

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 01.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Second Appeal No.879 of 2002 and

C.M.P. No.6830 of 2002

The Special Tahsildar,
Adi Dravidar Welfare,
Thirupattur,
Vellore District.

Appellant / Respondent

versus

R.G.Ramasamy Reddy

Respondent / Claimant

Prayer: Second Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Act 31 of 1978) read with Section 100 of Code of Civil Procedure against the Judgment and Decree dated 30.12.1998 made in L.A.A. No.1 of 1996 on the file of Sub-Court, Thirupattur, modifying the award dated 18.03.1996 made in Proceedings No.2 of 1995-1996 passed by the Special Tahsildar, Adi Dravidar Welfare, Thirupattur.

For Appellant : Mr.Dev Mahendran
Government Advocate

For Respondent : Mr.P.B.Balaji

J U D G M E N T

[Judgment of the Court was delivered by R.PONGIAPPAN, J.]

The Special Tahsildar, Adi Dravidar Welfare, Thirupattur has come forward with this Second Appeal questioning the validity of the Judgment and Decree dated 30.12.1998 made in L.A.A. No.1 of 1996 on the file of Sub-Court, Thirupattur, modifying the award dated 18.03.1996 made in Proceedings No.2 of 1995-1996 passed by the Special Tahsildar, Adi Dravidar Welfare, Thirupattur.

2. The lands owned by the respondent in Survey No.74/1A1 situated at Jolarpettai Village to an extent of 2.75 acres in Vellore District was sought to be acquired by the appellant along with similar other lands owned by other land

owners, for providing house sites to poor and landless Adi Dravidars. For this purpose, a notification under Section 4 (1) of The Land Acquisition Act was issued and published in the Vellore District Gazzette dated 04.12.1995 and it was also served on the respondent. An award enquiry was conducted on 26.10.1995 in which the respondent participated but did not raise any objection as against the acquisition of his land but only sought for a reasonable amount as compensation. For determining the compensation amount, the appellant had taken into account the sale transactions that had taken place in the locality from 01.11.1994 to 31.12.1995. The appellant had taken into account 23 sale transactions and ultimately, the appellant zeroed in on the sale deed dated 28.12.1995 registered as document No.1654 of 1995 as per which land measuring 1 acre was sold for Rs.50,000/-. Based on the sale value reflected in the aforesaid sale deed dated 28.12.1995, the appellant had fixed the market value for the acquired land at Rs.50,000/- per acre. The respondent had received the compensation amount determined by the appellant under protest with liberty to seek for higher compensation. Thereafter, aggrieved by the quantum of compensation, the respondent sought for reference. Accordingly, a reference was made and it was taken on file as L.A.A. No.1 of 1996 on the file of the learned Subordinate Judge, Thirupattur.

3. Before the Reference Court, the respondent examined 4 witnesses as CW1 to CW4 and Exs.C1 to C15 were marked. On behalf of the appellant, Mr.Ramasamy, was examined as RW1 and 4 documents were marked as Exs.R1 to R.4. The Reference Court, on considering the oral and documentary evidence, particularly, Exs.C1 to C15, fixed the value of the acquired land at Rs.8 lakhs per acre. Aggrieved by the same, the appellant has come forward with this appeal.

4. At the time of admission of this second appeal, the following substantial questions of law were framed for consideration:

(i) Whether the Court below is correct in determining the market value for the land acquired without following the provision of law as laid down under the Act and without considering the factors required for fixing the value of the land?

(ii) Whether the Court below is right in determining the market value on the basis of Exhibits A-2 & A-6, without following the procedure, simply on the basis of the previous judgment rendered in Ex.A-6?

(iii) Whether the Court below is right in making the deduction of only 20% towards developmental charges instead of higher deduction as ruled in a reported case in AIR 1998 SC 171?

(iv) Whether the Court below is right in determining the market value of the land on the basis of sq.ft in contrary to the ruling of the Supreme Court as reported in 1995 Supplementary 5 SCC 219, SHAKUNTALA BAI Vs. STATE OF MAHARASHTRA (1996 SCC 152), SECRETARY, KARNATAKA ELECTRICITY BOARD Vs. ASSISTANT COMMISSIONER GADAG AND OTHERS (1995 Supplementary 2 SCC 1) and 1996 1 MLJ 45?

5. The learned Government Advocate appearing for the appellant would contend that the extent of land covered in Exs.C1 to C15 relates to smaller extent of land and therefore, the Court below ought not to have taken it into consideration for determining the compensation for the acquired lands. On the other hand, the Court below ought to have taken into account the sale deed, which the appellant had taken into account, for arriving at the market value of the acquired land inasmuch the value indicated therein reflects the correct value of the acquired lands. The Court below also failed to take note of the fact that the acquired land is not developed and it will not fetch the value as that of the other lands which were already developed. Therefore, appropriate deductions ought to have been given while fixing the compensation towards development charges. In such view of the matter, the learned Government Advocate appearing for the appellant prayed for setting aside the decree and judgment passed by the court below by allowing this appeal.

6. The learned counsel appearing for the respondent would contend that the learned Subordinate Judge only after complying the relevant provisions contemplated under Act 31 of 1978 modified the award fixed by the appellant. According to him, interference is not necessary in the judgment and decree passed by the Subordinate Judge, Thirupattur.

7. We have heard Mr.Dev Mahendran, the learned Government Advocate appearing for the appellant, Mr.P.B.Balaji, learned counsel appearing for the respondent and also perused the material evidence.

8. As regards the enhancement of the market value of the acquired lands, we have gone through the order, which is impugned in this appeal, wherein the Sub Court, Thirupattur has clearly recorded the deposition of the appellant as well as the respondent and the documents filed by them. While referring to the deposition of CW1 to CW4, the Sub Court has taken into account the locational advantages the acquired lands possess. The Court below has also found that the data land taken into account by the appellant is a barren land and on the other hand, the acquired land have been converted into house sites and are capable of fetching more value. In such circumstances only, the Court below deducted 20% of the compensation amount towards development charges.

9. Now on going through the evidence adduced by CW1 to CW4, it is found that within half kilometer from the acquired

land, there was a Higher Secondary School and the Head Post Office are situated. Thus, the Court below, taking into account all the surrounding buildings and other locational advantages etc., correctly deducted 20% of the compensation amount under the head "development charges" which does not need any interference. Furthermore, the Court below, taking into account Ex.C2 filed on behalf of the land owners/respondent found that similar lands have been sold for a higher price and therefore, the Court below has arrived at a sum of Rs.8 lakhs per acre as compensation for the acquired lands. The Court below also rendered a specific finding that on behalf of the appellant herein, no documentary evidence was filed to show that the lands covered in Ex.C2 does not reflect the correct market value of the acquired lands.

10. In the said circumstances, the only grievance of the learned counsel appearing for the appellant is that, the Court below, awarded 12% as interest for the compensation amount, which is against the findings of this Court in the case of SPECIAL TAHSILDAR vs. DAYALAN reported in 2016 SCC Online Mad 14147. In the said judgment, it has observed as follows:

"22. However, we have our own doubts with reference to the interpretation placed by the learned counsel regarding payment of interest under the Act. We are of the view that the application of Section 12 regarding payment of interest is only about the proceedings initiated by the prescribed authority and the resultant payment of compensation by the authority. It cannot be stretched to cover the proceedings either of the Lower Court or this court exercising power under Section 33 in a Second Appeal. In this case, the compensation fixed by the prescribed authority has already been paid and received by the respondent. The only dispute is regarding the enhanced compensation and the Appellate Court can fix a reasonable interest untrammelled by Section 12 of the Act, which applies only to the initial proceedings. Be that as may, since the counsel for respondent himself has conceded and is willing to receive a uniform six percent (6%) interest, we accordingly modify the judgment and decree of the Subordinate Court in L.A.A. No. 16 of 2004 dated 10.2.2005 and direct that the appellant shall pay 6% interest on the amount awarded in this appeal from the date of the judgment of the Subordinate Court till the date of realization."

11. In the said circumstances, the learned counsel appearing for the respondent fairly accepted that, such an interest cannot be ordered in the light of Section 12 of Tamil Nadu Act 31 of 1978 wherein a uniform interest rate of 6% per annum has been prescribed.

12. In the result, the Second Appeal is partly allowed, modifying the award passed by the Court below only in so far as it relates to the rate at which interest is awarded. In all other respects, the award passed by the Reference Court is confirmed. Accordingly, the interest fixed by the Reference Court is modified to the effect that the appellant shall pay the compensation amount with interest of 6% per annum. There shall be no order as to costs. The appellant is directed to deposit the balance amount together with all other statutory benefits within a period of eight weeks from the date of receipt of a copy of this judgment. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Subordinate Judge,
Thirupattur.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Thirupattur,
Vellore District.

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.P.B.Ramanujam, Advocate, S.R.No. 68059

Second Appeal No.879 of 2002

RJ(CO)
GN(20/12/2018)