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.17 to 26 of 2010
&
M.P.Nos.1 and 2 of 2010

The Special Tahsildar (LA),
Unit -IV, ORR Project,
CMDA, Egmore,
Chennai 600 008.
New office at Koyambedu Wholesale
Market Complex,
Chennai 600 092. ..Appellant/ Referring Officer in all AS

Vs

Ravikumar .. 1st respondent/Claimant in AS No. 17 of 2010

Thirunavukarasu
Ranganathan
Chandran
Pachaimmal ...Respondents 1 to 4/ Claimants 1 to 4 in AS.No.18 of 2010

K.Sasithakumar ...1st Respondent/Claimant in As.No.19/2010

C.Singaram ...1st Respondent/Claimant in A.S.No.20/2010

Jothibai ...1st Respondent/Claimant in AS No.21/2010

Soodamani Ammal(deceased)
Lakshmikanthan
Kuttiyammal
Savithri ...Respondents 1 to 3/Claimants 1 to 3 in AS.No.22 of 2010

Varadharajulu ...1st Respondent/Claimant in AS No.23/2010

Adhikesavalu Naidu ...1st Respondent/Claimant in AS No.24/2010

Gopal ...1st Respondent/Claimant in AS.No.25/2010

Achuthammal ...1st Respondent/Claimant in AS No.26/2010

2. The Member Secretary,
CMDA, Egmore,
Chennai 600 008. ... 2nd respondent /Beneficiary in AS NO.17,19 to 21,23 to 26/2010

...5th Respondent/Beneficiary in A.S.No.18/2010

...4th Respondent/Beneficiary in AS.No.22/2010

Prayer: Appeal suits is filed under Section 54 of the Land Acquisition Act, against the common judgment and decree dated 24.4.2009 passed in LAOP Nos.5,10,11,12,14,15,17,19,76 and 81/03 on the file of Additional District Sessions Court, FTC-I, Poonamallee.

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

Mr. K. Ravi for R1(in AS 17,19 to 21, 23 to 26/2010
for R1, 3 & 4 (in AS 18/2010)
and For R1 to R3 (in AS No.22/2010)

Mr.C.Johnson (CMDA)R2 in AS.17,19 to 21,23 to 26/10
R4 in AS.22/10 & R5 in AS.18/10

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

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 Sessions Court, Fast Track Court II, Poonamallee in L.A.O.P.Nos.5, 10, 11, 12, 14, 15, 17, 19, 76, 81 of 2003 respectively dated 24.4.2009.

2. Heard Mr.J. Balagopal, learned Special Government Pleader (AS) appearing for the appellant, Mr.K.Ravi, learned counsel appearing for the first respondent/claimants.

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 on the B.O.T. Concept for a distance of of 62 kms under phase I of the project under G.O.Ms.No.381, Housing and Urban development Department, dated 25.5.1993.

4. Pursuant to issuance of the aforesaid G.O., the 2nd respondent herein sent a requisition to acquire dry and Manavari lands in Nemilichery village, Poonamallee taluk, Thiruvallur District for formation of Outer Ring Road phase – I with necessary Land Plans Schedule.

5. A notification under section 4(i) of the Land Acquisition Act was published in the Government Gazette on 5.1.2000 and it was published in the news papers on 5.1.2000 and in the locality on 25.1.2000. An enquiry under section 5 (a) of the Act was conducted on 10.3.2000, 13.3.2000 and 14.3.2000. Draft Declaration under section 6A of the Act was published in the Government Gazette on 17.1.2001 and it was published in the news papers on 25.1.2001.

6. The lands to an extent measuring 8.23.5 hectares situate in the village of Nemilicherry, Pooamallee Taluk, Tiruvallur District in S.F.Nos.93/1B2, 93/2B, 94/1A2, 94/1B2, 94/2B, 95/1B, 95/2B, 96/1A2, 96/1B2, 96/2, 97/2A1A2, 97/11B, 97/3B, 97/4, 97/5, 97/6, 97/8, 97/9, 97/10, 97/13, 103/2A1A2, 103/2A1B, 103/2A1C, 104/1A1B, 104/2A1A, 104/3A1B, 104/2A2, 104/2B, 104/3, 104/4, 104/5, 104/6, 104/7, 104/8, 104/9, 104/10, 104/11, 104/12, 104/13, 104/13, 104/14, 104/15, 104/16, 104/17, 104/18, 105/1A, 105/1B, 105/2, 106/1, 106/2A, 106/2B, 159/2A2, 159/2B2, 159/3A2, 159/3B1B, 161/1B, 162/2, 163/1, 163/2A, 163/2B, 164/1A2B, 164/ 2B2, were acquired by the said notification.

7. The Land Acquisition Officer has passed an Award in Award No.1/2002 dated 31.01.2002, fixing the value of the acquired land as Rs.670/- per cent.

8. The Land Acquisition Officer while passing the award for fixation of the value of the lands proposed for acquisition, gathered sales for the period of three years preceding the date of publication of 4(i) Notification from the SRO/Avadi from 29.1.1997 to 28.2.2000. He collected 387 sale deeds

during the period preceding date of publication of 4(i) notification.

9. After discarding 377 sale deeds, out of a total of 387, one transaction was rejected on the basis that the said transaction relates to combined sales far away from acquired lands, two sale deeds were rejected on the basis that they were situated far away from the acquired lands; three sale transactions were rejected on the ground that they were boosted sale of house sites, one sale was rejected due to the reason that the sale is of different taram and assessment and one was rejected because of combined sale of different classifications.

10. After discarding the sale deeds out of 387 sales, the sale in Sl.No.246 was taken up for consideration as the same was found to be having the same sort, soil, taram and assessment of the land to the same under acquisition and found to represent reasonable market value. So the above value was taken as market value for the lands acquired for this scheme.

11. After considering the same, the Land Acquisition Officer, based on the sale transaction at Serial No.246 in Survey No.143/3 measuring an extent of 1.03 acre as Document No.3726 dated 17.8.1999 sold for Rs.670/- per cent, fixed the same as market value for the lands proposed for acquisition. The claimants have received the Award amounts under protest, claiming Rs.65,400/-per cent and requested the Land Acquisition Officer to make Reference under Section 18 of the Act.

12. The Land Acquisition Officer has made Reference under Section 18 of the Act, and they were taken on file by the Additional District Court, Fast Track Court-II, Poonamallee in L.A.O.P.Nos.5, 10, 11, 12, 14, 15, 17, 19, 76, 81 of 2003.

13. On the side of the claimants in LAOP Nos.5, 10, 11, 12, 14, 15, 17, 19, 76 and 81 of 2003 were examined as C.W.1.

14. In LAOP.No.5 of 2003, Ex.C.1 to Ex.C.6, in LAOP.No.10 of 2003, Ex.C1 to Ex.C6, in LAOP.11 of 2003, Ex.C.1 to Ex.C.8, in LAOP.12 of 2003, Ex.C.1 to Ex.C.8, in LAOP.No.14 of 2003, Ex.C.1 to Ex.C.7, in LAOP.15 of 2003, Ex.C.1 to Ex.C.8, in LAOP.No.17 of 2003, Ex.C.1 to Ex.C.7, in LAOP.No.19 of 2003, Ex.C1 to Ex.C.12 , in LAOP.No.76 of 2003, Ex.C.1 to Ex.C.6 and in LAOP.81 of 2003, Ex.C1 to Ex.C.6 were respectively marked as claimant side documents. In all the exhibits, the sale deed dated 11.6.1999 registered in document No.2558/99 was marked as one of the documents. The Special Tahsildar was examined as R.W.1 and Award No.1/2002 dated 31.1.2002 was marked as Ex.R1.

15. After considering the oral and documentary evidences, the learned Additional District Judge, Fast Track Court-I, Poonamallee, taking into consideration, the transaction at Serial No.289 in Survey No.94 shown as house site which was registered as document No.2558, dated 11.6.1999 sold at Rs.23,146/- per cent and was marked as one of the exhibits in all LAOP Nos.5, 10, 12, 15, 19, 76 and 81 of 2003 much prior the date of Notification under Section 4(i), passed an Award enhancing the market value from Rs.670/- to Rs.23,146/- per cent. In LAOP.No.11 and 17 of 2003, it passed an award enhancing the market rate from Rs.670/- to Rs.38,335/- per cent. In LAOP.No.14 of 2003, the award was passed enhancing the market value from Rs.670/- to Rs.38,335/- per cent.

16. Aggrieved by the enhancement of the award amount by the Reference Court, the Land Acquisition Officer as appellant has preferred these appeals.

17. A perusal of the records would reveal that the lands belonging to the claimants were acquired for the purpose of formation of Outer Ring Road phase - I between the New Mahabalipuram Road and TVTR-Panjetti-Ponneri (TPP) Road for a distance of 62kms under G.O.Ms.No.381, Housing and Urban development Department, dated 25.5.1993.

18. After publication of 4(i) notification, an enquiry under section 5(a) of Land Acquisition Act was conducted and Draft Declaration under section 6A of the Act was published in the Government Gazette on 17.1.2001 and it was published in the news papers on 25.1.2001

19. The Land Acquisition Officer, vide his order dated 31.1.2002 in Award No.1 of 2002 has fixed the market value at Rs.670/- 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 24.4.2009 passed in LAOP Nos.5, 10, 12, 15, 19, 76 and 81 of 2003 enhanced the Award amounts. Challenging the same, the appellant is before this Court.

20. Mr. J. Bala Gopal, learned Special Govt. Pleader (AS) appearing for the appellant would submit that the value of the acquired land fixed by the Court below is highly exorbitant and the trial court has not deducted any amount towards development charges while fixing the market value. He would further submit that small extent of lands sold at fancy prices cannot form the basis for determining the market rate, whereas the acquired land is a larger extent. Therefore as per the 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 enhancing market value is liable to be set aside and thus prayed for allowing the appeals.

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

22. The court below has taken the sale deed dated 11.6.1999, bearing Document No.2658 of 1999 as sample sale for fixing market value. Though the document relates to a smaller extent it is very nearer to the acquired land and also similar in nature as of the acquired land. Therefore the document was taken into consideration for fixing the market value for the acquired lands.

23. This Court finds that the Document No.2658 of 1999 dated 11.6.1999 is executed in a relevant point of time and similar in nature of the acquired land. The document No.2658 of 1999 dated 11.6.1999 refers to Survey No.197/2 and the extent covered under the sale deed is 1760 sq.ft. and the land was sold for a sum of Rs.93,280/- and it comes to Rs.53/- per square feet.

24. It appears that the extent covered under the aforesiad document No.2658 of 1999 dated 11.6.1999 is a small extent, whereas the acquired lands is of larger extent and it is also apparent that the Reference Court while passing the award, has not deducted any amount towards development charges.

25. The document dated 11.6.1999 taken as sample document for sale by the Reference Court was purchased few months prior to the issuance of 4(i) Notification and the land covered under the said document is only 4.36 cents only. On the other hand, the total acquired land is more than 8.23 hectares. The learned Reference Court has not given any deduction taking into account the larger extent of land acquired vis-a-viz the extent shown in the date of sale.

26. Therefore, while retaining the value shown in the Document No.2658/99, we are of the view that 2/3rd deduction should be given towards development charges. In short, 1/3rd of the market value shown in the document No.2658 of 1999 dated 11.6.1999 should be determined as the market value.

27. The land value on the basis Doc.No.2658/1999 would come to Rs.23108/- per cent. In case 1/3 is deducted, it would come to Rs.15,405/- per cent. We therefore fix the land value uniformly at Rs.15,405/- per cent.

28. In the result,
1. The first appeal is partly allowed.
2. The land value is uniformly fixed at Rs.15,405/- per cent.
3. The claimants are entitled to all other statutory benefits.
4. The learned Special Government Pleader is entitled to separate fee for all the appeals.

Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS VIII)
dt. 09.07.2018

Corrected as per letter dated 13.08.2018
in AS.No.17 to 26/10 (for CMDA)

Sd/-
Assistant Registrar(CO)
dt. 20.08.2018

//True Copy//

Sub Assistant Registrar

msr/tsh

To

The Additional District Sessions Judge,
FTC-I, Poonamallee.

+1cc to the Government Pleader Sr.20958
+1cc to Mr.C.Johnson, Advocate Sr.20661
+20 cc to Mr.K.Ravi, Advocate SR.21003 to 21012

A.S.Nos. 17 to 26 of 2010
&
M.P.Nos. 1 and 2 of 2010

vd[co]
srg 10/07/2018
EU 21.08.2018