

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.M.A.Nos.2480, 2481, 2317 and 2318 of 2015

J.Bhavani ... Appellant in CMA.2480 of 2015
R.Suseela ... Appellant in CMA.2481 of 2015
R.Kumarakuruparan ... Appellant in CMA.2317 of 2015
R.Raja Chidhambaram ... Appellant in CMA.2318 of 2015

Vs.

1. The District Revenue Officer,
Perambalur.
2. The Special Tasildhar, (L.A.)
National Highways - 45,
Perambalur.
3. The Project Director,
National Highways Authority of India,
No.44, 3rd Main Road,
Ponnagar, Tiruchirappalli.

... Respondents in all the CMA's

Civil Miscellaneous Appeals are filed under Section 37 of the Arbitration and Conciliation Act, 1996 to modify the decree and judgment dated 22.08.2014 in Arbitration O.P.Nos.4, 5, 2 and 3 of 2009 respectively on the file of the Principal District Judge, Perambalur.

For Appellants : Mr.R.Rajaraman

For Respondents : Mr.S.Arulandu for
M/s.P.Wilson Associates for R3
Mr.R.Venugopal
Special Government Pleader
for R1 & R2

C O M M O N J U D G M E N T

All these four appeals are by the land owners whose lands were acquired for the purpose of four laning of NH45 between Thindivanam and Trichy. The lands of the appellants situated in Naranamangalam Village, Kunnam Taluk of Permbalur District were acquired for the said purpose.

2. A notification under Section 3A(1) of the National Highways Act, 1956 was published on 27.05.2004, the substance of the notification was also published in two local news papers as provided under Section 3A(3) of the Act. Upon the said acquisition the Competent Authority namely the District Revenue Officer passed an award on 31.08.2006 fixing the value of the land acquired at Rs.74.65 per Sq.m.

3. Since the land owners did not accept the award and sought for a reference under Section 3G(5) of the National Highways Act, 1956, a reference was made to the Arbitrator appointed under the said provision namely the District Collector, Perambalur. The Arbitrator by his award dated 25.09.2008 confirmed the compensation award by the Competent Authority. Aggrieved the land owners filed an Original Petition before the District Court, Perambalur under Section 34 of the Arbitration and Conciliation Act, 1996.

4. The learned District Judge by his common award dated 22.08.2014 made in Arbitration OP.Nos.2, 3, 4 and 5 of 2009 enhanced the award and granted a sum of Rs.25 per Sq.ft. Aggrieved the land owners are on appeal before this Court.

5. Heard Mr.R.Rajaraman, learned counsel appearing for the appellants and Mr.S.Arulandu, learned counsel appearing for M/s.P.Wilson and Associates for the respondents.

6. Mr.R.Rajaraman, learned counsel appearing for the appellants would contend that the learned District Judge, having accepted the valuation in sale deeds produced as Exs.P10 to P12 dated 11.06.2003, 18.06.2003 and 21.07.2003 respectively erred in fixing the value of Rs.25 per Sq.ft. which is much lower than the value reflected under the said documents. According to the learned counsel, the trial Court erred in reducing the compensation after having accepted the sale deeds namely the Exs.P10 to P12.

7. He would also contend that the Ex.P13 which is the copy of guide line register maintained by the Sub-Registrar would show that the guide line value of the property is between Rs.38 and 44 during the relevant period.

8. Mr.R.Rajaraman, learned counsel would further contend that the learned District Judge had granted interest only from the date of the Award till the date of realization of the award amount. This according to the learned counsel is not in tune with Section 3H(5) of the National Highways Act, 1956. According to him the interest should have been directed to be paid from the date of taking possession till the date of payment on the enhanced amount.

9. Mr.S.Arulandu, learned counsel appearing for the respondents would contend that the learned District Judge was not bound to accept the valuation reflected in the documents.

According to him, the valuation reflected in the documents could only be taken to be guiding factor and it is for the Court to come to conclusion on the actual market value of the property. He would also submit that Sub Section 5 of Section 3H of National Highways Act, 1956 provides that payments of interest at 9% from the date of taking possession only to the enhanced award of the Arbitrator.

10. I have considered the rival submissions. The trial Court has recorded categorical finding that the value reflected in Exs.P9, P10, P11 and P12 is acceptable. The learned trial Judge also concluded that those documents reflect the proper market value of the property. However, came to the conclusion that the market value of the property would be fixed at Rs.25 per Sq.ft.

11. Mr.R.Rajaraman, learned counsel appearing for the appellants would invite my attention to the judgment of the Hon'ble Supreme Court in Sri Rani M.Vijayalakshamma Rao Bahadur, Ranees of Vuyyur vs.The Collector of Madras reported in 1969 (1) MLJ SC 45, wherein the Hon'ble Supreme Court had observed that in matters relating to payment of compensation while determining the market value of the land on the basis of the similar sales in the locality, the highest value fetched should be taken into account and not the average value of the properties sold under different documents. The Hon'ble Supreme Court has observed as follows:

" Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case. "

12. This judgment of the Hon'ble Supreme Court was followed by a Division Bench of this Court in The Special Tahsildar (La) Vs. Rathinareddi reported in (2003) 1 MLJ 781 in para 10 of the said judgment the Division Bench has observed as follows :

" It is settled law, while fixing the market value, the comparable sale transaction which fetched maximum price and which is the most advantageous to the Claimants, alone should be taken into consideration, since the guideline and principle laid down is that Court should see at what price a willing seller will sell. {Refer [i] 1969 (1) MLJ SC 45 (Ranees of Vuyyur vs. Collector of Madras); [ii] (State Vs.P.Seetharamammal); and [iii] (Mehta Ravindraraj Ajitraj Vs.State of Gujarat)}"

13. In view of the above categorical pronouncement by the Hon'ble Supreme Court and Division Bench of this Court, I am of the considered opinion the learned trial Judge was not right in fixing the value of the land acquired at Rs.25/Sq.ft. ignoring the value of land in Ex.P9 which is at Rs.39/Sq.ft. Therefore, the trial Court ought to have granted a sum of Rs.39/Sq.ft. for the land belonging to the appellants acquired for the purpose of four laning of NH45.

14. On the question of interest the Section 3H(5) provides for fixing of interest by the Arbitrator. The said Section reads as follows:

" Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent. per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof."

15. It is the admitted case the possession was taken prior to the award being passed. Therefore, under Section 3H (5) of the act interest is payable at 9% from the date of taking possession till date of realization. Therefore, the learned District Judge was not right in granting the interest only from the date of the award and not from the date of taking possession. Hence, the order of the learned District Judge requires modification.

16. In fine the appeal is allowed the award of the learned District Judge stands modified as follows:

The appellants would be entitled to a sum of Rs.39 per Sq.ft/ Rs.419.64 per sq.m. of the land acquired from them along with interest at 9% per annum from the date of taking possession till date of payment. The amount if any already paid shall be deducted from the amount fixed herein above. In these circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The District Revenue Officer,
Perambalur.

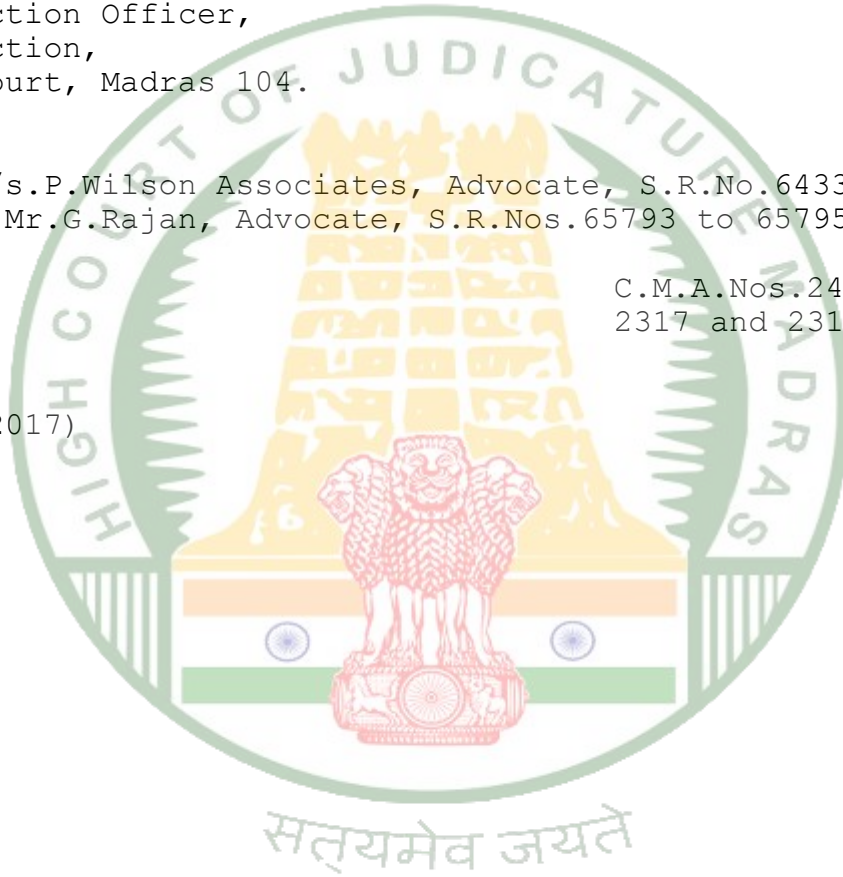
<https://hcservices.ecourts.gov.in/hcservices/>

2. The Special Tasildhar, (L.A.)
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Ponnagar, Tiruchirappalli.
4. The Principal District Judge,
Perambalur.
5. The Section Officer,
V.R.Section,
High Court, Madras 104.

+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.64338
+3cc's to Mr.G.Rajan, Advocate, S.R.Nos.65793 to 65795

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CNR(CO)
CA(03/10/2017)



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