IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.09.2017

Pronounced on : 17 -11-2017

CORAM:

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

Appeal Suit Nos. 19 and 20 of 2012 and 31 and 32 of 2015

A.S. No. 19 of 2012

1. D. Suresh Kumar
represented by his power of attorney agent
D. Narayanan
New No.27, Old No.19, College Road
Pazhavanthangal, Chennai – 600 114 .. Appellant

Versus

1. The Special Tahsildar (LA)
Chennai City Water Ways Scheme
Ambattur, Chennai – 600 053

2. The Executive Engineer
Public Works Department
Kosathalaiyar Basin
Tiruvallur .. Respondents

A.S. No. 20 of 2012

1. Mrs. R. Chandra
represented by her power of attorney agent
D. Narayanan
New No.27, Old No.19, College Road
Pazhavanthangal, Chennai – 600 114 .. Appellant

Versus

1. The Special Tahsildar (LA)
Chennai City Water Ways Scheme
Ambattur, Chennai – 600 053

2. The Executive Engineer
Public Works Department
Kosathalaiyar Basin
Tiruvallur .. Respondents

A.S. No. 31 of 2015

The Special Tahsildar (LA)
Chennai City Water Ways Scheme
Ambattur, Chennai – 600 053 .. Appellant

Versus

1. Mrs. R. Chandra
   represented by her power of attorney agent
   D. Narayanan
   New No.27, Old No.19, College Road
   Pazhavanthangal, Chennai – 600 114

2. The Executive Engineer
   Public Works Department
   Kosathalaiyar Basin
   Tiruvallur .. Respondents

A.S. No. 32 of 2015

The Special Tahsildar (LA)
Chennai City Water Ways Scheme
Ambattur, Chennai – 600 053 .. Appellant

Versus

1. D. Suresh Kumar
   represented by his power of attorney agent
   D. Narayanan
   New No.27, Old No.19, College Road
   Pazhavanthangal, Chennai – 600 114

2. The Executive Engineer
   Public Works Department
   Kosathalaiyar Basin
   Tiruvallur .. Respondents

A.S. No. 19 of 2012:- Appeal filed under Section 54 of The Land Acquisition Act, 1894 against the Judgment and Decree dated 23.02.2011 passed in L.A.O.P. No. 1443 of 2008 on the file of Sub Court, Kancheepuram

A.S. No. 20 of 2012:- Appeal filed under Section 54 of The Land Acquisition Act, 1894 against the Judgment and Decree dated 23.02.2011 passed in L.A.O.P. No. 1429 of 2008 on the file of Sub Court, Kancheepuram

A.S. No. 31 of 2015:- Appeal filed under Section 54 of The Land Acquisition Act, 1894 against the Judgment and Decree dated 23.02.2011 passed in L.A.O.P. No. 1429 of 2008 on the file of Sub Court, Kancheepuram

A.S. No. 32 of 2015:- Appeal filed under Section 54 of The Land Acquisition Act, 1894 against the Judgment and Decree dated 23.02.2011 passed in L.A.O.P. No. 1443 of 2008 on the file of Sub Court, Kancheepuram

For Appellant : Mr. M.S. Subramanian
in A.S. Nos. 19 and 20 of 2012

Mr. S.T.S. Murthi, Additional Advocate General
assisted by Mr. P. Gunasekaran
Additional Govt. Pleader (AS)
in A.S. Nos. 31 and 32 of 2015

For Respondents : Mr. S.T.S. Murthi, Additional Advocate General
assisted by Mr. P. Gunasekaran
Additional Govt. Pleader (AS)
in A.S. Nos. 19 and 20 of 2012

Mr. M.S. Subramanian for R1
in A.S. Nos. 31 and 32 of 2015

COMMON JUDGMENT

R. SUBBIAH, J

Being dissatisfied with the quantum of compensation awarded by the Reference Court in favour of the claimants in LAOP Nos. 1443 and 1429 of 2008 respectively, Appeal Suit Nos. 19 and 20 of 2012 have been filed by the land owners/claimants. As against the very same award, the Land Acquisition Officer has filed Appeal Suit Nos. 31 and 32 of 2015, questioning the enhancement of the compensation amount from Rs.1,500/- to Rs.29,430/- per cent in favour of the land owners/claimants. Since both the appeals arise out of a common Decree and Judgment dated 23.02.2011 passed by the Sub Court, Kancheepuram, these four appeals are taken up for hearing together and are disposed of by this common judgment.

2. For the sake of convenience, the parties shall be referred to as the "claimants" and "appellant" in these appeals.

3. The Executive Engineer, Public Works Department, Kossathalayar Basin, Thiruvallur, as requisitioning body, has made a request to the Government for acquisition of lands comprised in various survey numbers measuring an extent of 11.53.5 hectares of Wet lands in No.92, Thirumudivakkam Village, Sriperumbadur Taluk, Kancheepuram District for the purpose of implementing the scheme namely Improvement of Chembarambakkam Surplus Water Course and Widening Channel under Improvement of Chennai City Waterways Scheme. In this context, a joint inspection was carried out by the officials attached to Public Works Department as well as the revenue department. After such joint inspection, it was decided that an extent of 11.53.5 Hectares of public land alone in Thirumudivakkam Village (Block-1) of Sriperumbadur Taluk shall be acquired by invoking the Land Acquisition Act (hereinafter referred to as The Act), 1894, which is inclusive of the lands owned by the claimants herein. Accordingly, a draft notification under Section 4 (1) of the Act was issued vide G.O. Ms. No.3, Public Works Department dated 03.01.2006 and it was published in the Government Gazzette Part-II Section 2, Extraordinary issue No.6 dated 06.01.2006. The notification in this regard was also published in leading Tamil Newspapers and the gist of the notification was published in the locality on 19.01.2006.

4. For the purpose of fixing the compensation for the acquired lands, the appellant has examined 311 sale transactions carried out in the Village between the period 17.01.2003 and 18.01.2006. After discarding the transactions which were found to be irrelevant, the appellant zeroed in on the sale deed entered in Serial No.4 relating to the land in Survey No.353/1B measuring an extent of 0.75 acres

and the same was taken as the data lands, as according to the appellant, it reflects the correct market value. According to the appellant, the data land was sold on 10.03.2003 for a sum of Rs.1,25,000/- and registered in the office of the Sub-Registrar, Padappai as document No. 481 of 2003. Therefore, based on the value of the data land, the appellant has fixed the market value for the acquired land at Rs.1,500/- per cent and accordingly passed the award in Award No.3 of 2007 dated 30.11.2007 fixing the market value of the land at Rs.1,500/- per cent or Rs.3,705/- per acre. Apart from paying the market value of the land at Rs.1,500/- per cent, the appellant has also awarded 30% of the compensation amount as solatium with 12% additional market value from the date of issuance of notification under Section 4 (1) of the Act till the date of award. That apart, interest was also awarded at the rate of 9% for the first year from the date of taking possession and 15% for the subsequent years till the date of deposit.

5. Objecting to the market value fixed by the appellant, the land owners have sought for reference under Section 18 of the Act for determination of the correct market value before the competent Civil Court. On reference, the claim petitions were taken on file as LAOP Nos. 1429 and 1443 of 2008.

6. Before the Reference Court, on behalf of the claimants, Mr. Narayanan, power of attorney agent representing the claimants herein, was examined as CW1 and Exs. C1 to C-17 were marked. On behalf of the appellant/Land Acquisition Officer, Mrs. K. Lalitha, Special Tahsildar was examined as RW1 and Mr. A. Palanisamy, Executive Engineer was examined as RW2 and Survey Sketch was marked as Ex.R1. The Reference Court, on perusal of the oral

and documentary evidence produced by both sides and on consideration of the rival submissions, enhanced the compensation fixed by the appellant from Rs.1,500/- per cent to Rs.29,430- per cent.

7. The learned Additional Advocate General appearing for the appellant would vehemently contend that the compensation awarded by the Reference Court at Rs.29,430/- per cent for the acquired land is excessive and not in consonance with the market value of the acquired lands which prevailed at the time of issuing the notification under Section 4 (1) of the Act. It is further submitted that the Reference Court has not considered Exs. C1 to C6 by not comparing the soil and the nature of soil (quality) involved in the acquired lands and the lands covered under Exs. C1 to C6. It is further contended that the lands sold under Exs. C1 to C6 relates to smaller extent of lands besides that they are capable of being converted into house sites at a later date. On the contrary, the lands sought to be acquired are agricultural lands, which cannot be converted into house sites. The purpose for which the scheme was sought to be implemented is to arrest the excess water that may be discharged from the Chembarambakkam lake during monsoon and in the absence of widening the water channel to facilitate the water to flow freely, it would submerge the entire acquired lands and the adjacent lands. Thus, the project was aimed to save the habitations and other lands from being submerged during rainy season. Therefore, the lands identified for the purpose of implementing the scheme are such that they are not having the potential value and are not fit for being converted into house sites. It is further contended by the learned Additional Advocate General that the Reference Court failed to take note of the fact as to whether the acquired lands are situated near the Canal and the water

discharged from Chembarambakkam lake would pass through the acquired lands during monsoon. The Reference Court, without taking note of this important aspect has passed the impugned award by enhancing the market value fixed by the appellant. Further, no evidence was let in before the Reference Court in respect of the topography and nature of the land and therefore, it is submitted that the compensation arrived at by the Reference Court is excessive and not in consonance with the potentiality of the lands in question. Therefore, if the amount fixed by the Reference Court is confirmed, it would allow the claimants/land owners to unjustly enrich themselves.

8. The learned Additional Advocate General would further contend that the lands covered under Exs. C8, C9 and C10 marked on the side of the claimants itself would indicate that those lands are covered within the channel and in the channel bed. Further, not even a single house was constructed in the vicinity where the acquired lands are situated. There was no evidence let in on behalf of the claimants that there was house constructed very nearer to the acquired lands. On the contrary, on behalf of the appellant, RW1 and 2 have clearly deposed that the acquired lands are not even and there were several pits and ditches which exist therein and they are not fit for even carrying out any agricultural activities. Further, on behalf of the claimants, Exs. C3 to C6 were marked and they relate to lands situated far away from the acquired lands, on the other hand, the acquired lands cannot even be converted as house sites and therefore, the documents marked on the side of the claimants do not reflect the true and correct market value of the acquired lands, based on which the Reference Court ought not to have enhanced the compensation amount from Rs.1,500/- per cent to Rs.29,430/- per cent. In this

context, the learned Additional Advocate General placed reliance on the decision of the Honourable Supreme Court in (**K.S. Shivade Vamma and others vs. Assistant Commissioner and Land Acquisition Officer and another)** reported in **(1996) 2 Supreme Court Cases 62** to contend that even if the acquired lands are situated in a developing area at the relevant period, they are not immediately capable of realising the price as a building site. Further, if the lands are to be used as house site and a building has to be constructed, then necessarily under the Building Rules, the land owner has to leave 53% area for roads, open space and other public amenities which will be the determining factor for awarding the compensation.

9. As regards the deduction to be given towards development charges, the learned Additional Advocate General would place reliance on the decision of the Honourable Supreme Court in the case of (**Sabha Mohammed Yusuf Abdul Hamid Mulla vs. Land Acquisition Officer)** reported in (**2009) 15 SCC 769** to contend that percentage of deduction for development to be made for arriving at the market value of large tracts of undeveloped agricultural land with potential for development can vary between 20% and 75% of the price of developed plots.

10. The learned Additional Advocate General also placed reliance on the decision of the Honourable Supreme Court in (**K.S. Shivadevamma and others vs.** wherein it was held that even 53% of the amount given towards deduction is not automatic but depends upon the nature of the development and stage of the development. Further, for laying the roads and other amenities, 33 1/3% is required to be deducted. Where the development had already taken place,

appropriate deduction needs to be made. Even if the land acquired is having potential value, but no development has taken place, the deduction of 53% towards requirement to spend money for laying roads, water supply mains, electricity etc., and further deduction towards development charges at 33 1/3% are required to be given.

11. According to the learned Additional Advocate General, whenever the water from the Chembarambakkam lake is discharged, it would run through Kavanur, Sirukalathur, Kundrathur and Thirumudivakkam Villages to reach the Adyar river. Before implementation of the scheme, the excess water released from Chembarambakkam lake will be drained in the lands belonged to the claimants since the lands are situated in a low lying area and naturally the water from the lands in higher altitude would flow and drain through their land. Thus, the acquired lands are prone for inundation during rainy season and they have no potential value or they cannot be converted into house site. In such circumstances, the Reference Court ought to have examined as to whether the acquired lands are situated very near to the canal and whether the water discharged from the Chembarambakkam lake passes through the acquired lands during Monsoon. In the absence of determination of the above aspects, the Reference Court is not correct in determining the compensation for the lands in question. In this context, the learned Additional Advocate General placed reliance on the decision of the Honourable Supreme Court in the case of (**State of Gujarat etc., vs. Vakhatsinghji Vajesinghji Vaghela)** reported in **AIR 1968 sc 1481** wherein the Supreme Court, having found that the acquired lands are situated near river and river beds and it was not properly considered by the Special Deputy Collector, remanded the matter

back for conducting a fresh enquiry. In the present case also, the Reference Court failed to properly examine as to the location where the lands are situate and their potentiality before fixing the market value. The learned Additional Advocate General, while referring to the observations made by the Reference Court, would contend that it is not correct to say that the acquired lands are having high potential value and having the flexibility to be converted into house sites. Therefore, the learned Additional Advocate General prayed for setting aside the award passed by the Reference Court and to remand the matter to the Reference Court for re-consideration of the claim of the claimants.

12. Countering the submissions of the learned Additional Advocate General appearing for the appellant, Mr. M.S. Subramaniam, learned counsel appearing for the claimants, would contend that even though the acquired lands belonging to the claimants are in Thirumudivakkam and Kundrathur Villages, the lands are contiguous as a single block and acquired for the same purpose. The lands in Thirumudivakkam Village have already been acquired during the year 1995 for establishment of Industrial Estate by SIDCO and the said industrial estate is separated only by one survey number from the acquired lands. In other words, the acquired lands are very adjacent (150 meters) to the proposed 400 feet outer ring road. Further, the lands belonged to the claimants comprised in Survey No. 971 and 972 in Kundrathur Village were acquired in the year 2003 by the Chennai Metropolitan Development Authority for the purpose of establishing a 400 feet wide Outer Ring Road Project. The outer ring road is within 150 meters from the acquired lands and it is designed and developed subsequently as a six lane road with service road on either side having 100 feet width with provision in the middle

for Railway line. Thus, after establishment of industrial estate, number of industries have started functioning and residential colonies have sprung up in the neighbourhood. There was a great demand for industrial and residential plots Apart from the above locational advantages in and around the acquired lands, educational institutions such as Madha Engineering and Dental College, Sai Ram Engineering College, Schools, Temples, Banks and other Industries are situate very closer to the acquired lands. Therefore, it is incorrect to state that the acquired lands could not be converted into house sites. The acquired lands are situated in Thirumudivakkam Village, which is a well developed town and classified as Primary Residential zones by the Chennai Metropolitan Development Authority in their Second Master Plan. While so, the acquired lands cannot be termed as agricultural lands or that the acquired lands have no potentiality. According to the learned counsel for the claimants, some of the lands are partly acquired and the remaining lands were left unacquired and severed, therefore, the claimants are also entitled to severance compensation for the unacquired lands. It is further contended by the learned counsel appearing for the claimants that the acquired lands formed part of a block of land belonging to the claimants and other lands in Kundrathur Village where brick kiln industry was run and subsequently manufacturing (pavement bricks) was done by the claimants. The acquired lands have copious supply of water having service connection. The entire block of acquired lands are situate close to Kundrathur Town and also the SIDCO Industrial Estate, which are well developed and classified as Primary Residential Zone by the Chennai Metropolitan Development Authority in their II Master plan even before the notification was issued by the appellant under Section 4 (1) of the Act for acquiring the lands in question

13. According to the learned counsel for the claimants, there was a great demand for industrial sites and house sites and the prices for the acquired lands escalated. Even the agricultural lands were converted into house site and sold at a very high price. The 400 feet proposed Outer Ring Road is situate within 150 meters of the acquired lands. The said 400 feet outer ring road was to have railway lines in the middle, lane roads and service roads flanking on either side with accessibility from the neighbouring lands. The lands are even lands and levelled after being converted into house sites. Therefore, according to the learned counsel for the claimants, no deduction needs to be given for amenities as the condition that prevailed at the time of acquiring the lands is capable of being sold as an unapproved layout plot.

14. The learned counsel for the claimants would contend that the lands in Kundrathur Village measures 13.00 Acres and the lands in Thirumudivakkam measures 15.00 Acres and they formed one block. Though they belong to 2 revenue Villages, they form one block and are used as such. By virtue of transfer of acquisition of part of the land, the land in Survey No.11, where there was a pavement brick manufacturing industries, was cut off from other lands and it cannot be reached from the remaining lands.

15. The learned counsel for the claimants would further contend that the appellant has taken the value reflected in Serial No.4 relating to the sale deed dated 10.03.2003 measuring 0.75 acres and it does not reflect the correct market value. The said sale was made 2 years prior to the notification under Section 4 (1)

of the Act. On the contrary, abetting the said data land, the land in Survey No.355, which remained as an unapproved land, was sold by a sale deed dated 27.10.2005 and as per the value mentioned therein, one cent of land was sold for Rs.58,860/-. According to the learned counsel for the claimants, the land in Survey No.355 is similar and identical in all respects with that of the acquired lands, however, for the reasons best known, the appellant has discarded this sale transaction without any valid reasons.

16. The learned counsel for the claimants would also contend that the locational advantages which the acquired lands possess has been clearly spoken to by CW1 in his proof affidavit. CW1 in his evidence has stated that there is no compound wall to bifurcate the lands situate in Kundrathur and Thirumudivakkam Village. The Kundrathur is a Township where the famous Kundrathur Murugan Temple exists. Further, within a few kilometers away, the famous Mangadu Temple exists which attract huge devotees at all times. Further, Kundrathur Town is surrounded by industrial areas such as Porur, Sriperumbadur, Thiruneermalai which are fast growing towns. The entire block of lands are about 750 meters away from State Highway No.113 (Kundrathur-Sriperumbadur Road) which leads to Sriperumbadur and Hyundai Car Factory, which is situate around 15 to 16 kilometers away from the site. That apart, the house sites in the area are being converted with or without approval and they were demarcated by planting stones. Thus, according to the learned counsel for the claimants, the claimants have proved before the Reference Court that the acquired lands are fit for being converted into house sites, in such event, the compensation awarded by the Reference Court is very meagre and warrants interference by this Court.

17. As regards the documentary evidence filed before the Reference Court, the learned counsel for the claimants invited the attention of this Court to Ex.C3, sale deed dated 04.01.2002 wherein land measuring 3.0 Hectares was sold at the rate of Rs.18,900/- per cent situated in SIDCO Industrial Estate. Similarly, Ex.C4, sale deed dated 20.04.2005 covers the land measuring 34.40 cents and a shed measuring 360 square feet and they were sold for a sum of Rs.27,468/- per cent. Further, under Ex.C5, sale deed dated 19.10.2005, land measuring an extent of 43.43 cents bearing Plot No.272 was sold at the rate of Rs.24,923/- per cent. Similarly, Ex.C6 is the sale deed dated 27.10.2005 in which a vacant house site measuring 1800 square feet was sold which works out to Rs.58,860/- per cent. Thus, by placing reliance on the above documentary evidence, the learned counsel for the claimants would contend that if the lands indicated in Kundrathur Village in Exs. C12 to C17 are considered, the market value of the acquired land could be fixed between Rs.76,300/- per cent and Rs.84,148/- per cent. Even if 10% is deducted towards development charges, a sum of Rs.20,570/- can be enhanced over and above the sum of Rs.29,430/- per cent awarded by the Reference Court. In other words, a sum of Rs.50,000/- per cent as market value for the acquired lands will be a just and fair compensation. Accordingly, the learned counsel for the claimants prayed for setting aside the award passed by the Reference Court and to enhance the market value of the acquired lands at Rs.50,000/- per cent.

18. To buttress his argument on the above aspect, the learned counsel for the claimants pointed out the deposition of RW1 in her cross-examination wherein, RW1 has admitted that the acquired lands have the potentiality to be converted into

housing sites.

19. In support of his contentions, the learned counsel for the claimants placed reliance on the decision of the Honourable Supreme Court in the case of (**Thakarsibhai Devjibhai and others vs. Executive Engineer, Gujarat and another)** reported in **(2001) 9 Supreme Court Cases 584** to contend that if the quality, including potentiality of two areas of land is similar, then the distance between the two would not by itself lead to a change in their respective market value. It was further held that the distances, such as distance between the acquired land and the nearest town providing educational, business, industrial and institutional facilities, could be relevant for deciding the market value of the lands. Further it was held that where holding of each land holder in the acquired area is small, there is no justification for clubbing together the individual holdings, treating them as a large area and differentiating them from other similar lands and applying a lower market value to such holdings.

20. Reliance was also placed by the learned counsel for the land owners/claimants on the decision of the Honourable Supreme Court in the cases of (i) **(Sagunthala (dead) through Lrs vs. Special Tahsildar (Land Acquisition and others)** reported in **(2010) 3 Supreme Court Cases 661** (ii) (**A. Natesam Pillai vs. Special Tahsildar, Land Acquisition, Trichy)** reported in **(2010) 9 Supreme Court Cases 118** and (iii) **(Udho Dass vs. State of Haryana and others**) reported in **(2010) 12 Supreme Court Cases 51** to contend that the potential of the acquired lands in so far as it relates to use for which it is reasonably capable of being put in immediate or near future, must be given due consideration while fixing the compensation.

21. The learned counsel for the claimants/respondents also relied on the decision of the Honourable Supreme Court in the case of (**Satish and others vs. State of Uttar Pradesh and others)** reported in (**2009) 14 Supreme Court Cases 758** to contend that for determining the market value of the acquired lands, the price paid within a reasonable time in bona fide transactions for purchase of the lands acquired or the adjacent lands possessing similar advantage needs to be considered. Further, the other factors required to be noticed is that the nature and quality of land, whether irrigated or unirrigated, facilities for irrigation, presence of fruit-bearing trees, location of the land, closeness to any road or highway, evenness of the land, existing of any building or structure and host of other factors are bearing for fixing the valuation of the lands. For the very same proposition, reliance was placed on the decision of the Honourable Supreme Court in the case of (**Sri Rani M. Vijayalakshmamma Rao Bahadur, Ranee of Vuyyur vs. The Collector of Madras)** reported in **(1969) (1) MLJ 45** wherein it was held that *whatever that may be, it seems to us to be only fair that when sale deed pertaining to different transactions are relied on behalf of the Government, that represent the highest value should be preferred to the rest unless there are strong circumstances justifying a different course.*

22. The learned counsel for the claimants/respondents also relied on the decision of the Honourable Supreme Court in the case of (**Arun Manohar Dange and another vs. Special Land Acquisition Officer, Rajgad, Alibag)** reported in **(2016) 13 Supreme Court Cases 319** wherein it was held that the normal practice adopted by the Courts is to limit the percentage of deduction only by 1/3rd of market

value. The learned counsel for the respondent also relied on the decision of the Honourable Supreme Court in (**2010) 1 SCC 444** to contend that no deduction should be made in cases where developments are not to be made.

23. By way of reply, the learned Additional Advocate General would submit that the lands acquired from the claimants are prone to inundation during rainy seasons as well as when water is discharged from Chembarambakkam Lake. They are not capable of being converted into house sites and hence, the compensation fixed by the Reference Court has to be reduced.

24. We have given our anxious consideration to the rival submissions made and perused the materials placed on record, including the award passed by the Reference Court. Admittedly, the lands of the claimants were acquired by the appellant for implementing the scheme - Improvement of Chembarambakkam Surplus Water Course and Widening Channel under Improvement of Chennai City Waterways Scheme. For this purpose, the notification under Section 4 (1) of the Act was issued on 19.01.2006. After complying with the formalities, the lands of the claimants in LAOP Nos. 1443 and 1429 of 2008 measuring 4 Acres 20 Cents and 7 Acres 9 Cents were acquired by the appellant. The land acquisition Officer/Appellant, after cullng out 311 sale transaction, has zeroed in on the data land to fix the value of the acquired lands at Rs.1,500/- per cent. Dissatisfied with the quantum of compensation fixed, the claimants sought reference of their claim to the competent Sub Court under Section 18 of the Act and accordingly, their claim petitions were taken up by the Reference Court. The Reference Court, after analysing the oral and documentary evidence, has enhanced the compensation

amount payable to the acquired lands from Rs.1,500/- to Rs.29,430/- per cent.

25. Before the Reference Court, CW1, who was examined on behalf of the claimants, has spoken to about the locational advantage of the acquired lands such as educational institutions, Sipcot Industrial Estate, temples, Outer Ring Road, Hospitals, Banks etc., in and around the acquired lands. On behalf of the Appellant, Mrs. Lalitha, Special Tahsildar was examined as RW1, who in her cross-examination, has deposed that the acquired lands had the potentiality to be converted and sold as housing house sites. The relevant portion of the cross-examination of RW1 is as follows:-

> ""......v';fshy; eph;zapf;fg;gl;Ls;s g[s;sp tptu';fspy; tptrha epy';fs; jhd; tPl;L kidahf gphpf;fg;gl;Ls;sd/ mt;thW gpshl; nghl;L tpw;Fk; nghJ nuhL. kpd;rhu trjp. jz;zPh; trjp Mfpait ,y;yhky; jhd; tpw;gid bra;ag;gl;lJ/ eh';fs; nrfhpj;j tptu';fspy; rpy epy';fs; mg;U:ty; bra;ag;gl;Lk; rpy epy';fs; mg;U:ty; bra;ag;glhkYk; ,Ue;jd vd;why; rhpjhd;/ rpg;fhl; bjhHpy; epWtdj;jpy; cs;s epy';fs; g[s;sp tptuj;jpy; fhl;lg;gl;Ls;sd vd;why; rhpjhd;/ rh;nt vz; 355 vd;gJ Mjhu epykhd 353f;F xl;oa[s;sJ vd;why; rhpjhd;/ 355 kw;Wk; 353 ,uz;Lnk e";ir epy';fs; vd;why; rhpjhd;/ Mh;$pj epy';fs; mg;U:ty; ,y;yhky; kidahf gphpj;J tpw;f ToaJ vd;why; rhpjhd;/

26. It is evident from the deposition of RW1 in her cross-examination that the lands of the claimants are capable of being converted into house site and sold as an unapproved land. Therefore, the submissions of the learned Additional Advocate General that the acquired lands are not feasible for conversion into house sites and consequently, they have no potential value for the purpose of determining the compensation has not been disproved by any evidence and such an argument has to be rejected.

27. For the purpose of determining the market value of the acquired lands, on behalf of the claimants Exs. C1 to C17 were marked out of which Exs. C3 to C6 are sale deeds dated 04.01.2002, 20.04.2005, 19.10.2005 and 27.10.2005. It is evident that these sale deeds have emanated much prior to the issuance of the notification under Section 4 (1) of the Act on 19.01.2006 and therefore, the value fixed thereunder can be taken into account for the purpose of fixing the market value of the acquired lands. Further, Ex.C7 is the combined Sketch of Thirumudivakkam and Kundrathur village indicating the location where the acquired lands are situated and the locational advantage or other physical features exist in and around the acquired lands. Ex.C8 is the CMDA Plan and Ex.C9 is the plan showing the existence of SIDCO Industrial Estate. Ex.C10 is the FMB Sketch. Ex.C11 is the draft plan envisaged by Chennai Metropolitan Development Authority designing the 400 feet Outer Ring Road. Ex.C12 to C17 are also sale deeds, of course, they relate to sale of lands having smaller extent of lands.

28 It is contended by the learned Additional Advocate General appearing for the appellant/Land Acquisition Officer that the extent of land transacted under Exs. C3 to C6 are in respect of smaller extent of land and therefore, they cannot be taken into account for the purpose of fixing the market value of the acquired land. It is further contended that the acquired lands are situated in a flood-prone area and those lands will be inundated during rainy season and during discharge of water from Chembarambakkam lake. Therefore, according to the learned Additional Advocate General, the acquired lands have no potential value and consequently, the market value fixed by the Land Acquisition Officer has to be confirmed.

29. Even though it is submitted by the learned Additional Advocate General that acquired lands are situated in the banks of the river or they are situate nearby a canal, we find that on behalf of the appellants, no documentary evidence was marked to show that the acquired lands are prone to inundation during rainy season. We also find that even before the Reference Court, such a contention was not raised by appellant. For the first time before this Court, it is contended by appellant that the acquired lands are situated in the banks of river or nearby a canal but it largely remains unsubstantiated. In the absence of such a contention before the Reference Court or documentary evidence, we are unable to appreciate this submission of the learned Additional Advocate General for the respondents.

30. As regards the distance between the acquired lands and data lands, we find that the the data land and the acquired lands are approximately situated within a distance of two kilometers as could be seen from the proof affidavit filed by the claimant. Even RW1 in her cross-examination has admitted that the data land comprised in Survey No. 353 is situate adjacent to the land comprised in Survey No.355, which is covered under Ex.C6, sale deed dated 27.10.2005. Further, it is not the case of the appellant that the data land and the lands covered under Ex.C6 are situated far away. In fact, CW1 in his proof affidavit has stated that the data lands and the acquired lands cannot be compared as having the same potential value and they have to be distinguished in terms of their respective potentiality. However, during the cross-examination of CW1, on behalf of the appellant, nothing could be elicited to disprove the potential value of the data land and acquired lands. Therefore, we find that there are dissimilarities in the acquired lands and the data land based on which the market value cannot be determined.

31. Before the Reference Court, the documents marked on behalf of the claimants/land owners, particularly Exs. C3 to C6, are sale deeds which came into existence much prior to the issuance of the notification under Section 4 (1) of the Act on 19.01.2006 by the appellant. Therefore, we find that the documentary evidence filed on behalf of the claimants under Exs. C3 to C6 can be relied on for the purpose of determining the market value of the acquired lands. Further, on perusal of the award passed by the Reference Court, we find that the Reference Court has taken into consideration Exs. C3 to C6 and out of which the value reflected in Ex.C6 was found to be the highest being Rs.58,860/- per cent. However, the Reference Court while taking note of the value mentioned in the sale deed dated 27.10.2005, Ex.C6, at Rs.58,860/- has given deduction at 50% towards development charges and arrived at the sum of Rs.29,430/- as the market value. Even though we do not find any reason to interfere with the market value arrived at by the Reference Court on the basis of the sale deed dated 27.10.2005, marked as Ex.C6, we find that giving 50% deduction towards development charges is excessive and unwarranted. It is needless to point out here that there is no evidence forthcoming from the appellant that the acquired lands are not feasible for conversion into house sites. Even RW1 admitted that the lands of the claimants are capable of being converted into house sites. Further, the claimants, through oral and documentary evidence, proved that the acquired lands are surrounded in the midst of educational institutions, Outer Ring Road, Temples, Industrial Estate etc., Therefore, we are of the view that the acquired lands are feasible of conversion into house sites and we proceed to determine the market value of the acquired lands accordingly.

32. As regards the deduction to be made towards development charges while fixing the market value of the acquired lands, the learned counsel appearing for the claimants would contend that giving 1/3rd deduction would meet the ends of justice. In this context, we are fortified by the decision of the Honourable Supreme Court in (**Arun Manohar Dange and another vs. Special Land Acquisition Officer, Rajgad, Alibag)** reported in (**2016) 13 Supreme Court Cases 319** mentioned supra, wherein it was held that the normal practice adopted by the Courts is to limit the percentage of deduction only by 1/3rd of market value. Further, it is well settled that deduction to be made towards development charges is generally one-third of the market value. Rule of one-third deduction was reiterated in **(2003) 10 SCC 525 [Tejumal Bhojwani v. State of U.P.]; (2003) 12 SCC 642 [V.Hanumantha Reddy v. Land Acquisition Officer]; (2004) 2 SCC 184 [H.P.Housing Board v. Bharat S.Negi] and (2004) 10 SCC 745 [Kiran Tandon v. Allahabad Development Authority].** Therefore, by applying the ratio laid down in the aforesaid decision of the Honourable Supreme Court and taking note of the facts and circumstances of the case on hand, we feel that giving 1/3rd deduction towards development charges would be fair and proper to arrive at a just compensation. Therefore, if 1/3 deduction is made from Rs.58,860/- arrived at by the Reference Court based on Ex.C6, the market value for the acquired lands to be fixed would be Rs.39,240/-.

33. In the result, the Decree and Judgment dated 23.02.2011 passed by the Sub Court, Kancheepuram in LAOP Nos. 1443 and 1429 of 2008 are modified enhancing the compensation amount payable to the claimants from Rs.29,430/- per cent to Rs.39,240/- per cent. Resultantly, Appeal Suit Nos. 19 and 20 of 2012 filed

by the land owners/claimants are allowed and Appeal Suit Nos. 31 and 32 of 2015 filed by the Land Acquisition Officer/Appellant are dismissed. No costs.

(**R.P.S.J**.,) (**M.S.R.J**.,)

17-11-2017

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Index : Yes / No

To

The Subordinate Judge
Kancheepuram

R. SUBBIAH, J
and
M.S. RAMESH, J

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Pre-delivery common Judgment in
AS Nos. 19 and 20 of 2012
and
A.S. Nos. 31 and 32 of 2015

17-11-2017