior Counsel for the second respondent, in unison, would further vehemently contend that the Land Acquisition Officer, before fixing the compensation for the acquired lands, has taken into account the sale statistics for the period between 01.01.2007 and 13.11.2009 and collected around 2512 documents. After discarding the documents for various reasons, the Land Acquisition Officer has taken into account the sale deed dated 17.11.2008 pertaining to sale of 8 grounds and 565 square feet of land and it was marked as Ex.R3 before the Reference Court. Taking into consideration the value of the lands mentioned under Ex.R3, the Land Acquisition Officer has rightly fixed the compensation at Rs.1,568/- per square feet for the lands acquired from the first respondent, which according to the learned Advocate General is a fair and reasonable compensation amount. However, the Reference Court, mainly relied on the documentary evidence filed on behalf of the claimant/first respondent herein in Exs. C1 to C4 and arrived at an exorbitant compensation amount of Rs.5,500/- per square feet. In this regard, it is submitted that the acquired lands are situated in a poor state abutting the Cooum river, adjacent to a burial ground and it is a flood prone area. To demonstrate this, the learned Advocate General appearing for the appellant produced photographs to show the physical features which exist in the acquired lands and prayed to mark the photographs also as additional documents in this appeal. The appellants have also filed a Petition in CMP No. 6447 of 2017 in A.S. No. 222 of 2015 seeking permission to mark the sketch drawn to scale, photographs, proceedings dated 29.03.2010 relating to the private negotiation made by the second respondent with the first respondent as additional document in these appeals.

10. It is further submitted that the documents marked on the side of the claimant/first respondent are only gift deeds relating to undivided share of land. In Ex.C1, gift deed dated 30.10.2008 and Ex.C2, Gift Deed dated 07.11.2008 the value of the land was mentioned as Rs.4,156/- per square feet. Further, Ex.C3, Sale deed dated 03.06.2009 relates to sale of undivided share of the land and the sale value thereof was fixed at Rs.5,281/- per square feet. Ex.C4 is another sale deed dated 15.07.2008 in which one square feet of land was sold at the rate of Rs.4,000/- per square feet. On the other hand, on behalf of

the appellant, Ex. R1 to R7 have been marked among them Ex.R3 relates to the data land relating to sale deed dated 17.11.2008 in which a larger extent of 8 grounds and 565 square feet of land was sold and the land covered therein is situate abutting the Poonamallee High Road. It is further stated that the lands covered under Exs. C1 to C4 are situate far away from the acquired lands and therefore also, the Reference Court ought not to have placed reliance on the documents filed by the claimant/first respondent herein. On the contrary, the data land is situate very near to the acquired lands and therefore, the Reference Court ought to have considered the value indicated in Ex.R3 filed on behalf of the appellant. However, the Reference Court, without considering Ex.R3 has erroneously enhanced the value of the acquired land at Rs.5,500/- per square feet without any basis and it calls for interference by this Court.

11. The learned Senior Counsel for the second respondent would further submit that for fixing the enhanced value for the acquired lands, the Reference Court has assigned a reason that the second respondent/requisitioning body, by the communication dated 25.11.2008, offered to pay a sum of Rs.6,150/- per square feet to the claimant/first respondent during private negotiation. According to the learned Senior Counsel for the second respondent, before the Reference Court, the claimant has not produced the so-called communication dated 25.11.2008. While so, the Reference Court on its own assumption referred to the so-called communication dated 25.11.2008 of the second respondent to enhance the compensation amount. On the contrary, during private negotiation, the second respondent/requisitioning body has only offered a sum of Rs.1,815/- per square feet as compensation and it was also recorded in the proceeding dated 29.03.2010 of the second respondent. Thus, the offer made by the second respondent during private negotiation with the first respondent was only Rs.1,815/- per square feet and not Rs.6,150/- per square feet as reasoned by the Reference Court. In any event, when the so-called communication dated 25.11.2008 has not been produced before the Reference Court or without going through its content, the Reference Court ought not to have enhanced the compensation amount. Thus, according to the learned Senior Counsel for the second respondent, the Reference Court, on the basis of assumption and presumption that the acquired land has the potential for payment of enhanced compensation, fixed the compensation at Rs.5,500/- per square feet without any basis. Therefore, it is prayed on behalf of the appellant as well as the second respondent that the Judgment of the Reference Court in LAOP Nos. 30, 31 and 32 of 2013, enhancing the compensation amount from Rs.1,815/- to Rs.5,500/- per square feet is without any basis and they are liable to be set aside.

12. On the contrary, the learned counsel for the land owner/first respondent herein would justify the enhanced compensation amount awarded by the Reference Court by contending that the Reference Court, on proper appreciation of the oral and documentary evidence, has rightly concluded that the compensation fixed by the Land Acquisition Officer is not proportionate to the physical features of the acquired lands especially when it is located in the heart of the City. As far as the additional evidence sought to be marked by the appellants at the appellate stage, the learned counsel for the first respondent would contend that the appellants have not offered any satisfactory explanation as to why those documents could not be marked before the Reference Court. In the absence of such explanation and evidence to show that despite due diligence the documents could not be marked, the additional evidence sought to be marked need not be permitted. In this context, the learned counsel for the first respondent placed reliance on the decision of the Honourable Supreme Court in (Satish Kumar Gupta etc., vs. State of Haryana and others etc.,) AIR 2017 Supreme Court 1072 wherein it was held that when it is not the case of the appellant that inspite of due diligence they could not mark certain document or the evidence sought to be marked by them was refused to be received by the court below, the plea of the appellant for marking additional document cannot be permitted which would amount to fill up the lacunae or to patch-up the weak points in the case. In Para No.20 of the said Judgment, it was held as follows:-

"20. It is clear that neither the Trial Court has refused to receive the evidence nor it could be said that the evidence sought to be adduced was not available despite the exercise of due diligence nor it could be held to be necessary to pronounce the judgment. Additional evidence cannot be permitted to fill-in-the lacunae or to patch-up the weak points in the case. There was no ground for remand in these circumstances."

13. As far as the enhancement of compensation is concerned, it is submitted by the learned counsel for the first respondent that the Reference Court, by taking into consideration of the communication dated 25.11.2008 sent by the second respondent, gave a specific finding that the requisitioning body has agreed to pay a sum of Rs.6,150/- per square feet as compensation during private negotiation. In spite of the same, the Reference Court has only awarded a lesser amount of Rs.5,500/- per square feet as compensation. The Reference Court, with due application of mind, has independently considered the oral and documentary evidence made available and rightly enhanced the

compensation amount and it calls for no interference by this Court.

14. By way of reply, learned Advocate General appearing for the appellant placed reliance on the decision of the Honourable Supreme Court in (North Eastern Railway Administration, Gorakhpur vs. Bhagwan Das (dead) by Lrs) reported in (2008) 8 Supreme Court Cases 511 to contend that in the interest of justice, additional evidence is always permissible at the appellate stage and it cannot be always presumed that such additional evidence are meant to fill up the lacunae. For the same proposition, the learned Advocate General also relied on the decision of the Honourable Supreme Court in (Wadi vs. Amilal and others) reported in (2015) 1 Supreme Court Cases 677.

15. We have heard the counsel on either side and perused the materials placed on record. It is not in dispute that the first respondent is the owner of the lands which were acquired by the appellant, on behalf of the second respondent/requisitioning body for laying of Metro Rail tracks and for provision of other allied infrastructural amenities required thereof. The question therefore falls for our consideration in these appeals is as to whether the enhanced compensation awarded by the Reference Court is justifiable or not.

16. In order to bring home the locational advantages, physical features and the locality in which the acquired lands as well as the data lands are situate, the appellant has produced a sketch not drawn to scale before the Reference Court, however, they did not produce the sketch drawn to scale before the Reference Court. According to the appellant, if the sketch drawn to scale is produced, it will throw more light on the existence of physical features of the acquired lands. It is the vehement contention of the appellant that the acquired lands are situated adjacent to the bank of coovum river, situate in a flood prone area, very near to a graveyard and it is not a potential land. Therefore, to prove the existence of the physical features of the acquired land, according to the appellant, it is just and necessary to produce the sketch drawn to scale especially when the Reference Court has made an observation to the effect that the appellant failed to produce the sketch for consideration. According to the appellant, now they have obtained the sketch drawn to scale from the Survey Department and therefore, if they are permitted to mark the sketch drawn to scale before the Reference Court, by remanding the matter, it would enable the Reference Court to consider it for determining a fair, just and reasonable compensation amount for acquired lands. The appellants have also indicated the steps taken by them to obtain the certified copy of the sketch drawn to plan from the Survey Department, however, they could

not obtain it before pronouncement of the Judgment by the Reference Court.

17. It is evident that the appellant has produced a sketch before the Reference Court but it was not drawn to scale. Now, the appellant has obtained a sketch drawn to scale from the Survey Department and it is sought to be marked. The fact remains that the appellant has already produced a rough sketch not drawn to scale and therefore, the document now sought to be marked namely sketch drawn to scale cannot be construed to be a new document filed by the appellant to fill up the lacunae. Having regard to the above facts, we are of the opinion that in the interest of justice, the appellant shall be permitted to mark the sketch drawn to scale so as to enable the Reference Court to ascertain the locational advantage and other physical features which exist in the acquired lands.

18. As regards the quantum of compensation enhanced by the Reference Court, it is vehemently contended on behalf of the appellant as well as the second respondent that the Reference Court, by referring to a so-called communication dated 25.11.2008 said to have been issued by the second respondent to come to a conclusion that the second respondent offered to pay a sum of Rs.6,150/- per square feet as compensation and thus mainly on the basis of the so-called communication the reference Court has enhanced compensation to Rs.5,500/- per square feet. According to the appellant as well as the second respondent, when the so-called communication dated 25.11.2008 has not been marked as a document, the Reference Court is not justified in referring to such a communication. But in the private negotiation proceeding dated 29.03.2010, which is now sought to be marked as additional document, with the first respondent, the second respondent has offered to pay a sum of Rs.1,815/- per square feet and not Rs.6,150/- per square feet as observed by the Reference Court. Thus, the second respondent dispute the offer of Rs.6,150/- made by them during private negotiation with the first respondent/land owner. We find force in such submission made by the appellant as well as the second respondent. When the so-called communication dated 25.11.2008 has not been marked as a document, the Reference Court ought not to have referred the said document for the purpose of enhancing the compensation.

19. For all the reasons indicated above, we set aside the Judgment and Decree dated 30.04.2015 passed in L.A.O.P. Nos. 30, 31 and 32 of 2013 on the file of the learned VI Assistant Judge, City Civil Court, Chennai and consequently the Appeal Suits are allowed. There shall be no order as to costs. The matter is remanded back to the reference Court for passing award afresh in LAOP Nos. 30 to 32 of 2013. The Reference Court is directed to

permit the appellant to mark additional documentary evidence and afford opportunity to them to examine and cross-examine the witness and thereafter, shall pass appropriate award thereof on merits and in accordance with law. Such an exercise shall be completed by the Reference Court within a period of two months from the date of receipt of a copy of the Judgment in these appeals. Consequently, all the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

rsh

To

The VI Assistant Judge
City Civil Court, Chennai.

+3cc to Mr.T.Viswanatha Rao, Advocate sr. 41962 to 41963
+1cc to the Government Pleader Sr, 42186

Pre-delivery common Judgment
in AS Nos. 222 to 224 of 2016

SSI (CO)
VR(16/8/2017)

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