

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.03.2017

DELIVERED ON: 05.04.2017

CORAM:

THE HON'BLE MR. JUSTICE R. SUBBIAH

and

THE HON'BLE MR. JUSTICE M.S. RAMESH

A.S. No.850 of 2009 and M.P. Nos.1 & 2 of 2009

&

Cross Objection No.80 of 2009

- 1 The Special Tahsildar (LA)
Inner Ring Road Scheme
Saidapet
Chennai 600 015
 - 2 The Divisional Engineer
Highways & Rural Works
Saidapet Division
Anna Salai
Chennai 600 006
- Appellants in A.S. No.850 of 2009 &
Respondents in Cr.Objection No.80/2009
vs.
- K. Prema Dhatry
represented by her Power of Attorney Agent
K. Gopalakrishnan
No.31/13, Sathyanarayana Avenue
Chennai 600 028
- Respondent in A.S. No.850 of 2009 &
Cross Objector in Cross Obj. No.80/2009

Appeal Suit filed under Section 54 of the Land Acquisition Act seeking to set aside the decree dated 28.12.2006 passed in L.A.O.P.No.45 of 2002 on the file of the Additional Sub Court (FAC), Chengalpattu.

Cross Objection filed under order 41 Rule 22 of CPC seeking to set aside the decree dated 28.12.2006 passed in L.A.O.P. No.45 of 2002 on the file of the Additional Sub Court (FAC), Chengalpattu and pass an order for enhanced compensation at the rate of Rs.250 per sq. ft. for the acquired land together with damages/rent as per Section 48(1) of the Land Acquisition Act, 1894.

For appellants in A.S. No.
850 of 2009 and respondents Mr. P. Gunasekaran
in Cross Objection
No.80 of 2009 Addl. Govt. Pleader (A.S.)

For respondent in A.S. No. Mr.R.Thiyagarajan
850 of 2009 and Cross Objector Sr. Counsel
in Cross Objection No.80 of 2009 for Mr. V. Srinivasa Babu

COMMON JUDGMENT

R. SUBBIAH, J.

While A.S. No.850 of 2009 has been preferred by the State challenging the judgment and decree dated 28.12.2006 passed in L.A.O.P. No.45 of 2002 on the file of the Additional Sub Court (FAC), Chengalpattu (for brevity "the Reference Court"), Cross Objection No.80 of 2009 has been preferred by the claimant in the very same L.A.O.P., seeking compensation of Rs.250/- per sq. ft. as against the compensation of Rs.134/- per sq. ft. awarded by the Reference Court.

2 Inasmuch as the judgment under assail in the Appeal Suit and Cross Objection and also the parties to the lis are one and the same, both the Appeal Suit and Cross Objection are considered and decided by this common judgment.

3 Since the appellants in the Appeal Suit are the respondents in the Cross Objection and the Cross Objector in the Cross Objection is the respondent in the Appeal Suit, for the sake of brevity, clarity and convenience, the parties are referred to as appellants and claimant/Cross Objector.

4 Shorn of the minute details, the facts which are germane and necessary for the disposal of the cases at hand are as under:

4.1 The lands measuring 0.67.5 hectares (72,664 sq. ft.) in S.Nos.311 and 312 of Madippakkam-II Village (Keelkattalai), Tambaram Taluk, Pallavaram Municipality, Kancheepuram District owned by the claimant/Cross Objector were originally acquired by the State for formation of eastward extension of National Highways By-pass between GST Road and Chennai-Mahabalipuram Road by issuing notification under Section 4(1) of the Land Acquisition Act (for brevity "the LA Act"), followed by notifications issued under Sections 6 and 7 of the LA Act. The notification under Section 6 of the LA Act was published in the gazette on 17.02.1984. Subsequent thereto, the State Government issued de-notification under Section 48 of the LA Act on

18.09.1986, which is about five years and 7 months from the date of the notification issued under Section 4(1) of the LA Act and the same was also gazetted.

4.2 Thereafter, the appellants took possession of the claimant's land on 01.07.1999 by de-marking in Field Map Book (FMB) in the Village Administrative Office, Keelkattalai, which is one of the methods of taking possession of the acquired land as per paragraph no.18(1) and 19 of the Board Standing Order and sub-divided the survey numbers of the claimant's lands.

4.3 Subsequently, in pursuance of the order dated 22.06.1998 passed by this Court in W.P. No.8395 of 1998, a fresh notification under Section 4(1) of the LA Act was issued on 07.03.2000 by invoking the urgency clause under Section 17(1) of the LA Act and the same was also gazetted on 22.03.2000 and declaration under Section 6 of the LA Act was approved by the Government in G.O. (Ms.) No.77, Highways Department dated 27.04.2000 and the same was also published in the local dailies on 03.05.2000, 19.08.2000 and 20.08.2000. On the same day, the appellants passed an award in Award No.2 of 2001 fixing the market value of the acquired lands at the rate of Rs.18.51 per sq. m. and arrived at a total compensation payable as Rs.1,95,030/-. Aggrieved by the compensation awarded by the appellants, the claimant/Cross Objector sought reference under Section 18 of the LA Act in L.A.O.P. No.45 of 2002 before the Reference Court.

4.4 Before the Reference Court, on the side of the claimant/Cross Objector, as many as 30 documents were marked as Exs.C.1 to C.30 and one witness by name K.Gopalakrishnan who is the Power Agent of the claimant/Cross Objector, was examined as C.W.1. On the side of the appellants, 6 documents were marked as Exs.R.1 to R.6 and one S.Velusamy, Special Tahsildar (Land Acquisition), Inner Ring Road Scheme, was examined as R.W.1.

4.5 The Reference Court, by the judgment impugned, finding that the acquired lands are highly potential and proximate to the Chennai city and by placing reliance upon Ex.C.30, sale deed dated 16.03.1998 covering the land in S.No.254/6, Keelkattalai Village, the market value of which was fixed at Rs.146/- per sq. ft. and by deducting 20%, fixed the value of the acquired land at Rs.116.80/- per sq. ft. In addition, the Reference Court awarded damages of 9% per annum at the rate of Rs.17.55 per sq. ft. Thus, the Reference Court fixed the market value of the acquired land at Rs.134/- per sq. ft. (Rs.116.80 + Rs.17.55).

4.6 Not satisfied with the said market value of Rs.134/- per sq. ft. fixed by the Reference Court, the Referring Officers have preferred the Appeal Suit and the claimant has filed the Cross Objection seeking enhancement of market value at the rate

of Rs.250/- per sq. ft. as against the market value of Rs.134/- per sq. ft. fixed by the Reference Court contending that the Reference Court ought to have taken Exs.C.8 to C.10 into consideration, the lands covered under which are proximate to the acquired land, for determining the market value of the acquired land.

5 Mr. P. Guansekaran, learned Additional Government Pleader appearing for the appellants would submit that the Reference Court has erred in enhancing the market value exorbitantly from Rs.18.51 per sq. m. to Rs.134/- per sq. ft. He further submitted that while fixing the value of the acquired land, the Reference Court has fallen in error by placing reliance upon Ex.C.30, sale deed dated 16.03.1998, since the measurement of the land covered in the said document is only 5 ½ cents (2,400 sq. ft.), whereas, the acquired land measures 0.67.5 hectares (72,664 sq. ft.). The next plank of contention of the learned Additional Government Pleader is that the Reference Court has erred in deducting only 20% as against the deduction of one third which is affirmed by the Supreme Court in a catena of decisions.

6 Per contra, Mr. R. Thiyagarajan, learned Senior Counsel appearing for the claimant/Cross Objector submitted that the acquired land is situated at Keelkattalai abutting the main road and it is also located in a junction abutting Medavakkam High Road on the eastern side, Ambal Nagar on the northern side and industrial estate on the southern side. Further, according to the learned Senior Counsel, the claimant/Cross Objector has direct access to Medavakkam High Road which is situated within 50 ft. from the acquired land and such being the location of the land, the Reference Court ought not to have determined the market value of the land at Rs.134/- per sq. ft. The learned Senior Counsel further submitted that inasmuch as the entire extent of acquired lands was utilised for the formation of ring road, the question of deduction of one third of the market value of the land does not arise at all and the Reference Court has rightly deducted 20% towards development charges.

7 The next contention of the learned Senior Counsel is that the land covered under Ex.C.30, sale deed, relied upon by the Reference Court, is in a different locality, viz., Nanmangalam Village which is 3 kms. far away from the acquired land. In this regard, the learned Senior Counsel, inviting the attention of this Court to the Advocate Commissioner's report, where, it is stated that the lands covered under Exs.C.8 to C.10 are very proximate to the acquired land, submitted that without giving due weightage to Exs.C.8 to C.10, the Reference Court, has placed wrong reliance upon Ex.C.30, sale deed, ignoring the fact that the land covered under the said document is much distant from the acquired land. The learned Senior Counsel, in

his endeavour to drive home the point as to how the market value of a land has to be determined, relied upon the judgment of the Supreme Court in Major General Kapil Mehra and others vs. Union of India and another¹, wherein, it has been observed at paragraph no.11 as under:

"11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value."

Based on these submissions, the learned Senior Counsel submitted that the value of the acquired land has to be fixed at Rs.250/- per sq.ft.

8 As a riposte, the learned Additional Government Pleader submitted that under Ex.C.10, only a small extent of 333 sq. ft. of land was sold at the rate of Rs.250/- per sq. ft. out of 10,900 sq. ft. and therefore, the said document cannot be relied upon for determination of market value of the acquired land. The same is his stand with regard to Exs. C.8 and C.9 as well. In short, in respect of Exs.C.8 to C.10, his submission is that the lands sold under the said documents are smaller extents and hence, they cannot be taken into consideration for fixing the market value of the acquired land which measures 0.67.5 hectares.

9 We have carefully considered the rival submissions and also perused the documents placed before us, particularly, the Advocate Commissioner's report and the land map.

10 On a perusal of the land map marked as Ex.C.20, we find that land covered under Ex.C.30 is much distant from the land acquired, whereas, the lands covered under Exs. C.8 to C.10 are proximate to the land of the claimant/Cross Objector. On a perusal of Ex.C.8, as contended by the learned Additional Government Pleader, only 281. sq. ft. was the extent of land sold. Likewise, under Ex.C.10, only 333 sq. ft. of land out of

1 (2015) 2 SCC 262

10,900 sq. ft. was sold. Whereas, under Ex.C.9, an extent of 3,600 sq. ft. of land was sold for Rs.9 lakhs at the rate of Rs.250/- per sq. ft. Therefore, it may not be appropriate to take Exs.C.8 and C.10 into consideration for determination of marked value of the claimant's land and instead Ex.C.9 could be taken into consideration.

11 At the same time, we are of the considered opinion that it would be appropriate to deduct one third of the market value towards development charges as has been held in Sanath Kumar vs. Special Tahsildar and another². Thus, based on the said judgment, instead of deducting 20% towards development charges as done by the Reference Court, if one third is deducted from Rs.250/- towards development charges, which comes to Rs.83.33, the market value of the acquired land comes to Rs.166.67 per sq. ft. (Rs.250-83.33) which is rounded off to Rs.167/-. Accordingly, the market value of the land acquired measuring 0.67.5 hectares (72,664 sq. ft.) is fixed as Rs.167/- per sq. ft. as against the market value of Rs.134/- per sq. ft. determined by the Reference Court.

12 We further hold that the claimant/Cross Objector is entitled to solatium of 30% on Rs.167/- per sq. ft., interest on the aggregate of market value of the land and solatium at 12% per annum from the date of notification issued under Section 4 (1) of the LA Act, i.e., from 23.03.2000 till the date of the award, viz., 20.08.2001 and at 15% thereafter, on the balance of the aggregate, after deducting the amount of compensation already received by the claimant/Cross Objector, till the date of payment.

In the result, the Appeal Suit is dismissed and the Cross Objection is allowed in part. No costs. Connected M.Ps. are closed.

Today, after the Judgment was pronounced, it was represented by the learned Senior Counsel appearing for the Claimant/Cross Objector that the appellants may be directed to make payment of the amount awarded by this Court within a specified time limit.

2. Acceding to the request made by the learned Senior Counsel appearing for the Claimant/Cross Objector, the appellants are directed to make payment of the amount awarded by this Court, within a period of twelve weeks from the date of receipt of a copy of this order, after deducting the amount that has already been paid to the claimant/Cross Objector.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1 The Additional Sub Judge, (FAC)
Chengalpattu

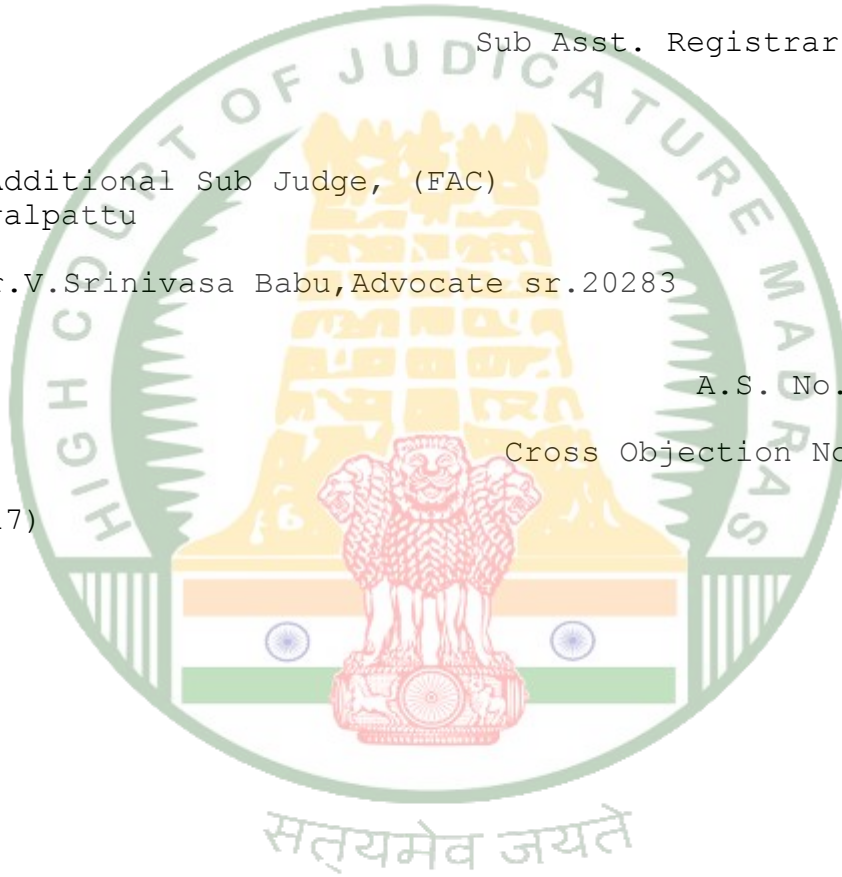
+2cc to Mr.V.Srinivasa Babu, Advocate sr.20283

A.S. No.850 of 2009

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Cross Objection No.80 of 2009

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