1IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 10.10.2017
JUDGMENT PRONOUNCED ON : 27.10.2017

CORAM :

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

AS.Nos.1048 to 1051 of 2004
and Cross Obj.Nos.32 to 35 of 2005

1. Union of India,
Rep by the Secretary to Government
Department of Atomic Energy
CSM Marg, Mumbai - 400 001.

2. The Chief Administrative Officer,
Department of Atomic Energy,
Indira Gandhi Centre for Atomic Research,
Kalpakkam-603 102.

... Appellants/Third Party
in all the appeals

...Respondents 1&2 in Cross
Objection 32 to 35/2005

Vs.

1. The Land Acquisition Officer,
and Special Tahsildar (LA)
Department of Atomic Energy Project,
Periya Melamaiyur, Chengalpattu.

... 1st respondent/Respondent in all the appeals
...3rd respondent in Cross
Objection 32 to 35/2005

2.M.Gurusamy
3.M.Ganapathy
4.M.Arumugam ... Respondents 2 to 4/Claimants in
AS.Nos.1048, 1050 & 1051 of 2004
... in Cross Objection 32,34 & 35/2005

M.Arumugam ... 2nd respondent/Claimant
in AS.No.1049 of 2004
... in Cross Objection 33/2005

PRAYER : Appeals are filed under Section 54 of the Land Acquisition Act, against the Common order and decree of the learned Additional Subordinate Judge, Chengalpattu in

LAOP.Nos.101 of 1990, 182 of 1991, 118 of 1992 and 183 of 1991 respectively dated 26.02.2002.

For appellant : Mr.Venkatasamy Babu in all appeals and R1 & R2 in Cross.obj 32to35/05

For respondents: Mr.P.Gunasekaran, AGP (AS) for R1 in all the appeals and R3 in Cross.obj 32 to 35/05

Mr.D.Govinda Reddy for R2 to R4 in AS.1048,1050& 1051/04 for R2 in AS.1049/04 for cross objectors in Cross.obj 32, 34, 35/05 for cross objectors in Cross.obj 33/05

Cross Appeals are filed Under Order XLI Rule 22 of Civil Procedure Code to Common order and decree passed in LAOP.Nos.101 of 1990, 182 of 1991, 118 of 1992 and 183 of 1991 respectively dated 26.02.2002 on the file of the Additional Subordinate Judge, Chengalpattu relating to quantum of compensation.

COMMON JUDGMENT

(Judgment of this Court was made by P.VELMURUGAN, J.)

These Appeals are filed against the order dated 26.02.2002 passed by the Additional Subordinate Judge, Chengalpattu in LAOP.Nos.101 of 1990, 182 of 1991, 118 of 1992 and 183 of 1991 respectively dated 26.02.2002.

2. Originally, vast extent of lands were acquired for Kalpakkam Atomic Power Project by the Government, among other lands an extent of 81.86acres in S.No.226/3C Meyur Village, Chengalpatu Taluk. Notification under Section 4(1) of the Land Acquisition Act has been published in the Government Gazettee on 27.04.1988. The acquisition officer after complying with all the provision passed an award fixing the compensation at the rate of Rs.100/- per cent. The land owners have took up the matter to the Subordinate Court under Section 18 of the Land Acquisition Act.

3. In order to prove the claim of the claimants, the first claimant examined himself as CW1 and marked Ex.C1 to Ex.C6. On the side of the respondents RW1 and RW2 were examined and marked Ex.R1 to Ex.R4. The reference Court after considering the oral and documentary evidences, fixed the market value of the acquired land at Rs.700/- per cent, Rs.56,500/- for casuarina trees in 10acres and Rs.40,000/- for cashew trees. Aggrieved against the said order, the claimants had filed AS.No.1136 of 1994 and the Special Tahsildar (LA), SAE project Kalpakkam, Chengalpattu filed an appeal in AS.No.241 of 1995 before this Court.

4. The Division Bench of this Court after hearing the arguments of both sides, by judgment dated 16.02.2001 remanded the matter to reference Court.

5. After remanding back the matter to the Sub Court, the claimants have examined CW1 to CW4 on their side and marked Ex.A1 to Ex.A4. The reference Court once again after hearing the matter afresh fixed the market value of the acquired land at Rs.805/- per cent. The operative portion of the fair order of the reference Court is extracted hereunder :-

> "10.On perusal of the above document a quantum can be fixed. We will taking 2 amounts into consideration and via media quantum will be arrived at in the interest of justice. As already discussed when larger extent of land is acquired by the Government the guideline value envisaged in the lesser extent of lands shall not be taken into account and deductions invariably shall have to be affected. As such 30% can be deducted in the quantum. Basing on the abovesaid documents the quantum of land value can be fixed at Rs.1150/- per cent in between the amount shown in Ex.A2 and Ex.A3. A sum of Rs.345/- has to be deducted in the quantum of Rs.1150/- for the aforesaid reasons. Thus the acquired land fixing quantum at Rs.805/- per cent will meet the ends of the justice. As such the quantum of amount is Rs.805/- per cent.
>
> 11.For the aforesaid reasons on the date of issuance of Notice u/s.4(1). I fix the quantum of Rs.805/- per cent.
>
> 12.In the result, the claimants are entitled 30% solatium only for the lands acquired. Further they entitled to additional amount at the rate of Rs.12%p.a. from the date of notification till the date of passing of award or delivery of possession which ever is earlier. In additional to this the claimants also entitled to interest at the rate of 9%p.a. from the date of possession for a period of one year and thereafter at the rate of 15%p.a. till the date of deposit."

Aggrieved against the the said order, the Government has preferred the present appeals before this Court and claimants have filed cross objections.

6. Heard the rival submissions made on both sides and perused the available records.

7. The learned counsel for the appellants would submit that the lands are acquired for the purpose of constructing quarters to the staff of the Atomic energy. While fixing the compensation, the Land Acquisition Officer considering all the aspects of the acquired lands and fixed the compensation after holding due inquiry, inspected the location of the lands etc., The reference Court erred in enhancing the compensation from Rs.100/- to Rs.805/- per cent, the referral judge has not clearly stated as to how he has fixed the quantum of land value at Rs.1,150/-per cent. The reference Court failed to consider the provisions under Tamil Nadu Nuclear Installation (Regulation of Building and Use) Act, 1978 there is a prohibition for the general public to construct houses near by nuclear plant and hence in the said locality the value of the land is very low. The acquired lands are situated within the prohibitory area. The reference Court has failed to consider the same and fixed higher value. The market value for the acquired land fixed by the reference Court is highly exorbitant. The reference Court erred in fixing the compensation in the case on hand by taking into account the sale of small pieces of land about few cents of land near the acquired land for the purpose of fixing the market value of the lands measuring a larger extent and the method adopted by the reference Court in the instant case is without any legal basis.

8. After remanding the matter by this Court, the claimants have examined CW1 to CW4, wherein CW1 has in his evidence has stated that in the village such a large extent of land was not available for acquisition and his land is adjoining to the road meant for housing plot, it has more value than the amount relied on by the land acquisition officer. In S.No.230/2A an extent of land 7½ cents have been sold for Rs.5,500/- as per Ex.A1 on 13.11.1986. As per Ex.A3 on 03.04.1987 land comprised in S.No.158/74/A1 has been sold for Rs.16,500/- at the rate of Rs.1,650/- per cent. CW2 deposed that in S.No.230/2A4B land owned by his cousin brother for 9.34cents have been sold as per Ex.A1 on 12.10.1987 for Rs.1,000/- per cent, which is adjoining to the claimants land. In his cross examination, he has stated that before the said transaction he was not aware of the acquisition proceedings by the Government, he further admits that the land given by him is meant for housing plot. CW3 has deposed that he signed as witness in Ex.A4 which speaks of sale of 7.5cents in S.No.230/2A/17/4 for Rs.5,500/- on 12.11.1986. CW4 has deposed that he sold 10cents of land in S.No.158/74/A1 to one Purushothaman through Ex.A3, the said land is within 500meters from the claimants land. CW4 in his cross examination stated that he was aware only after the Government acquired the land in that area for housing site.

9. The learned counsel for the cross objectors/claimants would submit that while fixing the quantum, the value of the adjoining lands has to be taken into consideration and the

highest prevailing rate or average rate shall be fixed. As per Ex.A2 and Ex.A3 the lands were sold for Rs.1,000 to Rs.1,650/- per cent and the reference Court fixed the value of the land for compensation at Rs.1,150/- per cent and deducted 30% i.e,Rs.345/- and fixed the compensation at Rs.805/- per cent. The ratio adopted by the reference Court in fixing the compensation at Rs.805/-per cent instead of Rs.1,500/- is untenable in law. Ex.A4 dated 12.10.1987 and Ex.A3 dated 03.04.1987 are the land sold just six months and one year prior to issuance of Section 4(1) notification dated 27.04.1988. The reference Court ought to have considered the documents in Exs.A1 to A4 and fixed the compensation at Rs.1,500/- per cent. The learned counsel for the claimants prays to fix the compensation at Rs.1,150/- per cent and filed Cross.Objection Nos.32 to 35 of 2005 to that effect praying for enhancement of the compensation amount.

10. The short point arises herein for consideration is whether the amount fixed by the reference Court in the acquired land is fair compensation or not.

11. The learned counsel for the appellants would submit that as per Tamil Nadu Nuclear Installations (Regulation of Buildings and Use of Land) Act, 1978, there is a prohibition for the general public to construct houses in the acquired land and hence the question of fixing an enhanced value as applicable to house sites does not arise in the instant case.

12. Considering the oral and documentary evidences produced on either side, and the order passed by the reference Court, the market value of Ex.A1 land in S.No.230/2A for 7½ cents have been sold for Rs.5,500/-. Ex.A4 dated 12.10.1987 and Ex.A3 dated 03.04.1987 are the lands sold just six months and one year prior to issuance of Section 4(1) notification dated 27.04.1988. The reference Court fixed the market value for the acquired land at Rs.1,150/- as the acquired lands are lessor extent and by considering the development in the locality during the relevant period, as per the guidelines issued by the Hon'ble Supreme Court, the reference Court has rightly deducted 30% towards developmental charges, after deducting the developmental charges the market value of the acquired land is fixed at Rs.805/- per cent.

13. In view of the discussions held above and also the recent decisions of the Hon'ble Supreme Court, we have come to the conclusion that prior to issuance of Section 4(1) notification dated 27.04.1988, Ex.A4 dated 12.10.1987 has been executed six months prior to the notification and Ex.A3 dated 03.04.1987 has been executed a year before the notification has been duly considered and also the evidences of CW1 to CW4 while fixing the quantum of compensation by the reference Court. Therefore, we feel that the reference Court has considered all the above aspects and rightly came to the conclusion while

fixing the market value of the acquired lands at Rs.805/- per cent. The award passed by the reference Court is a fair and reasonable compensation. Hence, we do not find any reason to interfere with the fair and decreetal order passed by the Additional Sub Judge, Chengalpattu on 26.02.2002 in LAOP.Nos.101 of 1990, 182 of 1991, 118 of 1992 and 183 of 1991 respectively and the same does not warrant any interference and the same is hereby confirmed. In other respects, the order passed by the Additional Sub Judge, Chengalpattu dated 28.07.1993 remains unaltered.

14. In the result, the Appeal Suits filed by the appellants stands dismissed and the cross objections filed by the claimants in Cross Obj.Nos.32 to 35 of 2005 are also dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To
The Additional Subordinate Judge, Chengalpattu.

Copy to:The Section Officer,
VR Section,
High Court, Madras.

AS.Nos.1048 to 1051 of 2004
and Cross Obj.Nos.32 to 35 of 2005

VD(CO)
sm:14.12.2017