IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

S.A.No.406 of 2015
and
M.P.No.1 of 2015

1. The Additional Special Tahsildar,
Adi Dravidar Welfare,
Harur, now re-designated as
Special Tahsildar (ADW),
Pappireddipatty, Dharmapuri District.

2. The Collector of Dharmapuri District,
Collectorate Post, Avvai Nagar,
Dharmapuri-636 705. ... Appellants/Referring Officer

Vs

Kutti ... 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 29.11.2012 made in C.M.L.A.No.22/2008 on the file of the Subordinate Judge, Harur, modifying the Award dated 26.03.1998 passed by the Special Tahsildar, Adi Dravidar Welfare, Harur in Award No.9/1997-98 in ROC Na.Ka.No.917/97(B) 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

The brief facts of the case is as follows:

The 1st appellant herein vide proceedings No.917/97B dated 26.03.1998, acquired land belonged to the respondent/claimant comprised in S.No.141/4B in S.No.183/6 in Mottankurichi Village, Pappireddipatty Taluk, measuring 1.16 acres for distribution of free house sites to S.C. Arundadiyar community. The appellants fixed the land value for the said property at the rate of Rs.69,125/- per hectare i.e., Rs.27,985/- per acre.

2. Challenging the said award, the appellant has preferred an appeal in C.M.A.(LA) No.22 of 2008 for enhancement of compensation. On the side of claimants, CW1 & CW2 were examined. On the respondent's side, RW1 was examined and Exs.R1 and R2 were marked. CW1 deposed that he acquired the land to an extent of 1.16 acres situate in S.No.183/6 in Nathamedu Village and the land situate adjacent to the acquired land is divided as a house site. According to the claimant, near the acquired land, there is Government School and the same is abutting main road. The claimant has marked the sale deed dated 20.01.1996 as Ex.C1, wherein, land measuring 2802 sq.ft. situate in S.No.49/9 in Mottankurichi Village and sold for a sum of Rs.28,000/-. As per the aforesaid document, the market value of the land is Rs.4,360/- per cent. The claimant has filed Ex.C2 sale deed, wherein land sold for a sum of Rs.31,000/- to an extent of 900 square feet in S.No.52/1. As per Ex.C2, land adjacent to the respondent's land was sold at the rate of Rs.34/- per sq.ft., and one cent was sold at Rs.14,824/- and 1 acre was sold at Rs.14,82,400/-. Both the above said documents are registered prior to the issuance of 4(1) notification dated 18.10.1997. But, the court below has held that both the lands stated above are faraway from the acquired land, however, considering Ex.C2 and enhanced the compensation by fixing the market value at the rate of Rs.3,80,000/- per acre for the acquired land on the basis of Ex.C2. Further, the court below has deducted 50% towards development charges and fixed the compensation amount at Rs.1,90,000/- per acre, along with the interest under the provisions of the Tamil Nadu Harijan Welfare Act along with 15% solatium, plus Rs.5,000/- for Tamarind Trees.

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 petitioner would submit that the award amount as fixed by the Special Tahsildar at Rs.27,985/- for the total extent of acquired land, but the court below has fixed at Rs.1,90,000/- per acre for the acquired land, without appreciating the decision of this Court for the deduction towards development charges.

5. According to the learned counsel for the respondent, the court below has determined the compensation amount at the rate of Rs.1,90,000/- per acre for the land acquired by the appellants from the respondent. According to the claimants/respondents, the claimant has filed Exs.C1 and C2, the registered sale deeds executed in favour of Nanjammal and Krishnammal. The Court below has considered Ex.C1 by fixing the market value of the acquired land at the rate of Rs.4,36,000/- per acre. Even though the claimant/respondent relied upon Ex.C2 for higher compensation amount for the acquired land, the court below has not accepted the same and fixed the compensation amount on the basis of Ex.C1. Further the Court below has deducted the amount towards development charges in the light of the decision of the Hon'ble Supreme Court by deducting 50% of the value fixed by the court below. Therefore, there is no warrant to interfere with the order passed by the court below. From the submissions made by the learned counsel for the parties, and on perusal of the records, the Court below has considered Ex.C1 and evidence of the claimants and fixed the compensation at the rate of Rs.3,80,000/- per acre plus solatium and interest to the claimant and considering Exs.C1 and C2 executed by Nanjammal and Krishnammal, wherein, the small extent of land was sold on the value fixed by the Registration Department. But, the present land acquired by the Department is more than one acre. No other document has been placed before the appellate Court to disprove the claim made by the claimants. By considering Ex.C1, the total extent of land is to an extent of 2,802 sq.ft., which was sold at the rate of Rs.28,000/-. The said sale deed was registered on 20.01.1996. The 4(1) notification was issued on 18.10.1997. The said document Ex.C1 is relevant for fixing the market value to the land acquired by the appellants. Hence, in the light of the decision of the Hon'ble Supreme Court, in the case of Iyasamy and another v. Special Tahsildar, Land Acquisition reported in 2010 (10) SCC 464 in paragraph Nos. 13 and 14, wherein, it reads as under:-

> ''13. If we assess the market value of the land acquired at ? 10 per square feet on the basis of Ext.C-3 and deduct 1/3rd towards development charges, it comes approximately to ? 6.25 per square feet. As far as Exts.C-15, C-16 and C-17 are concerned, in those documents, transactions were made at the rate of ? 20 per square feet. But the lands pertaining to those sale deeds are highly developed and better located being situated right on Manickampalayam Road not very far from Mettur Road, and the Municipal Colony. Therefore, if a deduction of 65% should be made as is done in some cases decided by this Court, the valuation would come to ?6.25. The aforesaid lands covered by the three exhibits are lands of

better quality, and better location with better connectivity. Besides, these are small pieces of land compared to a large tract of land acquired in the present case. Therefore, a deduction of 65% of land value appears to be just and appropriate.

14. For quality and location of land, if deduction is permissible at $1/3^{rd}$ valuation and for smaller piece of land pitted against large tract of land also another $1/3^{rd}$ deduction is permissible, the same would again amount to valuation being fixed at ?6 or ?6.25. This amount of compensation was awarded by the High Court in respect of acquired lands in LAOPs Nos.22, 24 and 26 of 1987 and 410 of 2000.''

6. It is clear from the aforesaid decision for considering the document relates to smaller extent of land for development of the house sites there shall be a deduction by fixing the market value of the property. There is no dispute by both the parties that Ex.C1 is only small extent of land sold for a sum of Rs.28,000/- to the extent of 2802 sq.ft., Further, the present land acquired by the appellant/Department for providing house sites for the Adi Dravidas. Therefore, in the light of the decision cited supra, this Court is of the view that there shall be 65% of deduction in the value fixed by the Court below is just and reasonable for granting compensation to the claimant for the land acquired by the Department. Therefore, by considering Rs.4,36,000/- per acre under Ex.C1, it is only small extent of land. Further, the above said land is far away from the acquired land. Apart from the said document, no other document has been marked by both sides for fixing the market value of the acquired land. Therefore, taking into consideration all the above aspects, the Court below fixed deduction of 50% towards development charges on the market value under Ex.C1 as relied by the Court below.

7. In the light of the above said judgment, this Court is of the view that 30 % deduction towards development charges for the land acquired from the respondent. As per the calculation, this Court determines the compensation amount at the rate of Rs.1,52,600/- per acre to the respondent/claimant plus Rs.5,000/- awarded for Tamarind Trees along with the interest under the provisions of the Tamil Nadu Harijan Welfare Act along with 15% solatium. The said amount at the rate of 6% interest from the date of possession till the date of realisation of the amount. Apart from the said compensation amount, the respondent/claimant is also entitled interest for the solatium as per 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 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 substantial questions of law are answered accordingly and the second appeal is partly allowed to the above said extent. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssn
To

1. The Subordinate Judge,
Harur.

2. The Special Tahsildar,
Adi Dravidar Welfare,
Harur.

3. The Section Officer,
VR Section, High court, Madras-104

+1cc to Mr.V.Nicholas, Advocate SR.No.50034/17
+1cc to Special Government Pleader SR.No.49740/17

S.A.No.406 of 2015
and
M.P.No.1 of 2015

KGK(CO)
sm:18.12.2017