

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.7.2017

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.264 of 2015

and

M.P.No.1 of 2015 and C.M.P.No.400 of 2016

The Special Tahsildar,
Adi Dravidar Welfare,
Gingee.

... Appellant/Referring Officer

Vs.

Sarojini

... Respondent/Claimant

Second appeal filed under section 13 of Tamil Nadu Acquisition of Land for ADW Schemes 31/18 read with Section 100 of the Civil Procedure Code to set aside the judgment and decree of the Sub Judge, Gingee, Villupuram District dated 6.11.2012 made in L.A.C.M.A. No.1 of 2006 enhancing the award amount passed by the Special Tahsildar (ADW), Gingee in Award No.3 of 1999-2000 in Proceedings Na.Ka.No.A/1511/1998, dated 31.01.2000.

For Appellant : Mr.T.Jayaramaraj, G.A.(C.S.)

For Respondent : Mr.P.Subbareddy

JUDGMENT

The brief facts of the case as follows:

According to the appellant, the land comprised in R.S.No.32/3C, 32/2C and 35/12 to an extent of 44.5 Ares (109.89 Cents) situate in Manandal Village, Gingee Taluk, Villupuram District was acquired by the appellant department under Section 4(2) of the Tamilnadu Land Acquisition Act 31 of 1978 for providing house sites to homeless Adi Dravidars. The appellant issued 4(1) Notification to acquire the respondent/claimant's land to an extent of 1.10 acres at Manandhal Village, Villupuram District. After enquiry, the appellant department awarded a sum of Rs.38,796/- to the respondents/claimants. Challenging the said award, the respondent has filed an appeal in L.A.C.M.A No.1 of 2006 before the Sub Court, Villupuram for enhancement of compensation.

2. The learned Sub Court after considering the oral and documentary evidence enhanced the compensation amount of Rs.1555/- per Cent and computed the total compensation amount of Rs.1,70,879/- for the total extent of 1.10 acres of land along with solatium of Rs.51,263/- totalling Rs.2,22,142/- with statutory interest as per the act. Challenging the said award enhancing the compensation amount, the appellant department has preferred the present Second appeal before this Court raising the following substantial question of law.

- (1) Whether the lower Court justified to enhance the award without assigning any convincing reasons to reject the document relied upon by the appellant to fix the value of the acquired land ?
- (2) Whether the lower Court enhanced the award based on the documents those are irrelevant and unconnected to the acquired land ?
- (3) Whether the lower Court erred by discarding the documents considered by the appellant to fix the value of the property and relied upon the documents produced by the respondents those are irrelevant and unconnected as far as the acquired land is concerned ?

3 Supporting the substantial questions of law, the learned counsel for the appellant would submit that the Court below erred in considering Ex.C1 and fixed the rate of Rs.1555/- per Cent and awarded compensation of Rs.1,70,879/- to the claimant which is unsustainable in law.

4 The learned counsel for the respondent/claimant would submit that Ex.C1 sale deed executed by one Venugopal Chettiyar would show that sale consideration of Rs.1555/- per Sq.ft. for a total extent of 25 Cents in the same village. The said property is very close to the claimant's property acquired by the appellant department. By considering the oral and documentary evidence, the Court below has rightly come to the conclusion and enhanced the compensation amount and fixed at Rs.1,70,879/. Therefore, there is no warrant to interfere with the judgment and decree passed by the Court below.

5 Heard the learned counsel for the appellant and the learned counsel for the respondent/claimant and perused the materials available on record.

6 The case of the appellant is that the Court below has considered Ex.C1 and fixed the market value of the acquired property at the rate of Rs.1555/- per sq.ft. The Court below has not considered the law laid down by the Hon'ble Supreme Court that deduction of 1/3rd of valuation of the property is permissible. The learned Additional Government Pleader relied upon the judgment in Kasturi vs. State of Haryana [(2003)1 SCC 354] wherein the Hon'ble Supreme Court

'7. It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for development and the area required for roads and other civic amenities to develop the land so as to make the plots for residential or commercial purposes.'

7 In the light of the decision cited supra, taking into consideration of the extent of land acquired by the appellant is only 1.10 acres, the market value of the land on the basis of Ex.C1 is fixed at the rate of Rs.1555/- per sq.ft. for the extent of 27 Cents. The Court below has not taken into consideration the deduction of 1/3rd towards development charges. Therefore, this Court is inclined to deduct 1/3rd amount of compensation towards development charges and after deduction, the respondent/claimant is entitled to Rs.1,14,500/- towards compensation for the entire extent of 1.10 acres of land acquired by the appellant department.

8 The second limb of contention of the appellant is that as per the Act, the respondent/claimant is entitled to 15% of the award amount towards solatium. The judgment of the Hon'ble Supreme Court in Iyasamy and another vs. Special Tahsildar, Land acquisition reported in (2010)10 SCC 464, it was held as under:

'18. the ratio of Sunder vs. Union of India (2001)7 SCC 211 would entitle the appellants to receive interest on solatium under Section under Section 23(2) and additional compensation under Section 23(1-A) in terms of the said decision. It was decided in Gurpeet Singh vs. Union of India ((2006)8 SCC 457) that such interest can be claimed only from the date of the judgment in Sunder i.e. 19.9.2001.

9 In the light of the aforesaid decision of the Hon'ble Supreme Court, the respondent/claimant is entitled to get 15% as solatium to the aforesaid extent of land along with interest. In so far as the compensation awarded in favour of the respondent/claimant is modified by fixing Rs.1,14,500/- to the entire extent of 1.10 acres of land and granted 15% for solatium along with interest as decided in Gurpeet Singh case cited supra, In respect of granting compensation in other

category, the award passed by the tribunal is unaltered and confirmed. Hence, the question of law raised by the appellant, is answered accordingly.

10 Thus, the Second Appeal is partly allowed to the aforesaid extent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Sub Judge, Gingee,
Villupuram District

2.The special Tahsildar(ADW), Gingee.

Copy to

The Record Keeper,
VR Section, High Court, Madras.

+1cc to the Special Government Pleader, S.R.No.49741

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M.P.No.1 of 2015
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GN(05/09/2017)

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