

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-03-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Second Appeal No. 1802 of 2003

The Special Tahsildar
Adi Dravidar Welfare
office at Cuddalore .. Appellant/Respondent/
Referring officer

Versus

Selvarajan .. Respondent/Appellant/
Claimant

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 09.01.2003 made in L.A.C.M.A. No. 6 of 1997 on the file of Sub-Court, Cuddalore, modifying the award dated 19.03.1997 made in Award No.4 of 1996-1997 passed by the Special Tahsildar, Adi Dravidar Welfare, Cuddalore.

For Appellant : Mr. M. Venkatesh Kumar
Government Advocate (Civil Suit)

For Respondent : No appearance

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

The Special Tahsildar, Adi Draviar Welfare, Cuddalore has come forward with this Second Appeal questioning the validity of the Judgment and Decree dated 09.01.2003 made in L.A.C.M.A. No. 6 of 1997 on the file of Sub-Court, Cuddalore, modifying the award dated 19.03.1997 made in Award No.4 of 1996-1997 passed by the Special Tahsildar, Adi Dravidar Welfare, Cuddalore.

2. The lands owned by the respondent in Survey No. 253/18 to an extent of 1.70.5 hectares in Thondamanthan (Nagammappettai) Village, Cuddalore Taluk and 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 South Arcot Vallalar District Gazette No.4 dated 07.02.1997 and it was also served on the

respondent. An award enquiry was conducted on 11.03.1997 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 07.02.1996 to 06.02.1997. The appellant had taken into account 33 sale transactions and ultimately, the appellant zeroed in on the sale deed dated 02.08.1996 registered as document No. 614 of 1996 as per which land measuring 0.65 acre was sold for Rs.25,600/-. Based on the sale value reflected in the aforesaid sale deed dated 02.08.1996, the appellant had fixed the market value for the acquired land at Rs.39,385/- 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 appellant sought for reference. Accordingly, a reference was made and it was taken on file as C.M.A. No. 6 of 1997 on the file of the learned Subordinate Judge, Cuddalore.

3. Before the Reference Court, the respondent examined himself as CW1 and Exs. C1 to C3 were marked. On behalf of the appellant, Mr. Srinivasan, Tahsildar (Retired) was examined as RW1 and Ex.R1, award proceeding, was marked. The Reference Court, on considering the oral and documentary evidence, particularly, Exs. C1 to C3, fixed the value of the acquired at Rs.7.25 per square feet. 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 has properly considered the oral and documentary evidence in proper perspective?

(ii) Whether the court below was right in permitting the respondents to mark evidence in the appellate stage without any application, therefor, when the provisions of C.P.C. except Order 41 is not applicable to the proceedings under the Act?

(iii) Whether the court below was right in fixing the market value on square feet basis when the land measuring 1.70.5 hectare was acquired for the purpose of providing house sites to adi-dravidars.?

(iv) Whether the court below was right in considering the market value of property covered in Ex.A-1 which is only measuring about 2616 square feet obviously lesser extent of lands?

(v) Whether the court below was right in calculating the market value on square feet basis which is contrary to the judgment of the Honourable Supreme Court and this Honourable Court?

(vi) Whether the court below was right in not deducting 35% towards development charges, admittedly the land could not be immediately put into use for residential purpose.?

5. The learned Government Advocate appearing for the appellant would contend that the extent of land covered in Exs. C1 to C3 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. Above all, the learned Government Advocate would contend that as per Section 9 of The Tamil Nadu Acquisition of Land for Harihan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) only an appeal would lie as against the award passed by the Prescribed Authority. Therefore, the learned Subordinate Judge is not a reference Court as contemplated under Section 18 of The Land Acquisition Act but only an appellate Court to try an appeal as against the award passed by the Prescribed Authority under Section 7 of the Tamil Nadu Acquisition of Land for Harihan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978). While so, the learned Subordinate Judge erred in permitting the Prescribed Authority as well as the land owner to let in oral evidence and thereby the Subordinate Judge assumed himself as a Reference Court as contemplated under Section 18 of The Land Acquisition Act. Such a course adopted by the Subordinate Judge is in contravention to Section 9 of the said Act. In such event, the provisions contained under the Code of Civil Procedure cannot be applicable to the proceedings conducted by the learned Subordinate Judge and the applicability of Code of Civil Procedure is impliedly excluded to the proceedings under Act 31 of 1978. 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. We have heard the counsel for the appellant and perused the material evidence. Even though notice was served and name of the respondent is printed, none appears for the respondent.

7. At the outset, the learned Government Advocate would vehemently contend that the Sub Court, Salem assumed the role of a Reference Court as contemplated under Section 18 of The Land Acquisition Act and it had permitted the appellant and the land owner to adduce evidence, which is contrary to the provisions contained under Act 31 of 1978. Such a contention

urged on behalf of the appellant cannot be countenanced. It is evident that the appellant did not raise any such objection before the Court below while letting in oral evidence or at the time of marking documents. The appellant, without any protest, has let in evidence and RW1 was also subjected to cross-examination. While so, in this appeal, the appellant cannot contend that the procedure adopted by the Court below is erroneous. Therefore, the argument advanced by the learned Government Advocate (Civil Side) is only liable to be rejected.

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, Salem has clearly recorded the deposition of the appellant as well as the respondents and the documents filed by them. While referring to the deposition of CW1, 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 did not deduct any amount towards development charges. Thus, the Court below, taking into account the value of the land covered in Ex.C2 and Ex.C3 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.7.25/- per square feet 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 and C3 do not reflect the correct market value of the acquired lands. We do not find any reason to interfere with such a finding arrived at by the Court below for determining the market value of the lands. Therefore, we answer all the questions of law framed for consideration in this appeal as against the appellant.

9. In the result, the second appeal fails and it is dismissed. No costs. It is brought to the notice of this Court that pending second appeal, the appellant had deposited 50% of the compensation amount as per the order passed by this Court in CMP No. 16423 of 2003 in S.A. No. 1802 of 2003. The appellant is therefore directed to deposit the balance compensation 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 petitions are closed.

Sd/-
Assistant Registrar(CO)

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To

1. The Subordinate Judge
Cuddalore.

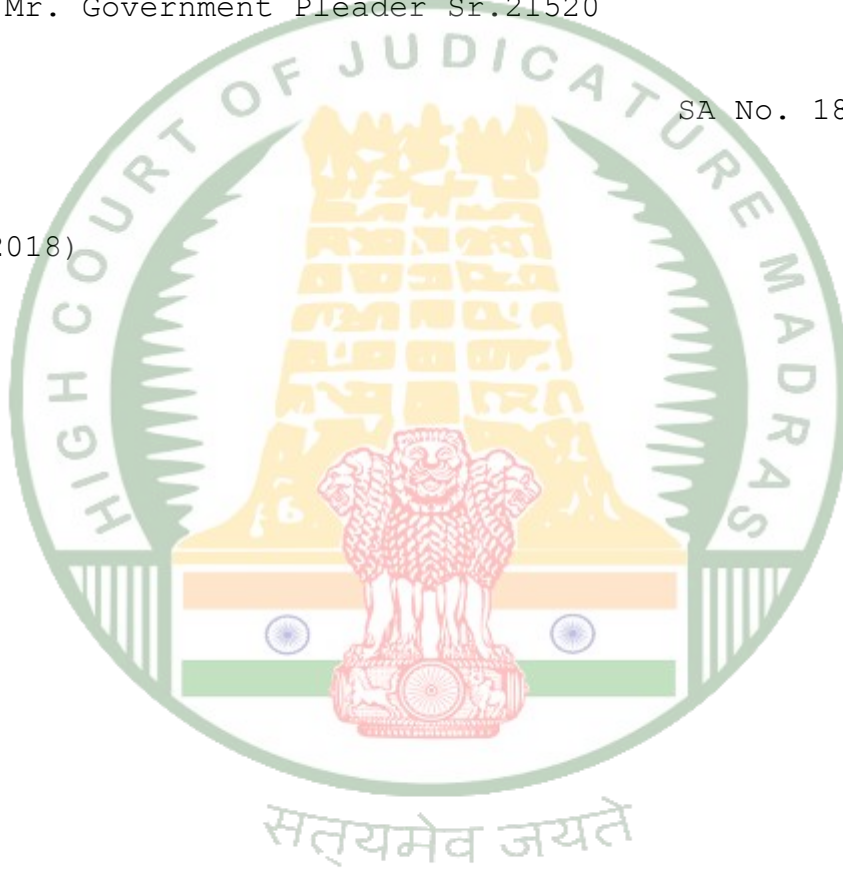
2. The Special Tahsildar,
Adi Dravidar Welfare Cuddalore.

3. The Section Officer, High Court, Madras.

+ 1 cc to Mr. Government Pleader Sr.21520

SA No. 1802 of 2003

RSY (CO)
EU (05/09/2018)



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