IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.07.2017	Delivered on: 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

Second Appeal No.407 of 2008
and
MP.No.1 of 2008

Special Tahsildar (ADW)
Vandhavasi .. Appellant/Respondent/
Land Acquisition Officer

Vs.

Venugopal .. Respondent/Appellant/
Claimant

Prayer : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree made in C.M.A.No.4/2001 dated 27.03.2002 on the file of Sub Court, Cheyyar, Thiruvannamalai District modifying the award made in Award No.3/2000-2001 dated 12.12.2000 passed by the Special Tahsildar cum Land Acquisition Officer, Adi Dravidar Welfare, Vandhavasi.

For Appellant : Mr.Jayaram Raj
Addl.Govt.Pleader (CS)

For Respondent : M/s.P.P.Purushothaman
and P.Arun Kumar

J U D G M E N T

The Appellant / Land Acquisition Authority, aggrieved over the finding of the Court below, which fixed the compensation for the land acquired, at Rs.800/- per cent, in the order passed in C.M.A.No.4/2001 on 27.03.2002 on the file of Sub Court, Cheyyar, Thiruvannamalai District, has come forward with the second appeal, seeking to set aside the same and to restore the Original Order passed by the Special Tahsildar cum Land Acquisition Officer, Vandhavasi, fixing Rs.200/- per cent, as compensation for the land acquired.

2. The Second Appeal was admitted by formulating the following substantial questions of law:-

> "1. Whether the Court below failed to appreciate the provision of Section 8 of Act 31/1978 wherein the classification of the land as on date of acquisition is the criteria for fixation of compensation and not the purpose for which it has been acquired?
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> 2. Whether the Court below had erred in not appreciating the various judgments of the Hon'ble Court as well as the Apex Court wherein it has been categorically laid down that the small extent of land cannot be relied on for fixation of compensation or large extent of lands as reported in 1998(2) SCC 150 and 1995(5) SCC 426 and 2003(12) SCC 334?
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> 3. Whether the Court below had erred in not appreciating the provision of Section 8 of Act 31 of 1978 wherein it is made clear that in the fixation of determining the amount of compensation, the purpose for which the land acquired shall not be a criteria and nature of land on the date of 4(1) notification shall be criteria for determining the compensation ?"

3. The land belonging to the respondent/claimant herein measuring to an extent of 1.22 Acres in Survey No.222/3A; 2.52 acres in Survey No.291/1; 0.69 cents in Survey No.291/2, 0.17 cents in Survey No.291/4; totally measuring to an extent of 4.60 acres at Parasur Village, Cheyyar Taluk, Thiruvannamalai District, was acquired for the purpose of constructing houses for Adi Dravidar People. As per Na.Ka.A.1394 of 1999, the compensation for the same was fixed at Rs.20,000/- per acre + 15% Solatium [Rs.200/- per cent] as per the Award No. 3 of 2000-2001, dated 12.12.2000 passed by Special Tahsildar, Land Acquisition, Adi Dravidar Welfare Office, Vandavasi. Aggrieved over the said Award, the claimant preferred an Appeal in C.M.A.No.4 of 2001, before the Sub Court, Cheyyar, Thiruvannamalai District, contending that the amount fixed by the authority concerned is very low; the correct market value of the land acquired was Rs.1,500/- per cent and the authority concerned has wrongly fixed the value at Rs.200/- per cent on the basis of sale of land in Survey Number 210/5A. It is further contended that the Land Acquisition Authority failed to calculate the compensation as per the market value. It is further contended that the land acquired was near the main road and the land relied on for fixing the compensation is situated far off from the acquired land and the value of acquired land is much higher than the land situated in Survey Number 210/5A, which has been taken as the Guideline by the Land Acquisition Authority. Thus, the claimant/landlord concerned, sought to fix

the land value of Rs.1,500/- per cent and award the compensation accordingly.

4. The above said contention was opposed by the Land Acquisition Authority contending that the value fixed at Rs.200/- is correct and there is no need to revise the same.

5. The landlord/claimant examined himself as P.W.1 and one Balaraman was examined as P.W.2 and also produced three documents Ex.A.1 to Ex.A.3 to substantiate his claim. On the other hand, the Land Acquisition Authority examined one witness as D.W.1 and produced three documents Ex.B.1 to Ex.B.3, to support their contention.

6. After considering both the oral and documentary evidence let in by both sides, the First Appellate Court fixed the value of the land acquired at Rs.800/- per cent and awarded total compensation of Rs.4,23,200/- as per the order under challenge .

7. Aggrieved over the said finding of the Appellate court, the Land Acquisition Authority has preferred this appeal on the grounds that the land under acquisition is far away from the State Highways road; the First Appellate Court failed to appreciate the statutory provisions of Section 8 of the Land Acquisition Act 31/78, which clearly laid down the factors which are not to be taken into consideration for fixation of market value; the First Appellate Court erred in relying upon two Exhibits viz., Ex.A.2 and Ex.A.3 sale deeds for enhancing the market value from Rs.200/- to Rs.800/- ignoring the fact that the said sale deeds were referred to the date of 4(1) notification issued by the Government; the court below failed to make necessary deductions towards developmental charges and also raising other grounds, the appellant herein seeks to set aside the order passed by the First Appellate Court and to restore the order passed by the Land Acquisition Authority fixing Rs.200/- per cent for the land of the claimant herein.

8. The fact that the land belonging to claimant measuring to an extent of 1.22 Acre in Survey No.222/3A; 2.52 acres in Survey No.291/1; 0.69 cents in Survey No.291/2, 0.17 cents in 291/4; totally measuring to an extent of 4.60 acres at Parasur Village, Cheyyar Taluk, Thiruvannamalai District, was acquired by the Land Acquisition Authority for the purpose of constructing houses for Adi Dravidar People is admitted. The fact that as per the Award No.3 of 2000-2001 dated 12.12.2000, compensation of the said land was fixed at Rs.200/- per cent by the officer concerned is also admitted. Aggrieved over the said compensation fixed by the authority concerned, the claimant has preferred the First Appeal before the court below. The claimant produced a copy of the Award passed by the Special Tahsildar (LA) dated

12.12.2000 as Ex.A.1, wherein the compensation was fixed for the land acquired. According to the Land Acquisition Authority, the said value was fixed on the basis of Ex.B.3 Sale Deed dated 15.09.1999 relating to another property in the same area. The Land Acquisition Authority also produced the map of Parasur Village as Ex.B.2 and also Extract of sale particulars in the locality concerned from 03.09.1999 to 02.09.2000 of the Sale Register Book as Ex.B.1 to support their contention that the value of the land fixed at Rs.200/- per cent is correct. According to the Acquiring Authority concerned, the value of the land was fixed after taking into consideration all the factors like the market value of land and various sale transactions that took place in that area and the land in sale deed relied upon for fixing such compensation was similar in nature to that of the land acquired by them. Hence, Land Acquisition Authority seeks to fix the compensation at Rs.200/- per cent and to set aside the order of the First Appellate Court.

9. In the case on hand, according to the claimant, his land is situated near the main road running between Cheyyar and Thiruvannamalai and the same is suitable land for constructing houses and also suitable for sale of plots and that Parasur Colony is also situated adjacent to that land. It is further stated by the claimant that to the South, West and North of the land under acquisition, main road is running and as such the acquired land is situated in a prime place and the value of the acquired land is much higher than the land situated in Ex.B.3 Sale Deed relied upon by the authority concerned. The above said evidence of the claimant is corroborated by the evidence of D.W.1 who is examined on the side of Land Acquisition Authority concerned. D.W.1 stated that he is working as Head Clerk in the office of Special Tahsildar, Adi Dravidar Welfare Office, Vandavasi and he has admitted in his cross examination that the land acquired for the purpose of constructing houses to Adi Dravidar People and it is situated very close to Cheyyar - Thiruvannamalai Main Road. It is therefore clear that the land acquired is adjacent to main road. According to the claimant, the Sale Deeds Ex.A2 and Ex.A3 produced by him are related to land situated adjacent to the acquired land and the value mentioned in the said Sale Deeds indicates the fair value prevailing in that area. The witness examined by the authority concerned also admitted that the lands mentioned in Exs.A.2 and A.3 - Sale Deeds are situated near to claimant's land and therefore it is clear that the documents relied upon by the claimant relates to the land of similar nature and situated near the claimant's land.

10. P.W.2 who was examined by the claimant stated that the land purchased by him is situated adjacent to claimant's land and the same was purchased by him on behalf of Vijayalakshmi

Educational Trust as per Ex.P.2 Sale Deed dated 15.09.2000 and the land value was fixed at Rs.800/- per cent. According to P.W.2, the claimant's land will have higher value than the land purchased by him. He further stated that the value of the land acquired will be Rs.1,500/- per cent and near the appellant's acquired land, he has constructed a Polytechnic and college in land purchased by him. PW2 also states that the lands in Parasur Village are very fertile lands. It is clear from the evidence of P.W.1 and P.W.2, the Polytechnic, Bank and Schools were situated near the appellant's acquired land. It is further contended that the value of the land is increasing day by day in that area. Further, the Claimant has produced Ex.A3 Sale Deed, whereby 1.50 acres of land in near by survey No.292/3 was purchased by one Mohan and the same was also substantiate the claim of the land owner/appellant about the value of the land in the said area. It is evident from the above said documents produced by the claimant that the value of the land in the said area is higher than the value fixed by the land acquisition authority.

11. On the other hand, the Head Clerk of Special Tahsildar Office who deposed on behalf of the authority concerned stated that the land was acquired for the purpose of Adi Dravidar Welfare Project and the mandatory enquiry under the Act 31/1978 was conducted on 06.03.2000 in Parasur village. According to him, the model land value was fixed and for that purpose the Sale Registration Extract for the period from 03.09.1999 to 02.09.2000 was secured and perused, the same is produced as Ex.B1. According to the person who deposed on behalf of the authority concerned, the value was fixed on the basis of sale effected during the period when 4(1) notification was issued by the Government and the value mentioned in Ex.B3 Sale Deed is just and correct and the said land to be acquired is similar in nature to the land of that mentioned in Ex.B3. Therefore, the value fixed by the authority concerned at Rs.200/- per cent is correct and seeks to confirm the same.

12. However, the claimant says that the land mentioned in Ex.B3 is far away from his land and both are not similar in nature. There is nothing on record to show that Ex.B3 land is situated near the land of the claimant and it is similar in nature and developed like the claimants land. In such circumstances, the learned counsel for the appellant contends that the value fixed by the Land Acquisition Officer cannot be accepted as just and proper. On the other hand, the claimant has produced Ex.A2 and Ex.A3 Sale Deeds and also examined the adjacent land owner who purchased the land mentioned in Ex.A2 to prove that the value of the land acquired is on the higher side and the said land is situated near the main road and having all developmental features. The Appellate court re-fixed the value

at Rs.800/- per cent on the basis of two sale deeds Ex.A2 and Ex.A3 produced by the claimant, even though it referred to the purpose for which the land is sought to be acquired and other features which may lead to development of that area. The said reasoning is opposed by the appellant on the ground that the purpose of acquisition cannot be the criteria and classification of land alone can be the basis for fixing the compensation. The same is unacceptable, since the first Appellate court has primarily re-fixed the value only on the basis of Ex.A2 and Ex.A3 Sale Deeds relating to the land situated near the claimant's land and not on the basis of purpose or otherwise usage of land as contended by the appellant. In view of the same, the first Appellate Court has correctly relied upon Exs.A2 and A3 Sale Deeds to fix the value of land at Rs.800/- per cent.

13. The learned Counsel appearing for the appellant further contended that the value of the land mentioned in Exs.A2 and A3 Sale Deeds cannot be relied upon as the said two Sale Deeds are dated 15.09.2000 and 21.12.2000 and came into being subsequent to Sec 4(1) Notification. On the other hand, the Appellant/Land Acquisition Authority relied upon Ex.B3 Sale Deed dated 15.09.1999 and also Ex.D1 extract of Sale Deed Register for the period from 03.09.1999 to 02.09.2000, to fix the compensation. However, it is admitted by the Head Clerk of Special Tahsildar Office of Land Acquisition while deposing as DW1 that particulars and details relating to the registration of sale deed for the period 03.09.1999 to 02.09.2000 was perused and taken into consideration by them while fixing the land value for the land in dispute. Admittedly, Exs.A2 and Ex.A3 documents were executed in the year 2000 only and it relates to the same period in respect of which the sale value was considered by the authorities. In such circumstances, the contention of the appellate authority that Exs.A2 and A3 Sale Deeds were executed subsequently and the same cannot be taken into consideration for fixing the value for the land acquired is unacceptable and the same is liable to be rejected.

14.In the light of the above said discussion and the fact that the land said to be acquired is situated near the main road running between Cheyyar and Thiruvannamalai and the sale deed relied upon by the claimant is relating to the land which is situated adjacent to claimant's land, the First Appellate Court has rightly looked into the same and considered the relevant factors properly and fixed the compensation at Rs.800/- per cent, and the said conclusion is just and proper for the above said land. Therefore, this court is of the considered view that there is no need to interfere with the order of the First Appellate Court.

15.In the result, the Second Appeal is dismissed. The substantial questions of law raised are answered in favour of the respondent. Parties shall bear their own costs. Consequently, Connected Miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vv

To

1.The Sub Court, Cheyyar,
Thiruvannamalai District.

2.The Special Tahsildar-cum-
Land Acquisition Officer,
Adi Dravidar Welfare, Vandhavasi.

3.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.P.P.Purushothaman, Advocate Sr. 52671
+1cc to the Special Government Pleader sr. 53521

Judgment
in
Second Appeal No.407 of 2008

SCD(CO)
VR(15/09/2017)