IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.09.2018

CORAM:
THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Appeal Suit Nos. 338, 339 and 340 of 2015

The Director
Air Force Naval Housing Board
Airport Station, Race Course
New Delhi – 110 003
.. Appellant/2nd Respondent/Requistiion Body

Versus

K. Sivanandham .. 1st Respondent/1st Claimant in AS 338/15

K. Manoharan .. 1st Respondent/1st Claimant in AS 339/15

K. Thangaraj .. 1st Respondent /1st Claimant in AS 340/15

The Sub Collector
Land Acquisition Officer
Saidapet Division
at Chennai – 600 006 Second respondent/LAO in all the appeals

Appeals filed under Section 54 of The Land Acquisition Act against the Judgment dated 31.12.2003 passed in LAOP No. 140, 141 and 142 of 2002 on the file of Additional Subordinate Judge at Chengalpattu.

For Appellant : Mr. S.Arivazhagan
in all the Appeals

For Respondent : Mr. T. Pramodkumar Chopda
for R1 in all the appeals

Mr. J. Balagopal
Special Government Pleader
for R2 in all the appeals

COMMON JUDGMENT
(Judgment of the Court was delivered by R. Subbiah, J)

These appeals are preferred by the Director, Air Force Naval Housing Board, Air Port Station, Race Course, New Delhi, who is the beneficiary in the acquisition proceedings initiated by the second respondent, seeking to set aside the Decree and Judgment dated 31.12.2003 passed in LAOP Nos. 140, 141 and 142 of 2002. By the said Decree and Judgment, the learned Subordinate Judge, Chengalpattu enhanced the value of the acquired lands from Rs.1,817/- fixed by the second respondent to Rs.5,041/- per cent with interest at 12% per annum from the date of notice of the date of acquisition together with solatium at 30% per annum and further interest at 9% from the date of petition till the date of judgment. It was further directed that if the payment is not made within a year, interest has to be paid at the rate of 15% per annum till the date of payment.

2. The Government of Tamil Nadu proposed to acquire certain lands for the purpose of construction of houses to the officers of the Air Force Naval Housing Board at Madambakkam Village, Tambaram Taluk, Chengalpattu District. For this purpose, a notification under Section 4 (1) of The Land Acquisition Act was issued on 04.04.1989 for acquiring several lands, including the lands of the respective first respondent in these appeals and they are (I) comprised in Survey No. 764/2 measuring 2.00 hectare I.e., 4.94 Acre (ii) Survey No. 764/1 measuring 2.00 hectare I.e., 4.94 acre and (iii) Survey No. 763/1 measuring 2.04 hectare viz., 5.04 Acre. On 02.04.1990, a draft declaration was made as contemplated under Section 6 of The Land Acquisition Act. After complying with the formalities, an award was passed by the second respondent herein on 02.04.1992 awarding a sum of Rs.1,817/- per cent (Rs.4.17 per square feet or Rs.4,48,799/- per hectare) as compensation. The claimants/first respondent received the compensation amount under protest and sought for a reference to the competent Civil Court as contemplated under Section 18 of The Land Acquisition Act. Accordingly, a reference was made and on such reference, Land Acquisition Original Petition Nos. 140, 141 and 142 of 2002 were filed by the claimants/first respondent in these appeals before the Subordinate Judge, Poonamallee on 07.07.1994 seeking to enhance the compensation amount for the lands acquired from them which was later transferred to the file of Subordinate Judge, Chengalpattu and re-numbered as LAOP Nos. 140, 141 and 142 of 2002.

3. Before the Sub Court, common evidence was adduced in all the Original Petitions. On behalf of the claimants/first respondent herein, one Mr. Krishnasamy was examined as CW1 and Exs. C1 to C6 were marked. On behalf of the respondents in the claim petition, one Mr. Radhakrishnan was examined and Exs. R1 to R3 were marked. The Reference Court, after considering the oral and documentary evidence concluded that a sum of Rs.6,722/- per cent shall be awarded to the acquired lands, out of which 25% of the amount was ordered to be deducted towards development charges and arrived at a sum of Rs.5,041/- per cent (Rs.11.57 per square feet) as compensation. Assailing the award passed by the Reference Court, the present appeals are filed by the beneficiaries of the acquisition proceedings namely the appellant herein.

4. The learned counsel appearing for the appellants would contend that the Reference Court ought not to have placed reliance on Ex.C3, the sale deed dated 29.03.1989

marked on behalf of the claimants wherein land measuring smaller extent of 0.04 cents was sold. The Reference Court did not take into account the value indicated in the sale deed registered as document No. 232 of 1989 under Ex.R1. In fact, the lands covered in Ex.R1 is situated next to the acquired lands as could be seen from Ex.R2, sketch. The Land Acquisition Officer had in fact taken into account 8 sale transactions that had taken place in the locality where the acquired lands are situate and zeroed in on the sale transaction covered under Ex.R1 which reflects the true and correct market value of the acquired lands and fixed a sum of Rs.1,817/- per cent. In any event, the value of the land arrived at by the Reference Court is exorbitant and it is not supported by any acceptable evidence. Hence, the learned counsel for the appellants prayed for allowing the appeals.

5. The learned counsel appearing for the claimants/first respondent in all these appeals would vehemently contend that the lands in question were classified as Prime Residential Land as could be evident from MMDA Plan marked as Ex.C6. However, the Land Acquisition Officer has taken into account the transaction emanated in a sale deed dated 27.01.1989 registered as document No. 232 of 1989, Ex.R1 in respect of a land comprised in Survey No.770/22 which was classified as an agricultural land. When the acquired lands were admittedly classified as residential lands and they were well developed, the Land Acquisition Officer ought not to have treated the lands in question as agricultural land for the purpose of fixation of the compensation amount. The Reference Court therefore has rightly taken into account the Sale deed dated 29.03.1989 registered as document No. 1427 of 1989, marked as Ex.C3 to arrive at a fair and just compensation for the acquired lands. In fact, the lands in question were well developed residential area and the purpose of the acquisition is also to put up residential houses. Notwithstanding the same, the Reference Court has deducted 25% of the compensation amount towards development charges, which is not warranted. However, as against the order passed by the Reference Court deducting 25% towards development charges, the claimants did not file any appeal. The learned counsel appearing for the claimants/first respondent therefore would only contend that the Reference Court has rightly taken into account the fact that the acquired lands were classified as prime residential area and awarded a just and fair amount as compensation based on legally acceptable evidence adduced on behalf of the claimants and it does not call for any interference by this Court. Therefore, the learned counsel for the claimants/first respondent prayed for dismissal of these appeals.

6. The learned Special Government Pleader appearing for the second respondent would contend that the value fixed by the second respondent is proper and it reflects the market value prevailing in the locality as on the date of the notification issued under Section 4 (1) of The Land

Acquisition Act. According to the learned Special Government Pleader, the total extent of land acquired from the claimants/first respondent is 5 acres and 4 cents. When such a larger extent of land was acquired, the Land Acquisition Officer has rightly taken into account the sale transaction emanated through a sale deed dated 27.01.1989 relating to a total extent of 2400 square feet of land in Survey No.770/20. This transaction reflected in sale deed dated 27.01.1989 not only relates to a larger extent of one ground of land but emanated just three months prior to the issuance of notification dated 04.04.1989 under Section 4 (1) of The Land Acquisition Act. In such circumstances, the learned Special Government Pleader would only contend that the value fixed by the Land Acquisition Officer is proper and reasonable but it was set aside by the Reference Court.

7. We have heard the counsel on either side and perused the material records placed. It is not in dispute that the lands owned by the respective first respondent in these appeals were acquired by the second respondent on behalf of the appellants in thse appeals for the purpose of putting up a construction of houses to the officers of the Air Force Naval Housing Board at Madambakkam Village, Tambaram Taluk, Chengalpattu District. For the purpose of fixation of the value of the acquired lands, the land acquisition officer has taken into account several sale transaction and ultimately zeroed in on the sale deed dated 27.01.1989 in relation to the land in Survey No.770/2C. According to the land acquisition officer, the value reflected in the sale deed dated 27.01.1989, Ex.R1 can be adopted for the purpose of fixing the market value for the acquired lands and therefore, the sum of Rs.1,817/- per cent fixed by him is proper. On the other hand, the claimants/first respondent would contend that the land acquisition officer, without any basis, has construed the acquired lands as agricultural lands, but the acquired lands are situated in a primary residential area as could be seen from Ex.C5, sketch. According to the claimants/first respondents, the value reflected in the sale deed dated 29.03.1989, Ex.C3 will reflect the correct market value of the acquired lands and therefore, the Reference Court is wholly justified in taking the value reflected in Ex.C3 to arrive at a sum of Rs.5,041/- per cent as compensation.

8. Admittedly, a total extent of 14.92 acres of lands have been acquired from the respective claimants/first respondent herein. When larger extent of lands are acquired, it is not desirable to compare and look into the value of the land transaction in respect of smaller extent of lands. Keeping this principle in mind, the Reference Court had taken into account the transaction relating to sale of 10 cents of land or 2.5 grounds of land reflected in sale deed dated 29.03.1989, Ex.C3 and arrived at a sum of Rs.6,722/- per cent. Out of this amount, 25% of the amount was deducted towards development charges. The contention of the appellant that the market value fixed by the Land Acquisition Officer

is reasonable cannot be accepted especially when the land covered under Ex.R1 is an agricultural land and it was not disputed by the appellant or the second respondent herein before the Reference Court. Further, the claimants/first respondent herein have marked Ex.C6, approved plan of the Madras Metropolitan Development Authority to demonstrate that the acquired lands are classified as Prime Residential Zone. While so, the Reference Court is right in ignoring Ex.R1 filed on behalf of the second respondent herein. In such view of the matter, we see no reason to interfere with the market value fixed by the Reference Court.

9. At the same time, we find that the Reference Court has deducted 25% towards development charges. Even though the lands acquired were situated in an area classified as Prime Residential Zone, when the lands are developed for the purpose of putting up construction of houses, it will involve huge costs. Admittedly, the lands are only classified as Prime Residential Zone meaning thereby they are fit for putting up residential units, however, there was no development that had taken place in the locality as pointed out by the Reference Court. Therefore, we are of the view that instead of giving 25% deduction towards development charges, awarding 30% towards development charges will be reasonable. Thus, we are inclined to interfere with the Judgment and Decree passed by the Reference Court only in so far as it relates deduction at the rate of 25% out of the compensation amount, instead, we allow 30% of the compensation amount to be deducted towards development charges. Accordingly, the Appeal Suits are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

rsh
To

The Additional Subordinate Judge
Sub Court at Chengalpattu

+3ccs to Mr.T. Pramodkumar Chopda,Advocate SR.No. 65078
+1cc to Mr.S.Arivazhagan , Advocate SR.No. 65250

AS No. 338 to 340/2015

A.SK(08/04/2019)