IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2017

CORAM:

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

A.S.No.668 of 2016,
CMP Nos.20394 of 2016 and
3512 of 2017

1.Union of India,
Represented by the Secretary to Government,
Revenue Department,
Government of Puducherry, Puducherry.

2.The Sub-Collector (Revenue) South-Cum-
Land Acquisition Officer, Saram,
Puducherry. ...Appellants/Respondents

-Vs.-

The Present Trustee
Sri La Sri Kanagasabai Swamigal
(Madadhipathi)
Ambalathadum Swamigal Madam ...Respondent/Petitioner

Appeal Suit filed under Section 54 of the Land Acquisition Act to set aside the Award dated 15.10.2015 in L.A.O.P.No.13 of 2010 on the file of the II Additional District Judge, Pondicherry.

For Appellants : Ms.V.Usha,
Additional Govt.Pleader
for Puducherry

For Respondent : Mr.P.Suresh

J U D G M E N T
K.K.SASIDHARAN,J.

This first appeal at the instance of the Government of Union Territory of Puducherry challenges the Award dated 15 October, 2015 in L.A.O.P.No.13 of 2010 on the file of the II Additional District Judge, Pondicherry on the ground that the Reference Court enhanced the market value without the support of documents indicating higher value in the locality in question.

The Facts

2. The Government of Puducherry acquired 00.56.73 Hectares of land at Embalam Revenue Village in Bahour Taluk, Puducherry for providing free house sites to the landless labourers. The State invoked urgency clause under sub-section (4) of Section 17 of the Land Acquisition Act. The notification under Section 4(1) was approved by the Government vide G.O.Ms.No.59 dated 12 December, 2003. It was followed by a declaration under 6 of the Land Acquisition Act in G.O.Ms.No.69 dated 20 February, 2004. The Collector fixed the land value at the rate of Rs.21,520/- per Are. The possession of the land was taken on 12 August, 2004, after paying 80% of the compensation. Thereafter, Award was passed on 12 September, 2005.

3. The Land Acquisition Officer, pursuant to the request made by the respondent referred the matter to the District Court under Section 18 of the Land Acquisition Act. Before the Reference Court, the respondent produced Exhibits P1 and P2 to prove the land value in the locality in question. The Reference Court on verification of documents found that the land covered in those documents were far away from the acquired land. The Reference Court ultimately fixed the land value at Rs.100/- per sq.ft.,

Submissions

4. The learned Additional Government Pleader contended that since the acquired land was wet land and larger extent, the Reference Court was not correct in fixing the land value on 'sq.ft.' basis. The learned Additional Government Pleader submitted that the acquired land is situated in a low level and for development, considerable amount is necessary. It was further contended that the land covered in Exs.P1 and P2 produced by the respondent is situated in another village and it is also a dissimilar one. Since there was no other document to show the actual market rate, the Trial Judge ought to have confirmed the Award passed by the Land Acquisition Officer.

5. The learned counsel for the respondent contended that even though the land acquired was wet land, the fact remains that the Government has fixed the guideline rate for similar land on "sq.ft" basis. The learned counsel submitted that the Sale Deed marked as Exs.P1 and P2 could be relied on to fix the market value as those lands are situated just adjacent to the acquired land. The learned counsel further contended that the revenue department in the Union Territory of Puducherry fixed similar guideline rate on "sq.ft." basis even for wet land and

as such, the appellants are not correct in the contention that the value given for a developed land cannot be the criteria for fixing the value of wet land though it is also in a developed locality.

Discussion

6. The Government of Puducherry acquired 00.56.73 Hectares of land owned by the respondent. The notification under Section 4(1) of the Land Acquisition Act was approved by the Government on 12 December, 2003 and it was published in the State Gazette on 30 December, 2003. The Government invoked urgency clause.

7. The Land Acquisition Officer collected the sale statistics for a period of one year preceding the notification under Section 4(1) of the Land Acquisition Act. The Land Acquisition Officer rejected 79 sales on various ground and retained one document. The sale retained by the Land Acquisition Officer indicates that the land value was Rs.22,360/- per Are. The Land Acquisition Officer deducted development charges and infrastructure facilities @ 20% of the retained value and the land value was assessed at Rs.17,888/- per Are. The assessed value was compared by the Land Acquisition Officer with the guideline value of Rs.20/- per sq.ft and accordingly, the market rate was fixed at Rs.21,520/- per Are.

8. The Land Acquisition Officer pursuant to the request made by the respondent referred the matter to the District Court under Section 18 of the Land Acquisition Act. Before the Reference Court, the respondent produced two documents. Ex.P1 is a Sale Deed dated 5 February, 2003. It was in respect of 1800 sq.ft of land in R.S.No.210/5, which was sold for a sum of Rs.54,000/-. Ex.P2 is dated 21 May, 2003. The land is in R.S.No.208/13A admeasuring 1800 sq.ft, which was sold for a sum of Rs.54,000/-. The Reference Court opined that Exs.P1 and P2 would not be of any help to fix the market value. The Reference Court also found that the acquired land is in a lower level and deduction of development charges is necessary. The Reference Court, thereafter, without any basis fixed the land value at Rs.100/- per sq.ft.

9. The Land Acquisition Officer was expected to fix the market value taking into account the value fetched in a similar sale in the locality one year prior to the issuance of notification under Section 4(1) of the Act. Though the Land Acquisition Officer in the counter affidavit filed before the Reference Court contended that 79 sales were rejected on the

ground either that the land is differed from that of the acquired land or that the land is far away from the locality, the fact remains that there was no discussion with reference to each of the documents considered for arriving at the market value.

10. The two documents produced by the respondent in Exs.P1 and P2 appears to be the documents relating to sale that took place few months prior to the notification under Section 4(1). The land is stated to be situated in a nearby village. The Award passed by the Reference Court does not contain any indication as to how the market value was arrived at. We are therefore of the view that the land value should be fixed taking into account Exs.P1 and P2 and after giving proportional deduction for development charges.

11. The Hon'ble Supreme Court in Bhupal Singh and others v. State of Haryana [(2015) 5 SCC 801] indicated that it is open to the Court to exercise the discretion within the permissible parameters after appreciating the evidence brought on record and applying the relevant legal principles.

12. The Hon'ble Supreme Court in Vithal Rao and another v. Special Land Acquisition Officer [(2017) 8 SCC 558] observed that the courts can always apply reasonable amount of guesswork to balance the equities in order to fix a just and fair market value in terms of parameters specified under Section 23 of the Land Acquisition Act.

13. The land involved in Exs.P1 and P2 are situated in another village. In the absence of any other document to fix the compensation, we are of the view that the value shown in those two documents could be taken as the guiding factor.

14. The Land Acquisition Officer in the Award stated that the guideline value is Rs.20/- per sq.ft. The guideline rate if considered in the light of the value prevailing in the adjacent locality which is borne out by Exs.P1 and P2, it would assist this Court to fix the land value. Accordingly, on consideration of the documents available on record and evidence, we fix the land value at Rs.60/- per sq.ft.

Guideline Value

15. Before parting with this appeal, we deem it fit and proper to indicate the illegality committed by the Revenue Department, Government of Union Territory of Puducherry in the

matter of fixing guideline value.

16. The learned Additional Government Pleader submitted that the subject land is wet land and as such, the guideline rate fixed on "sq.ft." basis for developed land cannot be adopted for fixing the market value of undeveloped wet land.

17. We have come across cases several cases from Puducherry indicating that the guideline value is fixed in a uniform manner on "sq.ft." basis without verifying the nature of land.

18. The Supreme Court in State of Punjab and others v. Mohabir Singh and others [(1996) 1 SCC 609] indicated the evidentiary value of guideline rate in the following words:-

> "5. The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alert him regarding the value. It is common knowledge that the value of the property varies from place to place or even from locality to locality in the same place. No absolute higher or minimum value can be predetermined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only on objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A."

19. The Supreme Court in R.Sai Bharathi v. J.Jayalalitha and others [(2004) 2 SCC 9] held that guideline value is not final but only a factor to be taken note of, which is prevailing in the area. The Supreme Court said:

> "24. This scheme of the enactment and the Rules contemplate that guideline value will only afford a prima facie basis to ascertain the true or correct market value, undue emphasis on the guideline value without reference to the setting in which it is to be viewed will obscure the issue for consideration. It is clear, therefore, that guideline value is not sacrosanct as urged on behalf of the appellants, but only a factor to be taken note of, if at all available in respect of an area in which the property transferred lies. In any event, therefore, if for the purpose of the Stamp Act guideline value alone is not a

factor to determine the value of property, its worth will not be any higher in the context of assessing the true market value of properties in question to ascertain whether the transaction has resulted in any offence so as to give a pecuniary advantage to one party or the other."

20. The guideline value of the land has to be determined having due regard to its existing condition with all its locational advantages and potential possibility. The question whether a particular land has potential value or not for fixing the guideline rate is primarily one of the fact depending upon its condition, situation, user to which it is put or is reasonably capable of being put and proximity to residential, commercial or institutions of importance. The existing amenities like road, water, electricity, possibility of further development are all relevant consideration while fixing the guideline rate. The guideline rate for the commercial land abutting the main road or highway cannot be the guiding factor for fixing the value for land having no such road access or which is away from town. The guideline rate for wet land should be less when compared to the developed land. Similarly, the rate for small extent of land cannot be the basis for fixing the value for larger extent of land.

21. The Hon'ble Supreme Court in Kasthuri v. State of Haryana [(2003) 1 SCC 354 indicated that existence of a developed land adjacent to, would not be a ground to value all the land in the area alike. The Supreme Court said :

"7. ...... It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; maybe the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character of a developed area. In 84 acres of land acquired even if one portion on one side abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, maybe in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose."

22. The Hon'ble Supreme Court in Vithal Rao case (cited supra) indicated the plus and minus factors while fixing the land value:-

	Plus factors	Minus factors
1	smallness of size	largeness of area
2	proximity to a road	situation in the interior at a distance from the road
3	frontage on a road	narrow strip of land with very small frontage compared to depth

	Plus factors	Minus factors
4	nearness to developed area	lower level requiring the depressed portion to be filled up
5	regular shape	remoteness from developed locality
6	level vis-a-vis land under acquisition	some special disadvantageous factor which would deter a purchaser
7	special value for an owner of an adjoining property to whom it may have some very special advantage	

23. The revenue department in the Union Territory of Puducherry has been fixing land value on "sq.ft." basis even for wet land. Even in the subject case, the land value for the wet land was fixed on "sq.ft." basis. There is no distinction shown between the value of developed housing /commercial plot and undeveloped plots situated in a remote or low lying area. The valuation is made uniformly for a land in a particular area or village on sq.ft. basis notwithstanding the fact that larger extent of land is often sold on 'ares' or 'kuzhi' basis. Since the land value is fixed uniformly for the entire land in a particular area, when the land is acquired for public purpose, the Government is compelled to pay the very same rate for the entire land notwithstanding the locational disadvantage of a particular land included in the notification. The guideline rate for the land situated away from the highway or arterial road should be less than the rate for the land abutting such roads. In case, the land is interior, proportional deduction should be given while fixing the guideline rate in comparison with the rate for a fully developed land with road access. In case, a scientific method of valuation is adopted by the revenue department taking into account the nature of the land and its locational advantages, claim for enhanced compensation even for wet and undeveloped land on the basis of the rate fixed for developed land could be avoided.

24. We are informed that the Government of Puducherry reduced the guideline rate recently and even such reduction was made on a uniform basis. We make it clear that the concerned officials of the revenue department must inspect the land in each village and the guideline rate should be fixed taking into account the locational advantages and disadvantages of a particular land. In short, the authorities should not fix the land value uniformly without considering the nature and use of

the land.

Disposal

25. For the reasons aforesaid, the Award impugned in the appeal is modified to the extent that the respondent is entitled to compensation at the rate of Rs.60/- per sq.ft. The respondent is also entitled to the statutory benefits.

26. We direct the Land Acquisition Officer to calculate the compensation payable to the respondent at the rate of Rs.60/- per sq.ft. and add the statutory benefits including interest and pay the entire amount within a period of two months, less the amount already paid.

27. The first appeal is allowed in part. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The II Additional District Judge,
Pondicherry.

2. The Chief Secretary to Government
Puducherry.

3. The District Collector
Puducherry

4. The Section Officer
V.R. Section, High Court
Madras-104.

+1 CC to Govt. Pleader sr 77505.
+2 Ccs to Mr.P. Suresh, Advocate sr 77137.

Appeal Suit No.668 of 2016

PA(CO)
SP(04/12/2017)