



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.08.2017

Date of Reserving the Judgment	Date of Pronouncing the Judgment
26.07.2017	01.08.2017

WEB COPY

CORAM:
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

A.S.(MD) No.13 of 2017
and
C.M.P.(MD) No.645 of 2017

The Special Tahsildar (LA)
Neighbourhood Scheme
Nagercoil, Vadiveeswaram Village
Agasteeswaram Taluk, Kanyakumari District.

.. Appellant/Referring Officer

-vs-

1.S.Nagarajan ...1st Respondent/Claimant

2.Tamil Nadu Housing Board
Tirunelveli Housing Unit
rep.by its Executive Engineer
and Administrative Officer
Sivanthipatti Road, E.B.Colony
Tirunelveli-627 011, Tirunelveli District
...2nd Respondent/Beneficiary

PRAYER: Appeal is filed under Section 54 of the Land Acquisition Act read with Section 96, to set aside the award and decree, dated 15.04.2008 made in L.A.O.P.No.55 of 1994, on the file of the Principal Sub Court at Nagercoil.

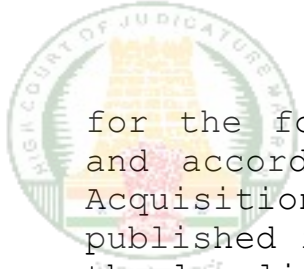
For Appellant :Mr.V.Muruganandam
Addl. Govt. Pleader

For Respondents :Mr.K.Sree Kumaran Nair for R1
No appearance for R2

J U D G M E N T

The first appeal is directed against the fair and decreetal orders, dated 15.04.2008, made in L.A.O.P.No.55 of 1994, on the file of the Principal Sub Court at Nagercoil, by the Referring Officer / appellant.

2. It is found that the Special Tahsildar (Land Acquisition), Neighbourhood Scheme, Nagercoil, had acquired various extent of lands including the lands of the claimant, comprised in T.S.No.L5-13/3, measuring 61 Cents and T.S.No.L5-13/1B, measuring 01 Cent,



for the formation of the Neighbourhood Scheme in Nagercoil Town and accordingly a Notification, under Section 4(1) of the Land Acquisition Act (hereinafter, referred to as "the Act"), was published in the Government Gazette, dated 11.07.1990, and also in the locality on 06.08.1990 and after due notice to the claimant as well as the other persons, whose lands had been acquired under the above said Scheme and after issuing the declarations required to be made as per the Act and insofar as the case of the claimant is concerned holding that the lands to which the claimant is staking title had been made on the basis of the Will executed in his favour by the Patta-holder Narayana Perumal, who is the grandfather of the claimant and accordingly holding that the claimant as such is entitled to receive the compensation for the lands in question and considering the various sale transactions that had occurred in the locality for the past three years, according to the appellant, 610 sale transactions have been taken into consideration and finally, after discarding all the sale transactions for one reason or the other as detailed in the Award and holding that only the sale transaction in Serial No.51, vide document No.1943, dated 12.10.1997, is relevant as the lands involved in the sale transaction is similar to the acquired lands involved in the matter and the rate also fixed in the said sale transaction being fair and reasonable and also the value of the trees fixed correctly in the said sale transaction, finally the value of the lands under the acquisition had been fixed by the Referring Officer at the rate of Rs.550/- per Cent and accordingly, determined the compensation to which the claimant and the other land owners are entitled to and passed the Award impugned in the land acquisition original petition.

3. Inasmuch as the compensation fixed for his lands acquired by the Referring Officer is inadequate and not correctly fixed in accordance with the prevailing market value of the lands in the locality at the relevant point of time, the claimant having contested the Award it is found that a reference was made to the Principal Subordinate Judge, Nagercoil, in L.A.O.P.No.55 of 1994 by the Referring Officer / appellant.

4. The claimant has contested the matter contending that the compensation awarded is very nominal and the guideline value adopted by the Registration Department being higher, the Acquisition Officer failing to note that the land in question lies within the Nagercoil Municipal limits and the entire area from Beach Road to Eathamozhi Road junction to the southern fringe of the Municipal Limit is covered with the residential buildings and not a dry land as such ought to have taken the principal value of the land while deciding the value of the property and the principal value of the land at that point of time more than Rs.550/- per Cent and the land in question also being surrounded by the well developed housing society on the south and



with bus route and very near to Schools and Colleges, the Acquisition Officer, without any basis, had fixed the value wrongly without ascertaining the true and potential value of the land in question. Therefore, claiming that the market value of the land per Cent is Rs.15,000/-, the claimant prayed for enhancement of the compensation.

5. Per contra, the Referring Officer stood firm on his Award contending that the award had been fixed rightly taking into consideration the value of the sale transaction, which had taken place in the locality pointed out the document in Serial No.51 and accordingly, contended that the Award passed does not call for any interference as such.

6. The following points were framed by the Court below for consideration in the matter:

i. Whether the market value of the acquired lands fixed at Rs.550/- per Cent by the Land Acquisition Officer is fair and correct? and

ii. Whether the claimant is entitled for enhanced compensation, if so, at what rate?

7. In support of the case of the claimant, C.W.1 was examined and Exs.A1 to A4 were marked and on the side of the appellant / Referring Officer, R.W.1 was examined and Exs.B1 and B2 were examined.

8. On a consideration of the materials placed, it is found that the Court below had fixed the value of the land at the rate of Rs.3,500/- per Cent and accordingly, passed the fair and decreetal orders impugned in this first appeal.

9. The following points arise for consideration in this appeal:

i. Whether the amount of enhanced compensation fixed by the Court below is proper and just? and

ii. To what relief the appellant is entitled to?

POINT No.I:

10. Insofar as the acquisition of the lands belonging to the claimant under the proceedings of the Referring Officer, the same is not in dispute. It is thus found that in respect of 62 Cents situated in two survey numbers belonging to the claimant, the acquisition proceedings had been initiated and accordingly, it is found that the Referring Officer had fixed the compensation amount to which the claimant is entitled to, at the rate of Rs.550/- per Cent. On a reference under Section 18 of the Act to the Court below, the Court below, on a consideration of the materials placed, had calculated the compensation fixing the value of per Cent at Rs.3,500/-.



11. It is found that as far as the case of the Referring Officer is concerned, it is found that they rely upon the document marked as Ex.B1, which is a sale transaction, dated 09.10.1987, in respect of 07 Cents in T.S.No.L5-8/2 of Vadiveeswaram Village, for a sale consideration of Rs.3,900/-. On the basis of the above, it is contended that the value of the land acquired involved in this case should be fixed at Rs.550/- per Cent. No doubt, at the time of passing of the Award, nearly 610 sale transactions were placed for consideration. However, excepting Ex.B1 sale transaction, the other sale transactions have been discarded for one reason or the other by the Referring Officer. It is found that the document marked as Ex.B1, dated 09.10.1987, had come into existence nearly two years and nine months prior to the 4(1) notification. However, it is contended by the claimant's counsel that the property covered under Ex.B1 is not located near the acquired land involved in this matter and therefore, the same would not be relevant for deciding the value of the acquired land.

12. Per contra, the learned counsel for the claimant placed reliance upon the sale transaction marked as Ex.A1, dated 21.10.1988, wherein an extent of 5 ½ Cents in Re-Survey No.L5-5/8 of Vadiveeswaram Village has been conveyed for a sale consideration of Rs.22,000/- and thus, contended that the same had come into existence nearly two years prior to the 4(1) notification and as the property covered under that document is located near the land involved in this matter, the same would be the relevant document for determining the market value of the acquired land.

13. It is not in dispute that the property of the claimant acquired is situated within the municipal limits at Nagercoil. Further, it is also noted that as seen from the impugned fair and decreetal orders of the Court below, the acquired land is located in an area, which is a fast developing area with all the facilities, like, Schools and Colleges etc., and it is also found that the Beach Road from Nagercoil to Sanguthurai is just located a few meters away from the acquired land. Therefore, it is contended that considering the prime locality of the acquired land, the value of the land should be determined as per the sale transaction marked as Ex.A1 and therefore, it is argued that the Court below had rightly taken into consideration the value of the sale transaction covered under Ex.A1 and however, considered the value at the rate of Rs.3,500/- per Cent.

14. As found by the Lower Court, it is seen that the property covered under Ex.B1 and the land acquired are not similar and also not located in the same vicinity. Therefore, the Lower Court has not taken into consideration the value fixed in Ex.B1 for determining the value of the acquired land. As contended by the



claimant, it is found that the acquired land is located in a prime locality, which is fast developing as already adverted to and therefore, it is seen that the Court below has taken into consideration the value of the sale transaction covered under Ex.A1 for determining the value of the acquired land. However, when the Trial Court has held that the property covered under Ex.A1 is not located adjacent to the land acquired and also does not have the identical advantages as that of the acquired land, the Court below was also hesitant in accepting the transaction covered under Ex.A1 fully to fix the value of the acquired land.

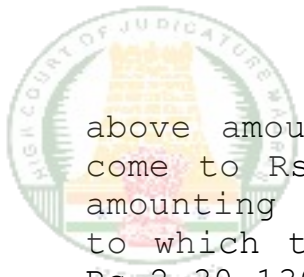
15. The Court below, therefore, seems to have fixed the value of the acquired land taking into consideration the prime locality, where it is situated and also the development being carried on in the locality and the other relevant factors and thereby fixed the market value at the rate of Rs.3,500/- per Cent.

16. It is argued by the learned Additional Government Pleader that the value adopted by the Lower Court is contrary and unfair and when even according to the Lower Court, the property covered under Ex.A1 is not situated adjacent to the acquired land, has erred in taking into consideration the value covered under Ex.A1 and therefore, the compensation fixed by the Lower Court has to be reversed. On the other hand, the learned counsel for the claimant, in this appeal, would contend that on considering the locality of the acquired land being in a prime area and also a fast developing one, the Lower Court has rightly fixed the value at the rate of Rs.3,500/- per Cent.

17. Inasmuch as it is not in dispute that the property covered under Ex.A1 is not located in the vicinity of the acquired land and also not having similar characteristic as that of the acquired land, the value of the property given in Ex.A1 cannot be the sole factor for determining the value of the acquired land. In such view of the matter, it is found that the Court below is not right in fixing the value of the acquired lands at Rs.3,500/- per Cent without any basis. Further, the Court below has also held that the value mentioned in Ex.A1 cannot be adopted as the market value of the acquired land.

18. In view of the above position, it is found that in my considered opinion, considering the location of the acquired land within the municipality limits and its other advantage factors as already adverted to, the compensation would be adequate if it is determined by fixing the value of the land at Rs.2,250/- per Cent.

19. So calculated, it is found that the land value for an extent of 62 Cents at the rate of Rs.2,250/- would come to Rs.1,39,500/- adding the value for trees at the rate of Rs.800/-, the total would come to Rs.1,40,300/- adding 30% solatium to the



above amounting to Rs.42,090/-, it is found that the same would come to Rs.1,82,390/-. Further adding 12% additional land value amounting to Rs.47,740/-, it is found that the total compensation to which the claimant would be entitled to receive would come to Rs.2,30,130/- deducting the award amount passed by the Referring Officer in a sum of Rs.57,257/- from the same, it could be seen that the enhanced compensation to which the claimant would be entitled to will be Rs.1,72,873/-.

20. In the light of the above position, I hold that the compensation fixed by the Lower Court is not proper and just. I further hold that the claimant is entitled to the enhanced compensation amount at the rate of Rs.1,72,873/- with interest at the rate of 9% per annum till deposit if it is made within three months and thereafter, at the rate of 15% per annum. Accordingly, Point No.I is answered.

POINT No.II:

21. The fair and decreetal orders, dated 15.04.2008, made in L.A.O.P.No.55 of 1994, on the file of the Principal Sub Court at Nagercoil, are modified and the claimant is entitled to the enhanced compensation at the rate of Rs.1,72,873/- with interest at the rate of 9% per annum till deposit if it is made within three months and thereafter, at the rate of 15% per annum. Accordingly, the first appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

/Truecopy/

Sub Assistant Registrar

To:

The Principal Sub Judge,
Nagercoil.

+1cc to M/S.K.SREE KUMARAN NAIR, Advocate SR.No.69478

+1cc to Special Government Pleader, SR.No.69388

krk

MAS/MR-KKR/SAR1:11.08.2017:6P-4C

JUDGMENT

IN

A.S.(MD) No.13 of 2017

and

C.M.P.(MD) No.645 of 2017

01.08.2017