IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.497 of 2008
and
M.P.No.2 of 2008

The Special Tahsildar
Adi Dravida Welfare,
Thirupattur ..Appellant/Respondent/
Land Acquisition Officer

Vs.

J.Meganathan ..Respondent/Appellant/Claimant

PRAYER:
Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in L.A.A.No.2/2002 dated 18.01.2005 on the file of Sub Court, Thirupattur, modifying the award made in Award No.4/2001-2002 dated 22.03.2002, passed by the Special Tahsildar, cum Land Acquisition Officer, Adi Dravidar Welfare, Thirupathur.

For Appellant : Mr.S.Jaganathan,
Government Advocate, (C.S)

For Respondent : M/s.Tamizharasi

J U D G M E N T

This Second Appeal is at the instance of the State, challenging the award of compensation of Rs.8,70,205/- for an extent of 50 cents of land with 31 coconut trees acquired by the Adi Dravida Welfare Department for construction of boys hostel in Ambur Town.

2. The land belonging to the respondent measuring about 50 cents situate in T.S.No.38/2, Block-3, Ambur Taluk was sought to be acquired for the purpose of construction of boys hostel for adi dravidar students under Act 31 of 1978. The Section 4(2) notification was made on 20.07.2001. The land acquisition officer by his award dated 22.03.2002 relying upon Ex.R3 which is sale deed dated 27.11.1998 as data sale deed granted a sum of

Rs.1,47,450/- at the rate of Rs.2,94,090/- per acre and a sum of Rs.6,200/- was awarded towards the value of 31 coconut trees with 15% solatium totaling Rs.1,76,699/-.

3. Aggrieved by the determination of the compensation the land owner filed an appeal before the sub-Court in LAOP.No.2 of 2002 under Section 9 of the Act. Before the Sub-Court the land owner produced the sale deed in Ex.C2 dated 31.03.1999, wherein, an extent of 1025 sq.ft of land was sold for Rs.58,000/-. The rate per square feet of land worked out to Rs.51.55/-. The learned Subordinate Judge rejected the document relied upon by the Land Acquisition Officer as data sale deed on two grounds, the first is that it is an agricultural land, whereas, the property under acquisition is house site suitable for construction and the second ground was that the document Ex.R3 dated 27.11.1998 was subject matter of reference under Section 47(A) of the Stamp Act on the ground of undervaluation and after the determination of the value, the Government has calculated and collected deficit stamp duty on the document. The said document was registered only during 2001 though executed on 27.11.1998. Upon rejection of Ex.R3, the learned Subordinate Judge taking into account the location of the property covered by the land acquisition proceedings as well Ex.C2 concluded that the value can be fixed based on the value of the land under Ex.C2. The learned Subordinate Judge after having deducted 1/3 of the value towards development charges awarded compensation of Rs.34 per sq.ft. Aggrieved the Government is on appeal.

4. At the time of admission the following questions of law were framed.

> 1. Whether the Court below failed to appreciate the provision of Section 8 Act 31/1978 wherein the classification of the land as on date of acquisition is the criteria for fixation of compensation and not the purpose for which it has been acquired?
>
> 2. Whether the Court below had erred in not appreciating the varioud judgments of the Hon'ble Court as well as the apex Court wherein it has been categorically laid down that the small extent of land cannot be relied on for fixation of compensation for large extent of lands as reported in 1998(2) SCC 150 and 1995(5) SCC 426 and 2003(12) SCC 334?
>
> 3. Whether the Court below had erred in not appreciating the provisions of Act 31/1978 wherein the land only similar in nature to the land only similar in nature to the land acquired has to be acquired has to

be relied upon for determination or compensation?

5. I have heard Mr.S.Jaganathan, Government Advocate (C.S.) appearing for the appellant and Mrs.Tamilarasi, learned counsel appearing for the respondents.

Question No.1:-

6. The land in question was acquired for construction of boys hostel for Adi Dravida students at Ambur town. The fact that the land is situate within Ambur Town is not in dispute, it is also been established by unimpeachable evidence before the Sub-Court in LAOP that the land is capable of being used as house site. It is settled law insofar as the award of compensation for land acquisition, the future development and potential of the land should also be taken into account, therefore the classification of land on the date of acquisition alone cannot be the sole basis for determining compensation payable to the land owner. Hence, the 1st question of law is answered against the appellant.

Question No.2:-

7. The Hon'ble Supreme Court as well as this Court had time and again held that there is no absolute prohibition in relying upon the sale deed relating to small extent of properties for acquisition of larger areas. Various features viz., purpose of acquisition, the nature of land, the potential of the land, compensation for future development etc., should be considered while fixing compensation. The Hon'ble Supreme Court has pointed out that while taking the sale deed of smaller area as data sale deed for fixing of compensation of larger extent the Court must always make a suitable deduction for the purpose of largeness in area. The learned Subordinate Judge has deducted 33% towards development charges and towards largeness in area and hence the 2nd question of law is also answered against the appellant.

Question No.3:-

8. In my considered opinion, the 3rd question of law does not arise at all. The Eye Valuation Sketch has been filed as Ex.R1. The same shows that the land covered by Ex.C2 sale deed is more nearer to the acquired land than the land covered by Ex.R3 sale deed. As already stated, Ex.R3 sale deed cannot be taken as safe indicator of the value of the land inasmuch as the subject matter of proceedings under 47(A) relating to undervaluation. I am therefore of the considered opinion that the learned Subordinate Judge was justified in relying upon Ex.C2 and granting compensation after suitable deduction.

9. For the foregoing reasons the Second Appeal fails and is

dismissed. However, in the circumstances there will be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Sub Court, Thirupathur,

2. The Special Tahsildar-cum-Land Acquisition Officer,
   Adi Dravida Welfare,
   Thirupattur.

3. The Section Officer,
   V.R.Section, High Court,
   Madras-104. (2 Copies)

+1cc to the Government Pleader, S.R.No.53884

S.A.No.497 of 2008

GJ(CO)
CS/12/09/18