

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM:
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

S.A.No.886 of 2011

1. The Land Acquisition Officer,
(Special Tahsildar, ADW),
Harur Town & Post,
Dharmapuri District.
2. The District Collector,
Dharmapuri. ... Appellants/Respondents

Vs.

S.Vediyappa Naikar ... Respondent/Appellant

Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 20.12.2006 passed in L.A.C.M.A.No.3 of 2004 on the file of the Subordinate Judge, Dharmapuri, modifying the award made in Award No.1/2001-02, dated 29.01.2002 passed by the Land Acquisition Officer/Special Tahsildar (ADW), Harur, praying the same to be set aside.

For Appellants : Mr.T.Jayaramaraj,
Government Advocate

For Respondent : Mr.I.Abrar Mohd. Abdullah

J U D G M E N T

Aggrieved by the judgment and decree dated 20.12.2006 passed in L.A.C.M.A.No.3 of 2004 on the file of the Subordinate Judge, Dharmapuri, modifying the award dated 29.01.2002 made in Award No.1/2001-02, passed by the Land Acquisition Officer/Special Tahsildar (ADW), Harur, the appellants are before this Court by way of the present Appeal, seeking to set aside the same.

2. The Land Acquisition Officer/Special Tahsildar (ADW), Harur, passed an Award vide Award No.1/2001-02 on 29.01.2002 fixing a sum of Rs.69,024/- as compensation to the respondent herein for the land acquired by them under Adi Dravidar Welfare Scheme. Seeking enhancement of compensation, the respondent went on appeal before the Subordinate Judge, Dharmapuri in L.A.C.M.A.No.3 of 2004 and the Lower Appellate Court, by a judgment and decree dated 20.12.2006, enhanced the compensation

by fixing the value at Rs.6/- per square feet, which comes to Rs.3,49,740/- for 0.54.0 hectares (58,290 sq.ft.) and 15% as solatium, which works out to Rs.52,461/-; in toto, the compensation was enhanced to a sum of Rs.4,02,201/-. Aggrieved by the same, the respondents in the First Appeal are before this Court seeking modification of compensation.

3. Learned Government Advocate appearing for the appellants contended that the Lower Appellate Court erred in enhancing the compensation from Rs.1,11,150/- per hectare to Rs.6/- per square feet without any credible foundation for the same by way of oral and documentary evidence. It is his further contention that the Court below erred in placing reliance on Exs.A3 and A5, where, a small extent of land classified as house site was conveyed, whereas, the land acquired was classified as dry agricultural land and the Sale Deed has also been executed after 4(1) Notification. He also contended that the Court below erred in not making any deduction towards developmental charges as per the law laid down by the Apex Court in the decision reported in 2003 (12) SCC 334.

4. In reply, learned counsel appearing for the respondent contended that the amount fixed by the Lower Appellate Court is very meagre and in view of the decision of the Apex Court in the case of Atma Singh (dead) rep. by L.Rs. and others vs. State of Haryana and another (2008 (2) SCC 568), they are entitled to 30% solatium and the contention of the appellants that there should be deduction in the compensation towards developmental charges is not acceptable.

5. On 28.07.2011, this Court admitted the Second Appeal on the following substantial questions of law:

(1) Whether the Courts below erred in not appreciating the provisions of Section 8 of Act 31/1978 inasmuch as the Section specifically provides that the future usage of the land shall not be taken into consideration for the fixation of market value?

(2) Whether the Court below had erred in not appreciating the fact that the Land Acquisition Officer had placed reliance on Ex.B4, the data sale deed since the land conveyed under the said document and the land acquired were similar in nature and classification?

(3) Whether the Court below had erred in placing reliance on Ex.A3 and Ex.A5 for fixation of market value without any discussion or finding as to the similarity in the nature

of land conveyed under the said sale deed and the land acquired?

(4) Whether the Court below erred in not making any deduction towards the development charges especially when the fixation of market value was placed upon sale deed Ex.A3 and Ex.A5, where under a small extent of land classified as house site had been conveyed ?

6. Heard the learned counsel on either side, gave careful consideration to their submissions and perused the material documents available on record.

7. After scrutinizing the documents filed by the respondent/claimant vide Exs.B3, B4 and B5, the Trial Court ultimately fixed the value of compensation at Rs.6/- per square feet. Admittedly, the land acquired was classified as Dry Agricultural land and a Sale Deed has been executed after the notification under Section 4(1). The Lower Appellate Court, relying on the decision reported in 2003 (1) MLJ 781, that transactions fetching the maximum price and most advantageous to the claimant has to be taken into consideration, fixed Rs.6/- as market value per square feet. In the said decision, this Court had clearly held that the Court should do some guess work in fixing the market value.

8. Since the finding of the Lower Appellate Court is a finding of fact and in the light of the decision of this Court reported in (2003) 1 MLJ 781, whereby, it is clearly held that the Court can do some guess work in fixing the market value, this Court finds no reason to interfere with the compensation enhanced by the Lower Appellate Court and the same is accordingly confirmed.

9. In view of the above discussion, the substantial questions of law framed in this appeal are answered against the appellants.

In fine, the Second Appeal is dismissed. No costs. Consequently, connected M.P.No.1 of 2011 is closed.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

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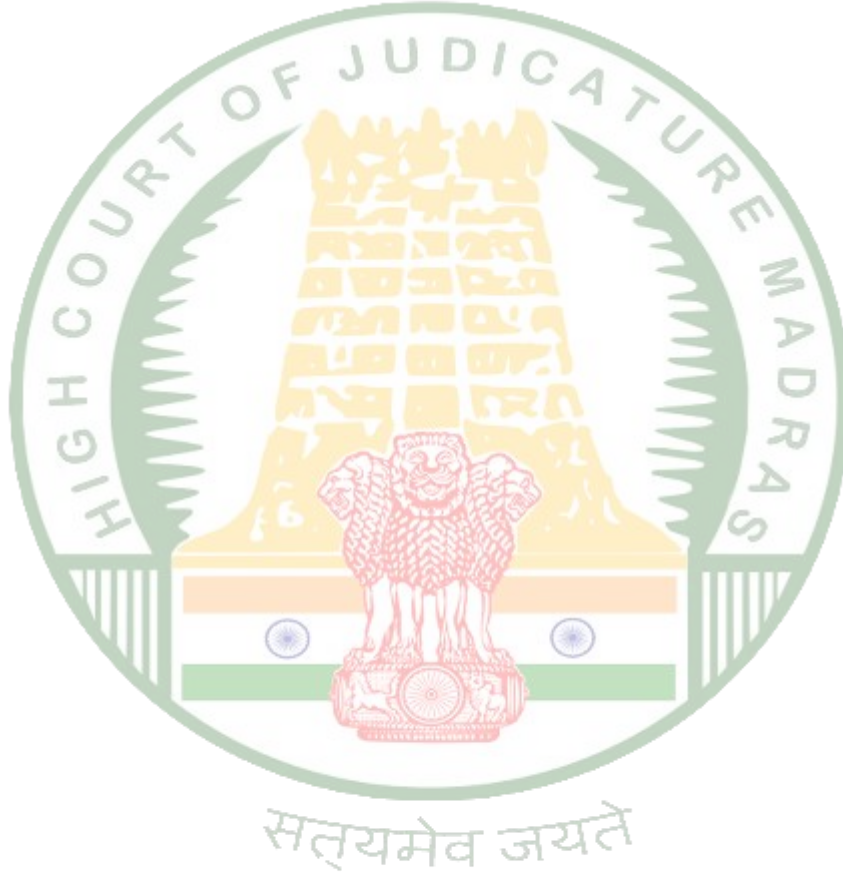
To:

1. The Subordinate Judge, Dharmapuri.
2. The Land Acquisition Officer/Special Tahsildar (ADW), Harur.
3. The V.R. Section, High Court, Madras.

+1cc to Special Government Pleader in sr.no.18728

S.A.No.886 of 2011

SR(CO)
NR 22/06/2017



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