

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.12.2017

Pronounced on : 31.01.2018

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

AS.No.599 of 2015

and MP.No.1 of 2015

and CMP.20784 of 2017

1.Union of India Represented by
Secretary to Government (Revenue)
Government of Puducherry, Puducherry.

2.The Sub Collector (Revenue) (South)
-cum-Land Acquisition Officer,
Puducherry.

.. Appellants

V.

The Managing Director,
M/s.Ravikumar Resorts & Hotels (P) Ltd.,
Villa Baladji, First Cross Extension,
Rainbow Nagar, Puducherry.

.. Respondent

PRAYER : Appeal Suit is filed under Section 54 of the Land Acquisition Act, to set aside the order dated 27.08.2014 made in LAOP.No.77 of 2007 on the file of the II Additional District Judge, Puducherry.

For appellants : Mr.V.Usha,
Additional Government Pleader (Puducherry)

For respondents: Mr.T.R.Rajagopalan, Senior Counsel
for Mr.Ashok Rajaraaman

J U D G M E N T

P. VELMURUGAN, J.

The respondent purchased the land which is the subject matter of the land acquisition on 15.12.2004 for a total sum of Rs.75,06,000/-, the rate per sq.ft. being Rs.10/-. The land was acquired by the Government of Puducherry within a period of seven months of purchase by the respondent as per Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") dated 04.10.2005. The Land Acquisition Officer taking into account the land value shown in the registered document dated 15.12.2004 awarded Rs.7,181/- per Are, which is equivalent to Rs.6.67/- per sq.ft. The learned II Additional District Judge, Puducherry enhanced the compensation to Rs.30 per sq.ft, without even a single document produced by the land owner to prove the prevailing market value; and in disregard to the land value shown in the Title Deed of the respondent relating to the very same land, executed seven months prior to the notification; and in violation of the law laid down by the Hon'ble Supreme Court in *Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun v. Bipin Kumar and another* [(2004) 2 SCC 283] that the best evidence to fix the market value is the sale deed through which the claimant has purchased the very same land. The issue is also covered by a recent judgment of the Hon'ble Supreme Court in *Bijender and Others v. State of Haryana and another* [2017 (13) Scale 1], wherein, it was held that one of the types of evidence of the value of the property is the sale of the acquired land to which the claimant is a party.

2. The land to an extent of 6.97.25Ha situated at Kirumampakkam Village was purchased by the respondent under two documents, both dated 15.12.2004 and registered as Document No.3109 and 3110 of 2004. The land value was shown as Rs.40,50,000/- and Rs.34,56,000/- respectively, the total amount being Rs.75,06,000/-.

3. The land was acquired by the Government of Puducherry for the re-habitation of Tsunami victims as per Notification dated 09.08.2005.

4. Since Urgency Clause under Section 17(3) of the Land Acquisition Act, 1894 was invoked, there was no enquiry. The Declaration under Section 6 of the Act dated 22.09.2005 was gazetted on 04.10.2005. The respondent failed to respond to the enquiry notice issued under Section 9(3) and 10 of the Act.

5. The Land Acquisition Officer determined the compensation

and passed an Award for a sum of Rs.68,33,736/- including solatium and interest.

6. The Land Acquisition Officer referred the matter to the II Additional District Court, Puducherry under Section 18 of the Act, after paying the compensation in two instalments to the respondent. The Reference was taken on file in LAOP NO.77 of 2007.

7. The learned Additional District Judge on a perusal of materials available on record observed that the claimant has not produced any document to substantiate the claim. It was further observed that there are no records to show that the land is near to the road. According to the Reference Court, there is no possibility of increase in land value within a period of three years. After saying so, the Reference Court enhanced the value by fixing Rs.30 per sq.ft. The Court enhanced the amount from Rs.68,33,736/- to Rs.2,99,36,216/-.

8. The State has come with this first appeal challenging the Award dated 27.08.2014 in LAOP No.77 of 2007.

9. The learned Additional Government Pleader (Pondy) would submit that the reference Court erred in enhancing the claim suo-moto on the basis of mere surmises and conjectures. The reference Court having accepted the contention of the appellants that there is no evidence on the side of the land owner to establish the potentiality of the land ought not to have enhanced the compensation. The land acquisition officer has already deducted the development charges for converting the land into houses for Tsunami victims. The reference Court has not appreciated the fact that the acquired land was undeveloped and low lying and it needed to be levelled for converting into house sites for which purpose the Government will incur huge expenditure. The reference Court ought to have considered the object of acquisition of land and the amenities to be made for the house site. The reasons assigned by the reference Court in enhancing the compensation from Rs.7,181/-per Are (Rs.6.67 per sq.ft) to Rs.30/-per sq.ft is contrary to law and on facts.

10. The learned Senior Counsel for the respondent would submit that land was purchased by the respondent for the purpose of opening a seaside resort hotel of international standard. The respondent had discussions with various international hotels for tie up arrangements, at the time of the proposal for acquisition of the said land by the appellants. The prevailing market value of the property was Rs.100/-per sq.ft prior to the acquisition. The property is situated on road side. It has got the potential value of a house site and hence the subject land

was chosen by the Government for construction of houses to the Tsunami victims. The appellants have not taken into consideration the respondents sale deeds while awarding compensation. The learned Senior Counsel submitted that the Reference Court was correct in enhancing the compensation.

11. During the course of arguments, the learned counsel for the respondent filed CMP.No.20784 of 2017 under Order 41 Rule 27 CPC, praying to permit the respondent herein to file the documents morefully described in the schedule thereunder as additional documents to be marked on the side of the respondent. The appellants filed a counter and opposed the petition stating that the respondent herein has not produced those documents either before the land acquisition officer or before the reference Court. Now the respondent herein has come out with this petition to mark the various sale deeds showing the value of the land in other survey numbers for consideration. The respondent has not satisfied the conditions stipulated in Rule 27 of Order 41 CPC. Hence, the appellants prayed for dismissal of the petition filed for marking additional documents.

12. On a perusal of the documents sought to be marked, it is found that they are sale deeds of small plots which is not near to the acquired land. Since the land covered by those documents are situated far away from the acquired land, the same cannot be taken into consideration for the purpose of fixing the market rate. There is no evidence or documents produced either before the land acquisition officer or before the reference Court that there are resorts or housing plots or residences near the acquired land. After Tsunami the value of the lands situated near the seashore has gone down considerably and after considering the potentiality of the land, the land acquisition officer has fixed the compensation. There was no radical changes in the value of the land as stated by the appellants. Therefore, the contention of the learned Senior Counsel for the respondent is not sustainable either under law or on facts and the same is liable to be rejected. Accordingly, the CMP.No.20784 of 2017 filed by the respondent in this writ appeal is dismissed.

13. The Government of Puducherry acquired 6.97.25 Ha of land owned by the respondent. The land itself was purchased only about seven months ago by the respondent. The Land Acquisition Officer without considering the land value paid by the respondent considered several other documents relating to small extent and fixed the market value.

14. The Reference Court was expected to fix the land value taking into account the sale documents relating to the land in the area. The respondent purchased the land about seven months

prior to Section 4(1) Notification at the rate of Rs.10 per sq.ft. The respondent is therefore entitled to the said rate.

15. The respondent has not produced even a single document before the Reference Court for enhancing the compensation.

16. The Reference Court accepted the case of the Land Acquisition Officer with respect to the location and valuation. The following observation made by the learned District Judge indicated that the case pleaded by the respondent was rejected outright:-

"No record is filed on the side of the petitioner to prove that the land is a residential area. According to PW1, he purchased the property at the rate of Rs.90 per sq.ft. But as per his documents Ex.P1 and Ex.P2, he has purchased the property at Rs.10 per sq.ft. The petitioner has not produced any document to substantiate the claim. The value fixed by the Government per sq.ft is nearly Rs.7/-. In this regard, PW1 deposed in his evidence as:

அந்த காலத்தில் அந்த இடத்தில் சதாடி 5 வடி 6 ரூபாய் வரை வரும்

But he has purchased the property at the rate of Rs.10/- per sq.ft. Now he is asking for enhancement at the rate of Rs.100/- per sq.ft. It is not based on any records. The land is very near to Seashore. Further there is no record to show that it is very near to the road and it is an industrial area or residential area. At that time of acquisition it is a dry land. No house or industry is shown near the acquired land. So the value of the land will increase after the construction of the seaside Resort only. Before that there is no possibility of increase of value of land at that place within a period of three years. The Government has fixed the value at Rs.7/- per sq.ft. It is not higher than the purchased rate. So after a period of three years it will increase to Rs.30 per sq.ft. No document is filed on the side of the petitioner to prove the enhanced land value near the acquired land. "

17. The Reference Court after making the above observation without any reason enhanced the market value from Rs.6.67/- to Rs.30/- with an observation that Rs.30/- per sq.ft is a reasonable amount.

18. The claimant in a reference under Section 18 of the Land Acquisition Act is akin to that of a plaintiff in the civil suit. The claimant has to discharge his burden by producing acceptable materials for fixing the correct market value. The Court is not expected to enhance the amount without any supporting reasons. The mere observation that the enhanced rate is reasonable alone is not sufficient.

19. The learned Judge all along proceeded under the factual premise that there was no possibility of increase in the land value at that place for three years. The purchase by the respondent was just seven months prior to the issuance of Section 4(1) notification. In case, there was increase in land value after purchase, the respondent would have produced documents to prove the said fact. Even according to the respondent, the company was still discussing the development of land with a hotel chain. Therefore, it is clear that there was no substantial development in the area after the purchase by the respondent and before the issuance of Notification for acquisition. We are therefore not in a position to agree with the observation of the Reference Court that Rs.30/- per sq.ft. is a reasonable amount.

20. In *Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun v. Bipin Kumar and another* [(2004) 2 SCC 283], the land owner claimed more compensation than the amount shown in the document, by which, he purchased the land, which was acquired subsequently on the ground that proper value was not reflected in the document as it was a case of under valuation. While rejecting the said contention, the Hon'ble Supreme Court made it clear that Sections 92 and 115 of the Evidence Act, 1872 precludes a party from leading evidence contrary to the terms of a written document and that the parties who undervalue the document for payment of stamp duty are precluded from claiming that their own document does not reflect the correct market value. The following observation would make the position clear:-

"7.For the purposes of Land Acquisition Act the market value must be determined on the basis of sale deeds of comparable lands. In this case the Land Acquisition Officer had taken note of one such sale deed where the price was Rs.15.37 per sq. yard. The Reference Court also had before it the sale deed by which the respondent purchased a portion of the acquired land. As stated above the sale deed was for Rs.15.40 per sq. yard. Section 92 of the Evidence Act precludes a party from leading evidence contrary to the terms of a written document. It was, therefore, not open to the respondent to urge that, even though his sale deed showed a

price Rs. 15.40 per sq. yard the real market value was Rs.120 per sq. yard. To permit a party to so urge would be to give a premium to dishonesty. Parties who undervalue their documents, for purpose of payment of stamp duty, cannot be allowed to then claim that their own documents does not reflect the correct market value. Therefore as per sale instances of the comparable lands the market value, on dates of sales, were in the region of Rs.15.37 to Rs.15.40 per sq. yard. "

21. The Hon'ble Supreme Court in *Bijender and Others v. State of Haryana and another* [2017 (13) Scale 1] observed that one of the types of evidence of the value of the property is the sale of the acquired land to which the claimant is a party. The Supreme Court held thus:

"39. It is held that when the Courts are called upon to fix the market value of the land in compulsory acquisition, one of the types of evidence of the value of the property is the sale of the acquired land to which the claimant is a party and in its absence, the sale of the neighboring lands.

40. It is held that the transactions relating to acquired land of recent dates or in the neighbourhood lands that possessed of similar potentiality or fertility or other advantageous features are considered to be relevant piece of evidence."

22. The Supreme Court in *Subh Ram and Others v. Haryan State and another* [2009 (13) Scale 528] indicated that the purpose of acquisition can never be a factor to increase the market value of the acquired land. The Supreme Court said:

"10.All that has to be noticed in the context of the issue before us, is that the use to which the acquired land may be put, can have no bearing upon the deduction to be made towards development cost. Nor can the purpose of acquisition be used to increase the compensation awardable with reference to the expected profits from the future user. The observation that purpose of acquisition is a relevant factor, unless properly understood and carefully applied with reference to special circumstances, may lead to absurd or unjust results. It is accepted generally that residential plots are costlier than industrial plots, and commercial plots are

costlier than residential plots. If the purpose of acquisition is a relevant factor in determining compensation, then it would lead to the absurd and unjust situation, that the compensation payable for the same land will be different, depending upon the purpose of the acquisition; and that compensation will be less if the acquisition is for a sewage treatment plant, more if the acquisition is for an industrial layout, much more if acquisition is for residential layout and highest if the acquisition is for commercial value. The purpose of acquisition cannot therefore be a factor to increase the compensation."

23. The question of awarding compensation by guesswork would arise only in case there are no comparable documents to fix the value. In a case where there are documents relating to the very same property, which was within one year prior to the acquisition, the rate shown in those documents must be taken to fix the market value.

24. The best piece of evidence in the subject case is the registered document relating to the land purchased by the respondent, which was acquired later by the appellants. The purchase was within one year prior to Section 4(1) notification. Both the Land Acquisition Officer and the Reference Court therefore must have taken the value shown in those two documents as the market value of the acquired land. We are therefore of the view that the market value must be fixed in accordance with the value shown in the registered Document No.3109 and 3110 of 2004 dated 15.12.2014 on the file of Sub-Registrar, Bahour.

25. The respondent purchased the land by documents dated 15.12.2004 for a total consideration of Rs.75,06,000/-. A sum of Rs.7,51,000/- was paid as stamp duty. Similarly, a sum of Rs.37,721/- was paid towards registration charges. Therefore, the total amount paid by the respondent would come to Rs.82,94,721/-.

26. We are of the view that the respondent is entitled to a total amount of Rs. 82,94,721/- (Rs.75,06,000/- towards land value and a sum of Rs.7,88,721/- incurred for registration). The respondent is entitled to solatium and interest on the market value of Rs.75,06,000/-.

27. The Award dated 27.08.2014 in LAOP No.77 of 2007 on the file of II Additional District Court, Puducherry is modified. C.M.P.No No.20784 of 2017 is dismissed.

28. The first appeal is allowed to the extent indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

tsh/svki

To

1. The II Additional District Judge,
Puducherry.
2. Union of India Represented by
Secretary to Government (Revenue)
Government of Puducherry, Puducherry.
3. The Sub Collector (Revenue) (South)
-cum-Land Acquisition Officer, Puducherry.

+1cc to Mr.F.B.BENJAMIN GEORGE, Advocate, S.R.No. 6885
+1cc to the Government Pleader, S.R.No. 6941

Pre Delivery Judgment in
AS.No.599 of 2015

AD (CO)
TR(20/02/2018)

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