

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

S.A.No.393 of 2015

and

M.P.No.1 of 2015

1. The Special Tahsildar

Adi Dravidar Welfare,
Pappireddipatty Town and Taluk,
Dharmapuri District.

2. The Collector of Dharmapuri District.

Collectorate Post,

Avvai Nagar, Dharmapuri-636 705.

.. Appellants/Referring
Officer

Vs

Dhandapani

..Respondent/Claimant

Prayer: Second Appeal filed under Section 13 of Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78 r/w. Section 100 of C.P.C., against the judgment and decree dated 07.01.2013 made in C.M.A.L.A.No.27/2008 on the file of the Subordinate Judge, Harur, modifying the Award dated 19.01.1999 passed by the Special Tahsildar, Adi Dravidar Welfare, Pappireddipatty in Award No.4/1998 praying to set aside the Award.

For Appellants : Mr.T.Jayaramaraj
Government Advocate(C.S.)

For Respondent : Mr.N.E.A.Dinesh

J U D G M E N T

This Second Appeal has been filed by the appellants challenging the judgment and decree dated 07.01.2013 made in C.M.A.L.A.No.27/2008 on the file of the Subordinate Judge, Harur, modifying the Award dated 19.01.1999 passed by the Special Tahsildar, Adi Dravidar Welfare, Pappireddipatty in Award No.4/1998 praying to set aside the Award.

2. The brief facts of the case as follows:

The 1st appellant herein, the Special Tahsildar, Adi Dravidar Welfare, Pappireddipatty Town and Taluk, Dharmapuri District has acquired the land to an extent of 2.95 acres in

which S.No.124/1C, 247/B, 247/2B situate at Molayanoor Village in Pappireddipatty Taluk, Dharmapuri for the purpose of acquisition of property for providing house sites to homeless Adi Dravidas. The appellant Department issued 4(1) notification on 10.03.1998. The award was passed on 19.01.1999 in Award No.4/98-99. The land acquisition officer has fixed the rate at Rs.39,516/- per acre as compensation to the respondent/claimant, on the basis of the sale deed document No.518 dated 27.03.1997 registered on the file of Sub-Registrar Office, Harur. As the respondent/claimant has objected for the said compensation, the appeal has been referred to the learned Subordinate Judge, Harur in CMALA No.27 of 2008 for enhancement of compensation at Rs.25/- per sq.ft. In support of his claim, the respondent/claimant has filed documents Exs.C1 and C2 before the Court below. On the basis of the documents, the appellate court, Harur had fixed the compensation as Rs.1,00,000/- per acre to the claimant/respondent along with solatium and interest as per the award. Challenging the award, the appellant has preferred this appeal before this Court.

3. The following substantial questions of law have been framed in the Second Appeal:-

'1) Whether the learned Judge justified to enhance the award passed by the appellant based on the document relied upon by the respondent when those documents are not relevant to the acquired land ?

2) Whether the learned Judge justified in holding that the enhancement of award can be made based on the sale deed document which is house site and small extent when the acquired land is agriculture land and larger extent ?

4. The learned counsel for the appellants would submit that the Court below has wrongly assessed the acquired land as house site. Therefore, fixing the compensation amount on the basis of the sale consideration of smaller extent of land, adjacent to the acquired property is contrary to law. Further, the classification of revenue records would clearly shows that the said acquired land is an agricultural land and the larger extent of the land has been acquired by the Department. The Court below has failed to taken into consideration of the settled principles of law laid down by the Hon'ble Supreme Court that there shall be a deduction towards 65% for development charges, if the larger extent of land is acquired. The documents relied upon by the appellant/defendant has not been properly taken into consideration by the court below, while fixing the market value of the land for the acquired property, has not considered the documents relied upon by the appellants. Therefore, the appellants have filed the present second appeal before this Court.

5. The learned counsel for the respondent would submit that the proximity of the acquired land is very close to the main road and the same is situate in elevated place in Molayanoor panchayat adjacent to the acquired land, the streets are provided with concrete roads, street electric lights, street pipes, Drainage facilities are available in the village. The acquired land is very close to Venkatasamudram Panchayat and also nearer to Pappireddipatty Taluk. The Court below by considering the sale consideration of adjacent land under Exs.C1 and C2 marked by the claimant/respondent has rightly fixed the compensation along with reasonable interest to the acquired land. There is no irregularity or illegality in the compensation awarded by the Tribunal.

6. Since the respondent/claimant has objected the compensation awarded by the Land Acquisition officer and claimed higher compensation amount for the acquired land, the appeal was referred to the learned Sub-Court, Harur, under Section 18 (1) of the Tamil Nadu Harijan Welfare Land Acquisition Act 31/78. The appeal was taken on file in CMALA No.27 of 2008 by the Tribunal. On the side of the claimant, CW1, CW2 and CW3 were examined and Exs.C1 to C3 were marked. On the side of the respondent, documents were marked and RW1 was examined and the documents Exs.R1 to R3 were marked. The petitioner's land comprised in S.No.124/1C, situate in Pappireddipatty to Bommidi main road. The claimant during his chief examination before the court below has stated that the acquired land is close to the main road namely Dharmapuri to Salem main road and in between Pappireddipatty and Bommidi and also close to bus stop. The claimant has relied upon the document Ex.C1, wherein, the sale was executed on 22.12.1997 in respect of S.No.331/1 for an extent of 561 square feet for a sum of Rs.9,256/-. As per Ex.C1 the land was sold at the rate of Rs.16.49 per sq.ft. The other document marked by the claimant is Ex.C2 dated 01.08.1966. As per Ex.C2, the land was sold at the rate of Rs.43/- per sq.ft. By considering the document marked under Ex.C1, the court below has fixed Rs.4,00,000/- per acre and after deduction of 50% and 1/3rd deduction towards development charges has determined the market value at Rs.1,00,000/- per acre for the acquired land. Apart from the above, the court below has awarded Rs.60,000/- for well, Rs.1,000/- each towards 17 Coconut sappalings, i.e., Rs.17,000/- and further awarded Rs.25,000/- to the electric motor pumpset motor room, along with 15% solatium for the said amount with interest at the rate of 6% from the date of taken possession till the date of realisation. During examination, CW1 deposed that Ex.C1 property is very close to the acquired land and the distance between Ex.C1 property and the acquired land is one furlong. Under Ex.C2, the land was sold on 01.08.1996, for a sum of Rs.90,000/- per acre. Further, Ex.C2 is also covered under the land acquisition proceedings issued under 4(1)

notification on 04.03.1997. By considering the larger extent of land and other factors and taking note of Ex.C1, the court below determined the compensation for the acquired land.

7. Therefore, by considering the extent of land, proximity of the land, and also considering the future development of the acquired land, it is reasonable to determine the market value of the acquired land for Rs.95,000/- per acre. Therefore, the compensation amount of Rs.1,00,000/- per acre awarded by the court below is modified as Rs.94,800/- per acre for the acquired land along with 15% solatium for the above said amount along with interest at the rate of 6% from the date of taken possession from 27.04.1998 till date of realisation and the other portions of the award passed by the court below is confirmed. In addition to the above award, the respondent/claimant herein is entitled to claim interest for the solatium in the light of the judgment reported in 2001(7) SCC 211 in the case of *Sunder v. Union of India*, wherein paragraph 26 is held as follows:-

'26. We think it useful to quote the reasoning advanced by Chief Justice S.S.Sandhawalia of the Division Bench of the Punjab and Haryana High Court in *State of Haryana v. Kailashwati* : (SCC p.119, para 10)

'Once it is held as it inevitably must be that the solatium provided for under Section 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.'

8. In the case of *Iyasamy and another v. Special Tahsildar, Land Acquisition* reported in (2010) 10 SCC 464, the Hon'ble Supreme Court has observed as follows:

'18. The learned counsel for the appellants in Civil Appeals Nos.1760-61 of 2004 are also claiming interest on solatium and additional compensation as the impugned order of the High Court was pronounced prior to the judgment in *Sundar v. Union of India*. Since the present appeal was pending before this

Court, therefore, the ratio of *Sundar v. Union of India* would entitle the appellants to receive interest on solatium under Section 23(2) and additional compensation under Section 23(1-A) in terms of the said decision. It was decided in *Gurpreet Singh v. Union of India* that such interest can be claimed only from the date of the judgment in *Sundar* i.e., 19-9-2001. Therefore, the appellants in Civil Appeals Nos.1760-61 of 2004 shall be entitled to such interest for the period after 19-9-2001, not the period prior to the same.'

9. In the light of the above said judgment, the claimant / respondent herein is entitled for the interest for the solatium from 19-9-2001.

10. In view of the above facts and circumstances and the decisions cited supra, the judgment and decree passed by the Sub-court, Harur, is modified to the above extent. The Second Appeal is partly allowed. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Subordinate Judge, Harur.
2. The Special Tahsildar,
Adi Dravidar Welfare,
Pappireddipatty Town and Taluk,
Dharmapuri District.
3. The Section Officer, VR Section,
Court, Madras.

+ 1 cc to Mr. V. Nicholas, Advocate Sr.49221

+ 1 cc to Mr. Government Pleader Sr.49431

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nm(CO)

EU(03/02/2018)