IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 06.06.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

C.M.S.A.No.42 of 2003

1. Pattammal
2. Venkatesan
3. Chinnapaiyan
4. Sampath
5. Vatchala @ Sakunthala .. Appellants/Appellants

Versus

The Special Tahsildar,
Land Acquisition Welfare,
Aadi Dravidar Welfare, Gudiyattam,
Vellore District. .. Respondents/Respondents

Civil Miscellaneous Second Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978 and R/w Section 100 C.P.C., against the Judgment and Decreetal Order in C.M.A.No.9 of 1999 dated 15.02.2002 passed by the learned Sub-ordinate Judge at Vellore, North Arcot District, modifying the Order dated 25.03.1998 passed in proceedings No.14/97-98 by the Special Tahsildar, Adi Dravidar Welfare Department, Gudiyatham, North Arcot District .

For Appellants : Mr.N.Nagu Sah

For Respondent : Mr.Dev Narendran
Government Advocate
for Mr.Venkadesh Kumar

JUDGMENT

This Civil Miscellaneous Second Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978 R/w Section 100 C.P.C., against the Judgment and Decreetal Order dated 15.02.2002 in C.M.A.No.9 of 1999 passed by the learned Subordinate Judge at Vellore, North Arcot District, modifying the Order dated 25.03.1998 passed in proceedings No.14/97-98 by the Special Tahsildar, Adi Dravidar Welfare Department, Gudiyatham, North Arcot District .

2. The brief facts on which C.M.A.No.9 of 1999 came to be filed is that the respondent has acquired the land for the purpose for providing house sites for the Adi- Dravidars in Vanjur Village, Gudiyattam Taluk, Vellore. The extent of land acquired in Survey No.32/1 is 1.020 hectare and the land measuring 0.13.0 hectare in Survey No.34/3d respectively. The total extent of land acquired was 1.15.0 hectare, with a well in the said land. The respondent fixed the sale consideration, based on the market value of the land at, Rs.39,216/- per acre for the land and Rs.47,039/- for the well along with solatium of Rs.1,28,079/-.

3. Aggrieved by the fixation of compensation for the acquired lands by the Acquisition Officer, the claimants have preferred the Civil Miscellaneous Appeal No.9 of 1999. It is stated that the respondent has fixed a very meagre rate for the said land, which is situated in a main area and further this acquired land is abutting the road, which was not considered by the respondent. Further, the price of the acquired land was very high even before issuance of 4(1) notification and it is fit for plotting for house sites but the rate fixed by the respondent is very meagre. However, without considering these facts, the Acquisition Officer has fixed a very low price. While fixing the rate, the respondent has considered the documents relating to the sample lands of lesser value, that were acquired for house sites. Hence, requested to fix the compensation at the rate of Rs.100/- per sq.ft for the house sites and Rs.60,000/- for the well. During cross examination, it has been submitted that in the acquired lands, the appellants were growing crops like groundnut and corn. As the income derived from the said land was the only source for their livelihood, they prayed to grant higher value for the acquired land. Considering the submission of the learned counsel and based on the documents filed by the claimants, the Appellate Court has awarded a sum of Rs.585/- per cent and 15% as solatium and interest at 6% per annum.

4. One of the grounds raised by the appellants is that for fixing the value of the acquired land, the claimants have furnished ten documents. It is brought to the notice of this Court by the claimants that the lands under Ex.A.3 measuring an extent of 1575 sq.ft., has been sold for Rs.47,250/- and since the acquired land is further adjoining the road, Rs.100/- per sq.ft has to be awarded. It is also the argument of the appellants/claimants that they were growing groundnut, Ragi and paddy in the acquired land, but it is observed that no documents were produced before the Tribunal for the same. On the side of the respondent, it is contended that from the sales statistics containing 51 sales, the land sold under Serial No.3 of the list was taken as sample and based on that the rate was fixed at

Rs.39,216/- per acre.

5. It is also submitted by the appellant that the sample land is situated 1 Km away from the acquired land and it is an agricultural land, which was sold as house plots. The Tribunal has also verified the documents. The respondent's side document Ex.A.10 proves the fact that the sample land is far from the acquired land. A perusal of the respondent's side documents viz Ex.A.2 dated 25.01.1996 shows that the sample land was sold prior to the 4(1) notification issued on 05.10.1997. By considering the above aspects, the Tribunal has fixed the rate at Rs.585/- per cent for the acquired land.

6. Aggrieved against the said award, the claimants/appellants have preferred this appeal. This Court, while admitting this appeal has framed the following substantial questions of law:-

> "(1) Whether the appellate authority is right in determining the market value of the acquired land contrary to the guideline provided under Section 7(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act for determination of the market value.
>
> (2) Whether the appellate authority is right in determining the market value of the acquired land as an agricultural land instead of an housing site while the acquired land itself was acquired itself was acquired for housing purpose and it was fit for plotted out as housing site while section 4(1) notification effected.
>
> (3) Whether the appellate authority is right in determining the market value at Rs.1.34 per square foot which is far below the prevailing market rate of Rs.100/- per square foot exist as on the date of Section 4(1) notification.
>
> (4) Whether the appellate authority is right in not considering the appellant's Doc.No.3 sale deed dated 6.6.1996 when there is no evidence to the contrary.
>
> (5) Whether the appellate authority is right in confirming the market value of the Well at Rs.47,039 without sighting any reason.

7. The grievance of the appellants is that fixation of Rs.585/- per cent, which comes to Rs.1.34 per sq.ft, is unjustified. Further argument is that while determining the market value of the acquired land, the Tribunal ought to have considered that the land in the sale deed in document No.3 Sale deed dated 06.06.1996 is very far from the acquired land. It is the further grievance of the appellants that the market value of the acquired land has to be assessed on the basis of housing sites, as on 05.10.1977 i.e., the date of 4(1) notification. Hence, the appellants/claimants vehemently argued that the market value of the acquired land has to be fixed at Rs.100/- per sq.ft and the value of the well at Rs.60,000/-.

8. In view of the arguments advanced by the learned counsel appearing for both sides and on perusal of the records, it is observed that the Tribunal has not considered such documents relating to the sale of land near the acquired land.

9. Out of the 51 documents filed on the side of the appellants, the respondent/ Government has taken into consideration only one document. It is also argued by the appellants that the acquired land is a fertile land and when the purpose of acquiring the same is for providing house sites, the value has to be fixed properly. On the side of the respondent, it is argued by quoting the case laws reported in 1996 (2) Supreme Court Cases 538 in the case of Special Land Acquisition Officer, Bangalore /Vs/ V.T.Velu and Others, which reads as follows:

" determining for compensation on square foot basis not proper - Such method is proper for the purpose of determinations of rentals".

On the side of the appellants, the case in Sagunthala /vs/ Special Tahsildar (Land Acquisition) and others reported in 2010 (3) SCC 661, is relied upon which reads as follows:

"the purpose of acquisition and potential use of the land also to be taken into account as a relevant factor for providing compensation".

It is further argued by relying on the decision in Special land acquisition officer /vs/ Tajar Hanifabi reported in 1996 (10) SCC 627, which reads wherein it is held as follows:

" Though, it was a case of agriculture land, no such principle was laid down that agricultural land must be computed per acre"

Reliance was also placed on the decision rendered in State of Madhya Pradesh /vs/ Harishankar Goel (1997 (2) SCC 487, which reads as follows:

> " where fixation of valuation of land was based on per square feet and was held to be per se illegal. But, considering the lands were possessed of potential value the compensation could be determined on the basis of the market value on square-yard basis".

The Tribunal has treated the agriculture land, acquired for house sites, had fixed the value at Rs.535/- per cent which comes to Rs.1.34 paise per sq.ft.

10. Considering the fact that the purpose for which the land is acquired is purely for providing house sites to Adi Dravidar and also the potential value of the acquired land, the respondent has not considered the documents submitted by the appellant. Hence, the value fixed by the Tribunal at Rs.535/- per cent is very meagre. The potential use of the land has to be considered. In view of the argument advanced by the appellant and also the case laws cited above, this court is of the opinion that it need not be a principle that agricultural land must be computed in acres. In this case, the purpose for acquiring the land and also the potential value of the land has to be properly considered. While, considering the purpose of acquiring the land, viz., for providing house site, the potential value of the acquired land should also be taken into account. While assessing the reasonable value, the value fixed by the Tribunal as Rs.535/- per cent which comes to Rs.1.34 per sq.ft., is very meagre and the same requires to be enhanced to Rs.11/- per sq.ft.

11. In the result, the Civil miscellaneous second appeal is partly allowed, enhancing the market value of the acquired land at Rs.11/- per sq.ft with interest at 9% p.a from the date of acquiring land till the date of realization. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vv

To

1. The Special Tahsildar,
   Land Acquisition Welfare,
   Aadi Dravidar Welfare, Gudiyattam,
   Vellore District.

2. The Sub-ordinate Judge,
   Vellore, North Arcot District

3. The Section Officer, VR Section,
   High Court, Madras.

+1cc to Mr.N.Nagu Sah, Advocate, S.R.No.34973
+1cc to the Special Government Pleader, S.R.No.35255

C.M.S.A.No.42 of 2003

EV(CO)
CS/13/12/2018