



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.06.2017

DELIVERED ON : 27.06.2017

CORAM:

THE HONOURABLE **MR. JUSTICE C.V.KARTHIKEYAN**

A.S. (MD) No.228 of 2015

and

M.P. (MD) No.2 of 2015

The Special Tashildar,
Adi Dravidar Welfare,
(Land Acquisition),
Periyakulam,
Now at the Taluk Office,
Theni.

: Appellant/Referring Officer

Vs.

1. Rajayya
2. Gubendran
3. Seerengammal

: Respondents/Claimants

PRAYER: This Appeal Suit is filed under Section 54 of the Code of Civil Procedure, against the judgement and decree, dated 20.01.2010 passed in LAOP. No.16 of 1998, on the file of learned Subordinate Judge, Periyakulam.

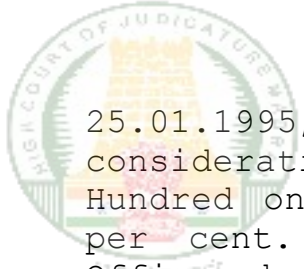
For Appellant : Mr.R.Velmurugan,
Government Advocate

For Respondents : Mr.D.P.Sundra Raj

JUDGMENT

The Referring Officer / Special Tahsildar, Adi Dravidar Welfare, (Land Acquisition), Periyakulam, has filed this appeal under Section 54 of Land Acquisition Act, challenging the judgment and decree in L.A.O.P.No.16 of 1998 dated 20.01.2010, passed by the learned Subordinate Judge, Periyakulam.

2. L.A.O.P.No.16 of 1998 had been filed by the respondents herein, since the Government, under 4(1) notification dated 27.01.1995, had acquired 0.17.5 hectares, namely 43 cents of land in survey No.2027/1 at Thamaraikulam village, Periyakulam Taluk, Theni District. It had been stated in the claim petition filed under Section 18 of the Act that the Acquisition Officer had fixed Rs.220/- (Rupees Two Hundred and Twenty only) per cent on the basis of the data sale deed which was for an extent of 2.61 acres of dry land in survey No.2030/1, in which, sale deed dated



25.01.1995, bearing document No.80/95, 2.61 acres was sold for a consideration of Rs.67,200/- (Rupees Sixty Seven Thousand and Two Hundred only) at the rate of Rs.600/- (Rupees Six Hundred only) per cent. After, necessary deductions, the Land Acquisition Officer had granted an award of Rs.220/- (Rupees Two Hundred and Twenty only) per cent by award dated 26.03.1996. In the claim petition, it had been mentioned that the acquired land has more value in the market. It had been further stated that the data land was not close to the acquired land. There are housing plots, shops and within a distance of five kilometers schools and colleges.

3. Before the Trial Court, sale deeds marked as Ex.P1 and Ex.P2 were filed. Under Ex.P1, which was a sale deed dated 10.12.1990 for survey No.2659/1, 1 ½ cents was sold for Rs.7,840/- (Rupees Seven Thousand Eight Hundred and Forty only) at the rate of Rs.5,232/- (Rupees Five Thousand and Two Hundred and Thirty Two only) per cent and under another sale deed Ex.P2 for survey No.2662 dated 07.02.1994, 1 ½ cents was sold for Rs.11,772/- (Rupees Eleven Thousand Seven Hundred and Seventy Two only) at the rate of Rs.7,848/- (Rupees Seven Thousand Eight Hundred and Forty Eight only) per cent. The learned Subordinate Judge rejected the data sale deed filed by the Government and taking into consideration, Ex.P1 and Ex.P2 finally fixed a sum of Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per cent and granted solatium at the rate of 30% and interest at the rate of 12% per annum from the date of 4(1) notification till the date of decree and thereafter interest at the rate of 9% per annum till realisation.

4. This award has been challenged and in support of the challenge Mr.R.Velmurugan, learned Government Advocate for the appellant stated that Ex.P1 and Ex.P2 are with respect to very small area of 1 ½ cents and in this regard, relied on the decision of the Honourable Supreme Court reported in **2008 (1) MLJ Page 1038 - Lucknow Development Authority Vs. Krishna Gopal Lahoti and Others**. It was also pointed out that the acquisition was for burial ground for Adi Dravidars of Lakshmipuram and consequently, stated that under the Tamil Nadu Act, subsequent interest at the rate of 6% per annum alone can be granted.

5. On the other hand, Mr.D.P.Sundraraj, learned Counsel appearing for the respondents has relied on the judgment reported in **2011 (5) page 852, The Special Tahsildar, Adi Dravidar Welfare, Tirupattur, N.A.A.District Vs. J.P.Kannan**, in which at paragraph No.14, it had been held that 7.5% escalation of price can also be granted. In the very same judgment, even when there is no appeal, the High Court had invoked the provision of Order 41 Rule 43 of the Code of Civil Procedure and enhanced the award amount.



6. I have carefully considered the rival submissions put forward.

7. In the present case, the acquisition Land was for burial ground for Adi Dravidars of Lakshmipuram Hamlet, Thamaraiikulam Village, Periyakulam Taluk. The Land Acquisition Officer had fixed Rs.220/- (Rupees Two Hundred and Twenty only) per cent and this was increased to Rs.6,500/- by the learned Subordinate Judge, Periyakulam.

8. The learned Subordinate Judge had relied on two documents Ex.P1 and Ex.P2. Ex.P1 dated 10.12.1990 was for the survey No.2659/1, whereby 1 ½ cents was sold for Rs.7,840/- (Rupees Seven Thousand Eight Hundred and Forty only) at the rate of Rs.5,232/- (Rupees Five Thousand Two Hundred and Thirty Two only) per cent. Ex.P2 was for Survey No.2662, data sale deed dated 07.02.1994, whereby 1 ½ cents was sold for Rs.11,772 (Rupees Eleven Thousand Seven Hundred and Seventy Two only) at the rate of Rs.7,848/- (Rupees Seven Thousand Eight Hundred and Forty Eight only) per cent. Both documents relied on related to very small extent of land of 1 ½ cents. In the present case, the total acquired area is 43 cents or 0.17.5 hectares of land. While determining the value to be fixed for 43 cents, the sale deed for 1 ½ cents cannot be taken into consideration. Moreover the said sale deeds are for the years 1990 and 1994. Ex.P1 is subsequent to the 4(1) notification which is dated 27.01.1995. Consequently, I am not able to convince myself to take Ex.P1 into consideration. Ex.P2 is dated 07.02.1994. This is prior to 4 (1) notification, however it is for an area of only 1 ½ cents. Consequently, the said document also cannot be taken into consideration.

9. It is seen from the records that the Land Acquisition Officer had considered 91 sale deeds for the period dated 27.01.1992 to 26.01.1995. He finally relied on the sale deed dated 25.01.1995 in document No.80, whereby for survey No.2030/1, the sale deed was for Rs.67,200/- (Rupees Sixty Seven Thousands and Two Hundred only). Forging a middle path and in the absence of better evidence, I hold that there should be an increase in value than granted by the Land Acquisition Officer. At the same time, the value fixed by the learned Subordinate Judge cannot be permitted to stand.

10. Consequently, I hold that ends of justice would be served by fixing the value at the rate of Rs.2,000/- (Rupees Two Thousand only) per cent along with 30% solatium and the award amount shall carry interest at the rate of 12% per annum from the date of 4(1) notification till the date of possession and thereafter at the rate of 6% per annum till the date of



11. In the result, this appeal suit is allowed. No costs. The impugned judgement and decree is set aside and the amount of compensation is fixed at the rate of Rs.2,000/- (Rupees Two Thousand only) per cent along with 30% solatium and the award amount shall carry interest at the rate of 12% per annum from the date of 4(1) notification, till the date of possession and thereafter at the rate of 6% per annum till the date of realisation. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1.The Subordinate Judge,
Subordinate Court, Periyakulam.

2.The Special Tahsildar, (Adi Dravidar Welfare), (Land Acquisition)
Periyakulam, Now at the Taluk Office,
Theni.

3. The Record Keeper, VR Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.D.P.SUNDRA RAJ, Advocate SR.No.62122

+1cc to Special Government Pleader, SR.No. 62391

rm/rmk

MAS/SKN-RSK/SAR2:03.08.2017:4P-6C

Judgment made in
A.S. (MD) No.228 of 2015
and
M.P. (MD) No.2 of 2015
27.06.2017