IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K. SASIDHARAN
&
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

A.S.Nos.1 and 2 of 2014
&
M.P.Nos. 1 and 2 of 2014

A.S.No.1 of 2014:
The Special Tahsildar,
Outer Ring Road Project,
Chennai Metropolitan
Development Authority,
Egmore, Chennai 600 008.
Now office at Koyambedu Wholsesale
Market Complex,
Chennai 600 092. ..Appellant/ Referring Officer

Vs

1. Dr.Fathima Jalal,
Power of Attorney,
Dr.Iqbal Ahmed.
.. 1st respondent/Claimant

2. The Member Secretary,
Chennai Metropolitan
Development Authority,
Egmore, Chennai 600 008. .. 2nd respondent /Beneficiary

Prayer: Appeal suit filed under Section 54 of the Land Acquisition Act, to set aside the judgment and decree passed in L.A.O.P.No.356 of 2008, dated 30.07.2011 on the file of Additional District Court, FTC-II, Poonamallee.

A.S.No.2 of 2014:

The Special Tahsildar,
Outer Ring Road Project,
C.M.D.A.,
Egmore, Chennai 600 008.
Now office at Koyambedu Wholsesale
Market Complex,
Chennai 600 092. ..Appellant/ Referring Officer

Vs

1. D.Muthu

.. 1st respondent/Claimant

2. The Member Secretary,
Chennai Metropolitan
Development Authority,
Egmore,
Chennai 600 008. .. 2nd respondent /Beneficiary

Prayer: Appeal suit filed under Section 54 of the Land Acquisition Act, to set aside the judgment and decree passed in L.A.O.P.No.449 of 2008, dated 30.07.2011 on the file of Additional District Court, FTC-II, Poonamallee.

For Appellant : Mr. J. Bala Gopal
Spl. Govt. Pleader (AS)

For Respondents : Mr. I.Abrar Md. Abdullah
for R2

: No Appearance for R1

C O M M O N J U D G M E N T

P.VELMURUGAN, J.

These appeals have been filed by the Land Acquisition Officer under Section 54 of the Land Acquisition Act, 1894 , challenging the enhancement of compensation granted by the Additional District Court, Fast Track Court II, Poonamallee in L.A.O.P.Nos.356 and 449 of 2008, dated 30.07.2011 on the file of Additional District Court, FTC-II, Poonamallee.

2. Heard Mr.J. Balagopal, learned Special Government Pleader (AS) appearing for the appellant and Mr.I.Abrar Md. Abdullah, learned counsel appearing for the second respondent.

3. The Government of Tamilnadu has approved proposals for development of Outer Ring Road between the New Mahabalipuram Road and TVTR-Panjetti-Ponneri (TPP) Road i.e. from Vandalur Village in the South and Minjur Village in the North on the B.O.T. Concept for a distance of 62 kms under Part II Scheme for 1993-94 of the project under G.O.Ms.No.381, Housing and Urban development Department (UD-III-1), dated 25.5.1993.

4. In G.O.Ms.No.983, Housing & Urban Development (UD-III-1), dated 27.11.1995, the Government accorded administrative sanction for the acquisition of land for Phase-I of Outer Ring Road Project. Subsequently, in G.O.Ms.No.385, Housing & Urban Development (UD-III-1), dated 16.10.1998. The Government also accorded administrative sanction for land acquisition works for Phase-II of Outer Ring Road Project(i.e. from Chennai - Tiruvallur High Road to Thiruvotriyur - Ponneri - Panjetti Road).

5. Pursuant to issuance of the aforesaid G.Os., the second respondent herein sent a requisition with Land Schedule for acquisition of total extent of 24.36.0 Hectares of Wet, Dry and Manavari patta lands in S.F.No.596/3A2A (part), etc. of No.14 Pammadukulam Village in Ambathur Taluk, Tiruvallur District for formation of Outer Ring Road Project, Phase-II with necessary land plan schedule.

6. A notification under Section 4(1) of the Land Acquisition Act was published in the Government Gazette (Tiruvallur District) on 10.09.2004 and it was published in the news papers namely, Dina Boomi and Makkal Kural on 02.11.2004 and in the locality on 05.11.2004. After conducting enquiry under Section 5 (A) of the Act, Draft Declaration under Section 6A of the Act was published in the Government Gazette on 28.10.2005 and it was published in the news papers namely, Dina Boomi and Dina Thanthi on 30.10.2005 and in the locality on 31.10.2005.

7. The lands to an extent measuring 2.92.5 Hectares situated in the village of Pammadukulam No.14, Ambathur Taluk, Tiruvallur District in S.F.Nos.554/2A1B, 554/4B, 554/5B and 554/5C of No.14 Pammadukulam Village, (Block VI) were acquired by the said notification.

8. The Land Acquisition Officer has passed an Award in Award No.5 of 2007, dated 30.10.2007, fixing the value of the acquired land as Rs.550/- per cent or Rs.1,358.50 per Are.

9. The Land Acquisition Officer while passing the award for fixation of the value of the lands proposed for acquisition, gathered sale deeds for a period of three years prior to the date of publication of 4(1) Notification from the SRO at Redhills i.e. from 05.11.2001 to 04.11.2004). While processing and examining to select a suitable data land from the sale deeds of one year prior to the date of publication of 4(1) Notification, i.e. from 05.11.2003 to 04.11.2004 no reasonable sale data was available and hence, remaining sale deeds of other two years i.e. from 05.11.2001 to 04.11.2003 were also processed and examined. Accordingly, he collected 408 sale deeds during the period preceding date of publication of 4(1) notification from SRO, Redhills.

10. After discarding 407 sale deeds, he had taken into consideration sale deed mentioned at Sl.No.17, which consists of 42 cents of dry lands in S.No.565/19A & 19B of 14 Pammadukulam village, which was sold for a sum of Rs.23,100/- i.e., at the rate of Rs.550/- per cent and he rejected other sale deeds on the basis that they are all house sites. After considering the sale deed mentioned at Sl.No.17, a total extent of 42 cents of Dry lands in S.No.565/19A & 19B of 14 Pammadukulam village was sold for a sum of Rs.23,100/- i.e., at the rate of Rs.550/- per cent or Rs.1,358.50 per Are and registered at the Sub Registrar Office, Redhills vide document No.4638/2001, dated 26.12.2001. The above said lands in S.No.565/ 19A & 19B is classified as Dry with soil/sort/tharam of 8.3.7 with assessment of Rs.1.23. The value of the lands in S.No.565/19A as per Guide line Register is Rs.605/- per cent.

11. The Special Tahsildar (LA) Unit - V, inspected the above lands in S.No.565/19A & 19B on 20.09.2007 and fixed the rate of assessment of the lands under acquisition as follows:

Classification	Soi/Sort/Tharam	Assessment
Dry	8.3.7	1.23

12. The Land Acquisition Officer/the Special Tahsildar (LA) Unit - V, after classification of Soil/Sort/Tharam and rate of assessment of the lands in S.No.565/19A & 19B and the lands situated at the Alignment of Outer Ring Road Scheme of Pammadukulam Village, felt that the lands proposed for acquisition and the lands sold in S.No.565/19A & 19B are one and the same and he decided to fix the value of the acquired land as that of the lands in S.No.565/19A & 19B and accordingly, he fixed at Rs.550/- per cent or Rs.1,358.50 per Are on the basis of the registered sale deed No.4638/2001, dated 26.12.2001.

13. The claimants have received the Award amounts under protest and requested the Land Acquisition Officer to make reference under Section 18 of the Act.

14. The Land Acquisition Officer has made a Reference under Section 18 of the Act and they were taken on file by the learned Additional District Judge (Fast Track Court No.2) Poonamallee in L.A.O.P.Nos.356 and 449 of 2008.

15. On the side of the claimants in L.A.O.P.Nos.356 and 449 of 2008, the respective claimants were examined as C.W.1 and three exhibits were marked as C.1 to C.3 namely, Sketch of

Pammadukulam Outer Ring Road, a Certified copy of document No.3005/2004, dated 27.08.2004 and a Certified copy of document No.4271/2004, dated 01.11.2004. On the side of the second respondent, one Karkuzhali was examined as D.W.1 and the decree passed in Award No.5 of 2007 dated 05.02.2007 was marked as Ex.D.1.

16. The Reference Court/learned Additional District Judge (Fast Track Court No.2) Poonamallee, after considering the oral and documentary evidence on either side and also taking into consideration Exs.C.2 and C.3, the Certified copy of document No.3005/2004, dated 27.08.2004 and the Certified copy of document No.4271/2004, dated 01.11.2004 respectively, found that according to Ex.C.2, 700 Sq.ft of land has been sold at the rate of Rs.18,312/- per cent and according to Ex.C.3, 1,320 Sq.ft of land has been sold at Rs,55,440/- and held that as Ex.C.2 reflects the land like that of the lands proposed for acquisition and it is within three years of 4(1) notification and therefore, he fixed the value at Rs.18,000/- sq.ft for the proposed land for acquisition in L.A.O.P.Nos.356 and 449 of 2008.

17. Aggrieved by the enhancement of the award passed by the Reference Court, the Land Acquisition Officer has preferred the present appeals before this Court.

18. A perusal of the records would reveal that the lands belonging to the claimant were acquired for the purpose of formation of Outer Ring Road, Phase - II, between the New Mahabalipuram Road and TVTR-Panjetti-Ponneri (TPP) Road i.e. from Vandalur Village in the South and Minjur Village in the North on the B.O.T. Concept for a distance of 62 kms of the project under Part II Scheme for 1993-94 under G.O.Ms.No.381, Housing and Urban development Department (UD-III-1), dated 25.5.1993.

19. After publication of 4(1) notification, enquiry under Section 5A of the Land acquisition Act was conducted and Declaration was passed.

20. The Land Acquisition Officer, vide his order dated 30.10.2007 in Award No.5 of 2007 has fixed the market value at Rs.550/- per cent, against which, there was a reference before the Reference Court for enhancement of Award amounts and the Reference Court, vide its common judgment and decree dated 30.07.2011 passed in L.A.O.P.Nos.356 and 449 of 2008 enhanced the Award amount from Rs.550/- per cent to Rs.18,000/- per cent. Challenging the same, the appellant is before this Court.

21. Mr.J.Bala Gopal, learned Special Government Pleader (AS) appearing for the appellant would submit that the value fixed by the Reference Court is highly exorbitant and no amount was deducted towards development charges while fixing the market value. He would further submit that the small extent of land sold at fancy prices cannot form the basis for determining the market rate, as the acquired land is of a larger extent. Therefore, as per the Land Acquisition Act and also various decisions of this Court and Apex Court, the Court below ought to have deducted development charges and therefore, the award passed by enhancing market value is liable to be set aside and thus prayed for allowing the appeals.

22. We have heard the arguments advanced on either side and perused the entire materials and documentary evidence placed on record.

23. The Reference Court has taken the sale deeds dated 27.08.2004 and 01.11.2004 bearing Document Nos.3005/2004 and 4271/2004 respectively as guidelines for fixing the market value. Though the documents relate to smaller extent, a perusal of the Sketch produced on the side of the appellant before this Court shows that the sale deeds, which have been taken as data sale are not very nearer to the acquired lands and also not similar in nature.

24. Further, this Court finds that the sale deeds taken to show the market value viz., Ex.C.2, the sale deed executed under Document Nos.3005/2004 in Survey No.601/3A, relates to extent of 700 Sq.ft of land which was sold at the rate of Rs.18,312/- per cent. Likewise, Ex.C.3, the sale deed under Document 4271/2004, covering an extent of 1,320 Sq.ft has been sold at Rs.55,440/-. Both the sale deeds were executed in the year 2004 and are smaller extents of land. The sale deed, Ex.C.2 had taken place before 4(1) notification dated 5.11.2004. Therefore, the Reference Court fixed the value of the proposed acquire lands at Rs.18,000/- per cent.

25. It is seen that both the sale deeds (Ex.C.1 and C.2), which have been taken as samples, are smaller extents whereas, the acquired lands is of a larger extent. Further, the Reference Court while passing the award has not deducted any amount towards development charges.

26. The documents dated 27.08.2004 and 1.11.2004, taken as supporting documents of sale by the Court below were executed prior to the issuance of 4(1) notification and the lands covered under the said documents are 700 sq.ft. and 1320 sq.ft. On the other hand, the total acquired land is 2.92.5 Hectares. The Reference Court has not given any deduction taking into account

the larger extent of land acquired vis-a-vis to the extent shown in the data sale.

27. Therefore, we are of the view that 50% deduction should be given towards development charges. We therefore fix the market rate at Rs.9000/- per cent.

In the result,

(i) The appeals are partly allowed. No costs.

(ii) The land value is fixed at Rs.9000/- (Rupees Nine Thousand only) per cent.

(iii) The claimants are entitled to all statutory benefits.

(iv) The learned Special Government Pleader is entitled to separate fee.

(v) Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Additional District Judge,
Fast Track Court-II,
Poonamallee.

+1cc to Mr.C.Johnson, Advocate Sr.20662
+1cc to the Special Government Pleader Sr.20956

A.S.Nos. 1 and 2 of 2014

TM[CO]
SP(03/07/2018)