

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

S.A.No.643 of 2017
and
C.M.P.No.15884 of 2017

The Special Tahsildar,
Adi Dravidar Welfare,
Pollachi.

... Appellant/Land Acquisition Officer

Vs

1. K.Palanisamy
2. K.Somasundaram
3. K.Senthilkumar
4. K.Vimal Prakash

... Respondents/Claimant

Prayer: Second Appeal filed under Section 13 of Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78 r/w. Section 100 of C.P.C., against the judgment and decree dated 06.12.2004 made in L.A.O.P.No.8 of 1999 on the file of Subordinate Judge, Udumalpet, modifying the Award No.15/97-98, dated 25.03.1998 on the file of the Special Tahsildar (ADW) and Land Acquisition Officer, Pollachi, Coimbatore District praying to set aside the Award.

For Appellant : Mr.T.Jayarama Raj
Govt.Advocate (C.S.)
For respondents : Mrs.R.Meenal

J U D G M E N T

The brief facts of this case that :

The appellant Department had acquired the land under Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78, after issuance of 4(1)Notification in the District Gazette, for the lands in S.Nos.464/2, 464/3, 464/5, measuring total extent of 2.30 acres (0.93 Hectares). As per the notification, the Land Acquisition officer has passed the award by considering the documents and value of the adjacent land of the acquired property. Based on the said documents, the price of the land was fixed at Rs.19,640/- per acre. Since the respondents/claimants raised objection against the award passed

for the land acquired from the respondents/claimants measuring 2.30 acres, the Land Acquisition officer has referred the matter to the Sub-Court, Udumalpet and the same was taken on file in L.A.O.P.No.8 of 1999. Before the Sub-Court, on the side of the claimants, Exs.C1 to C4 were marked, and on the side of the Land Acquisition officer, Exs.P1 to P4 were marked. The learned Sub-Judge considered the sale deeds under Exs.C2, C3 and C4 registered on 19.11.1997, 12.06.1997 and 13.10.1997 prior to the 4(1) notification dated 30.12.1997. As per Ex.C2, the land was sold for the sale consideration of Rs. 35,000/- for an extent of 10 cents, at the rate of Rs.8/sq.ft. Ex.C3, the sale deed received by the claimant would show that the land measuring 2790 sq.ft., was sold for the sale consideration of Rs.20,000/- at the rate of Rs.7.16/sq.ft. The sale deed was registered on 12.06.1997. According to the sale deed marked under Ex.C4, registered on 13.10.1997 land measuring of 2160 sq.ft., was sold for the sale consideration of Rs.15,000/- at the rate of Rs.6.94/sq.ft., On the basis of classification of land, the Court below has considered the documents Exs.C2, C3 and C4 and determined the market value of the land acquired from the claimants at the rate of Rs.8/sq.ft., which comes to Rs.3,488/- per Cent and fixing the rate of interest at 9% from the date of award and 6% interest from the date of acquisition and further awarded 15% towards solatium to the claimant. Challenging the aforesaid award enhancing the compensation awarded by the Sub-Court, Udumalpet, the appellant/Department has filed the present second appeal before this Court.

2. According to the learned counsel for the appellant, the Court below without considering the document relied upon by the appellant/Department and by considering the claimants' documents determined the market value at the rate of Rs.8/sq.ft., which is contrary to the principles laid down by the Hon'ble Supreme Court as well as this Court. Further, it is contended by the appellant Department that the Court below considering Exs.C2 and C3 sale deeds which are related to smaller extent of land, namely 10 cents, enhanced the compensation. Therefore, the Court below ought to have discarded those documents for fixing the compensation amount. In the present case, larger extent of land was acquired. Therefore, even if the above said documents are taken into consideration for fixing the compensation amount, in the light of the decision of the Hon'ble Supreme Court as well as this Court, there shall be a reasonable deduction for the acquired land. Without making any deduction for the larger extent of land, the court below awarded the enhanced compensation of Rs.3,48,800/- per acre.

3. The learned counsel for the respondent would submit that the respondents/claimants have marked the documents under Exs.C2, C3 and C4 and the Court below by considering those documents has rightly determined the compensation for the land

acquired from the claimants at the rate of Rs.3,48,800/- per acre.

4. Further, the learned counsel for the respondents/claimants submitted that the Court below has not awarded the interest for the solatium. In the light of the judgment of this Court, the interest awarded to the claimants is not in accordance with the provisions of the Act. Therefore, the respondents/claimants are also entitled for the interest for solatium as well as interest for the compensation amount.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. The appellant Department acquired the land under the Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/1978. At the time of acquisition, Kulanthaivel Gounder was the owner of the acquired land. The Department has acquired the land in S.Nos.464/2, 464/3 and 466/5 for the total extent of 0.93.0 hectares (2.30 acres). The Land Acquisition officer passed an award by considering the prevailing market value of the land and the vicinity of the land and by considering the tharam and classification of the acquired land and fixed the award amount at Rs.19,642/- per acre. On the basis of the objection, the Land Acquisition officer referred the matter to Sub-Court, Udumalpet, in L.A.O.P.No.8 of 1999. The Court below relied upon Exs.C2, C3 and C4 sale deeds which were registered in the year 1997 for an extent of 10 cents. On the basis of these documents, the compensation amount was enhanced to Rs.3,48,800/- per acre. The learned Sub-Judge, Udumalpet, by considering Ex.C2 sale deed was registered for the extent of 10 cents and Ex.C3 is also registered for the smaller extent of land enhanced the compensation. These documents are registered prior to 4(1) notification dated 30.12.1997. But, in the light of the decision of the Hon'ble Supreme Court and this Court, the document relied upon by the claimant is for the small extent of land, whereas the land was acquired by the Land Acquisition Officer is larger extent of land. Further, there shall be a deduction towards development charges. The dispute in the present case on hand is that the Sub-Court has failed to make any deduction towards the development of the acquired land. Based on Exs.C2 and C3, the Sub-Court fixed the compensation amount of Rs.8/- per sq.ft, totally, it comes to Rs.3,488/- per cent. In this regard, a reference could be placed in the decisions of Hon'ble Supreme Court in the case of Major General Kapil Mehra and others v. Union of India and another reported in 2015(2) SCC 262, wherein paragraph 40 would run as under:-

'40. Rule of one third deduction towards development appears to be the general rule. But so far as Delhi Development Authority is concerned, or similar statutory authorities, where well planned

layouts are put in place, larger land area may be utilized for forming layout, roads, parks and other common amenities. Percentage of deduction for development of land to be made in DDA or similar statutory authorities with reference to various types of layout was succinctly considered by this Court in [Lal Chand vs. Union of India & Anr.](#) (2009) 15 SCC 769 and observing that the deduction towards the development range from 20% to 75% of the price of the plots, in paras 13 to 22, this Court held as under:-

"13. The percentage of "deduction for development" to be made to arrive at the market value of large tracts of undeveloped agricultural land (with potential for development), with reference to the sale price of small developed plots, varies between 20% to 75% of the price of such developed plots, the percentage depending upon the nature of development of the layout in which the exemplar plots are situated.

14. The "deduction for development" consists of two components. The first is with reference to the area required to be utilized for developmental works and the second is the cost of the development works. For example, if a residential layout is formed by DDA or similar statutory authority, it may utilize around 40% of the land area in the layout, for roads, drains, parks, playgrounds and civic amenities (community facilities), etc.

15. The development authority will also incur considerable expenditure for development of undeveloped land into a developed layout, which includes the cost of leveling the land, cost of providing roads, underground drainage and sewage facilities, laying water lines, electricity lines and developing parks and civil amenities, which would be about 35% of the value of the developed plot. The two factors taken together would be the "deduction for development" and can account for as much as 75% of the cost of the developed plot.

16. On the other hand, if the residential plot is in an unauthorized private residential layout, the percentage of "deduction for development" may be far less. This is because in an unauthorized layout, usually no land will be set apart for parks, playgrounds and community facilities. Even if any land is set apart, it is likely to be minimal. The roads and drains will also be narrower, just adequate for movement of vehicles. The amount spent

on development work would also be comparatively less and minimal. Thus the deduction on account of the two factors in respect of plots in unauthorized layouts, would be only about 20% plus 20% in all 40% as against 75% in regard to DDA plots.

17. The "deduction for development" with reference to prices of plots in authorized private residential layouts may range between 50% to 65% depending upon the standards and quality of the layout.

18. The position with reference to industrial layouts will be different. As the industrial plots will be large (say of the size of one or two acres or more as contrasted with the size of residential plots measuring 100 sq. m to 200 sq m), and as there will be very limited civic amenities and no playgrounds, the area to be set apart for development (for roads, parks, playgrounds and civic amenities) will be far less; and the cost to be incurred for development will also be marginally less, with the result the deduction to be made from the cost of an industrial plot may range only between 45% to 55% as contrasted from 65% to 75% for residential plots.

19. If the acquired land is in a semi-developed urban area, and not an undeveloped rural area, then the deduction for development may be as much less, that is, as little as 25% to 40%, as some basic infrastructure will already be available. (Note: The percentages mentioned above are tentative standards and subject to proof to the contrary.

20. Therefore the deduction for the "development factor" to be made with reference to the price of a small plot in a developed layout, to arrive at the cost of undeveloped land, will be far more than the deduction with reference to the price of a small plot in an unauthorized private layout or an industrial layout. It is also well known that the development cost incurred by statutory agencies is much higher than the cost incurred by private developers, having regard to higher overheads and expenditure.

21. Even among the layouts formed by DDA, the percentage of land utilized for roads, civic amenities, parks and playgrounds may vary with reference to the nature of layout-whether it is residential, residential-cum-commercial or industrial; and even among residential layouts, the

percentage will differ having regard to the size of the plots, width of the roads, extent of community facilities, parks and playgrounds provided.

22. Some of the layouts formed by the statutory development authorities may have large areas earmarked for water/sewage treatment plants, water tanks, electrical substations, etc. in addition to the usual areas earmarked for roads, drains, parks playgrounds and community/civic amenities. The purpose of the aforesaid examples is only to show that the "deduction for development" factor is a variable percentage and the range of percentage itself being very wide from 20% to 75%." Lal Chand's case deals with acquisition of lands by DDA under the Rohini Residential Housing Scheme where 40% deduction was made towards the land area to be utilized for laying down of roads, drains etc. Further deduction of 35% of the value of the developed plot towards cost of levelling the land, cost of providing roads, underground drainage, laying down water lines, electricity lines was made."

In the light of the aforesaid judgment, there shall be a deduction towards development charges for land, layouts etc. By considering the aforesaid judgment of this Court as well as Supreme Court, deduction shall be made towards development charges for providing roads etc.

7. The evidence of the claimants would show that the said property is a developed one and it is very close to the main road and schools and also there is a future development in the acquired land. By taking into consideration of the development of land and the evidence of the Land Acquisition officer, and on the basis of the decision of this Court, there shall be 20% deduction towards development charges is reasonable. By deducting 20% in the total compensation amount would come to Rs.6,41,792/-. Apart from the said compensation amount, the respondents 3 & 4 are entitled interest on the solatium as per the judgment reported in 2001(7) SCC 211 in the case of Sunder v. Union of India, wherein paragraph 26 is held as follows:-

"26. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana v. Kailashwati : (SCC p.119, para 10)

"Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the

compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

8. In the case of Iyasamy and another v. Special Tahsildar, Land Acquisition reported in (2010) 10 SCC 464, the Hon'ble Supreme Court has observed as follows:

'18. The learned counsel for the appellants in Civil Appeals Nos.1760-61 of 2004 are also claiming interest on solatium and additional compensation as the impugned order of the High Court was pronounced prior to the judgment in Sundar v. Union of India. Since the present appeal was pending before this Court, therefore, the ratio of Sundar v. Union of India would entitle the appellants to receive interest on solatium under Section 23(2) and additional compensation under Section 23(1-A) in terms of the said decision. It was decided in Gurpreet Singh v. Union of India that such interest can be claimed only from the date of the judgment in Sundar i.e., 19-9-2001. Therefore, the appellants in Civil Appeals Nos.1760-61 of 2004 shall be entitled to such interest for the period after 19-9-2001, not the period prior to the same.'

9. In the light of the above said judgments, the claimants 4 & 5 / respondents 3 & 4 are entitled for the interest on the solatium from 19-9-2001. As far as the interest is concerned, the claimants 4 & 5 / Respondents 3 & 4 are entitled interest as per Section 12 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. The total compensation amount would come to Rs.16,05,081/- to be paid by the appellant/Department to the claimants.

10. In view of the above facts and circumstances and the decisions cited supra, the Second Appeal is partly allowed and the Appellant Department undertakes to settle the amount, less

the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

ssn

To

1. The Subordinate Judge,
Udumalpet.

2. The Special Tahsildar (ADW)
and Land Acquisition Officer,
Pollachi, Coimbatore.

3.The Section Officer,
VR Section, High Court,
Madras.(2 copies)

+ 1 cc to Mrs.R.Meenal Advocate,SR.70547

+ 1 cc to The Special Govt.Pleader, SR.70185

S.A.No.643 of 2017
and
C.M.P.No.15884 of 2017

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