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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.No.97 of 2006
&
C.M.P.No.916 of 2008

The Special Tahsildar (LA),
World Bank Project,
Water Supply Scheme,
Coimbatore-43

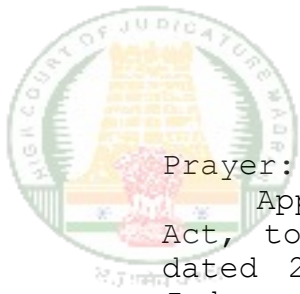
..Appellant/ Referring
Officer

Vs

- 1.Balasundaram
- 2.K.Venkatesan
- 3.G.Govindasamy
Administration Trustee,
B.S.G.Ganga Naidu &
Sons Arakkattalai,
Kanya Gurugulam,
Coimbatore.
- 4.K.Gopal Naidu
- 5.Chinnammal
- 6.Pushpavalli
- 7.Selvi
- 8.Kalpana
- 9.Mythili
- 10.Gopikrishna
- 11.Karthikeyan
- 12.Kuttiyammal
- 13.K.Rangasamy Naidu
- 14.The Executive Engineer,
Tamil Nadu Water Supply
and Drainage Board,
Vilangurichi Road,
Peelamedu,
Coimbatore - 4.

.. Respondents 1 to 3/
Claimants 3,4 & 6 to 16

.. Respondent/Beneficiary



Prayer:

Appeal suit filed under Section 54 of the Land Acquisition Act, to set aside the decree passed in L.A.O.P.No.353 of 1992, dated 29.03.2005 on the file of the I Additional Subordinate Judge, Coimbatore.

For Appellant : Mr. J. Bala Gopal, Spl. Govt. Pleader (AS)

For Respondents : Mr.S.N.J.Hariharan
for Mr.V.Nicholas
for R.1, R.2, R.6 to R.12

: Ms.S.Thamizharasi, for R14

JUDGMENT

P.VELMURUGAN, J.

This appeal has been filed by the Land Acquisition Officer, challenging the enhancement of compensation granted by the I Additional Subordinate Judge, Coimbatore in L.A.O.P.No.353 of 1992, dated 29.03.2005.

2. Heard Mr.J. Balagopal, learned Special Government Pleader (AS) appearing for the appellant, Mr.S.N.J.Hariharan, learned counsel appearing for respondents 1, 2, 6 to 12 and Ms.S.Thamizharasi, learned counsel appearing for 14th respondent.

3. The Government of Tamilnadu (Water Supply and Drainage Board) has approved proposals for construction of staff quarters, Laboratories, Stockyard and formation of road and laying pipeline under Water Supply to Coimbatore local planning and rural areas and decided to acquire 17.76 acres of lands under G.O.Ms.No.413, Municipal Administration and Water Supply Department, dated 5.11.1984.

4. In G.O.Ms.No.338, Municipal Administration and Water Supply Department, dated 12.03.1986, the Government accorded administrative sanction for the acquisition of land for formation of road and laying pipeline under Water Supply to Coimbatore local planning and rural areas.

5. Pursuant to issuance of the aforesaid G.Os., 14th respondent herein sent a requisition with Land Schedule for acquisition of total extent of 15.65 Acres Hectares of Manavari Dry lands situate in the Village of No.13, Vilankurichi village, Coimbatore Taluk, Coimbatore District for construction of staff quarters, Laboratories, Stockyard and formation of road and laying pipeline under Water Supply to Coimbatore local planning and rural areas.



6. A notification under Section 4(1) of the Land Acquisition Act (hereinafter, it has been referred to as "the Act") was published at page 3 of Supplement to Part II Section of the Tamil Nadu Government Gazette on 19.12.1984 and it was published in English daily namely, "Indian Express" and in Tamil daily namely, "Daily Thanthi" on 29.04.1985. The general notice in Form 3 was published in all Government Offices on 15.05.1985 and the public notification was published in the village by beat of tom-tom on 15.05.1985. An enquiry under Section 5(A) was conducted on 08.07.1985, 12.07.1985 and 02.08.1985. Draft Declaration under Section 6A of the Act was published in the Tamil Nadu Government Gazette on 23.04.1986 and it was published in the English news paper namely, "Hindu" on 06.05.1986 and in Tamil news paper namely, "Daily Thanthi" on 01.05.1986 and the substance of the Declaration was also published in the village on 14.05.1986.

7. The lands measuring to an extent of 15.65 Hectares situate in No.13, Vilankurichi village, Coimbatore Taluk, Coimbatore District were acquired by the said notification.

8. The Land Acquisition Officer has passed an Award in Award No.1 of 1987, dated 20.08.1987, fixing the value of the lands proposed for acquisition at Rs.12,000/- per Acre.

9. The Land Acquisition Officer, while passing the award for fixing the value of the lands proposed for acquisition, gathered sale deeds of the period, three years prior to the date of publication of 4(1) Notification from the SRO, Coimbatore. He collected 314 sale deeds including house site and sales of small extents in Vilankurichi village.

10. After selecting one sale deed in item No.189, out of total 314 sale deeds, he discarded remaining sale deeds as they are lying in developed areas, adjacent to town area, house site sales, far away etc.

11. After discarding 313 sale deeds, the sale deed in item No.189 was taken for consideration as the same was found to be having the same sort, soil, taram, genuine, a bona-fide sale and it reflected the prevailing market value of agricultural manavari dry lands. Hence, the above value was taken as the market value for the lands proposed for acquisition for the scheme. In the said sale deed, the land measuring to an extent of 1.13 acres in S.Nos.277 and 278 of Vilankurichi Village was sold for Rs.13,560/- as per Doc.No.541, dated 17.02.1983 at SRO/Coimbatore and the rate per Acre works out to Rs.12,000/-. The Land Acquisition Officer, after finding out that the soil fertility and productivity of data land are similar to the lands under acquisition, he fixed Rs.12,000/- as market value for the



lands proposed for acquisition. The claimants have received the Award amounts under protest, claiming Rs.8,000/- per cent and requested the Land Acquisition Officer to make Reference u/s 18 of the Act.

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12. On the request of the claimants, the Land Acquisition Officer had made a Reference under Section 18 of the Act and they were taken on file by the learned I Additional Subordinate Judge, Coimbatore in L.A.O.P.No.353 of 1992.

13. On the side of the claimants, two witnesses viz., Gopikrishnan/claimant and one another Selvaraj were examined as C.W.1 and C.W.2 and ten documents were marked as Exs.C.1 to C.10. On the side of the appellant, one Nagarajan was examined as D.W.1 and four documents were marked as Exs.D.1 to D.4.

14. The Reference Court after considering the oral and documentary evidence on either side and also taking into consideration Exs.C.7 and C.8, which were prior to issuance of 4 (1) notification, found that the lands have been sold at the rate of Rs.2,000/- per cent in Ex.C.7 and at Rs.2,693/- per cent in Ex.C.8, and the lands have been sold at the rate of Rs.4,000/- per cent in Ex.C.9 and Rs.3,326/- per cent in Ex.C.10, which have been sold at the developed stage and held that in Exs.C.7 and C.8, the average rate of sale is at Rs.2,349/- and in Exs.C.9 and C.10, the average rate of sale is at Rs.3,663/- and has taken average rate of sale from all the four Exs.C.7, Ex.C.8, Ex.C.9 and Ex.C.10 i.e Rs.2,349/- from Exs.C.7 & C.8 and Rs.3,663/- from Ex.C.9 & C.10 per cent respectively and accordingly, fixed the market value of the acquired land at Rs.3,000/- per cent.

15. Aggrieved by the enhancement of the award passed by the Reference Court, the Land Acquisition Officer has preferred the present appeal before this Court.

16. A perusal of the records would reveal that the lands belonging to the claimants were acquired for construction of staff quarters, Laboratories, Stockyard and formation of road and laying pipeline under Water Supply to Coimbatore local planning and rural areas and decided to acquire 15.65 acres of lands under G.O.Ms.No.413, Municipal Administration and Water Supply Department, dated 5.11.1984.

17. The Land Acquisition Officer, vide his order dated 20.08.1987 in Award No.1 of 1987, has fixed the market value at Rs.12,000/- per Acre, against which, there was a reference before the Reference Court for enhancement of Award amount and the Reference Court, vide its judgment and decree dated 29.03.2005 passed in L.A.O.P.No.353 of 1992 enhanced the Award



amount from Rs.12,000/- per Acre (Rs.120 per cent) to Rs.3,000/- per cent. Challenging the same, the appellant is before this Court.

18. Mr.J.Bala Gopal, learned Special Government Pleader (AS) appearing for the appellant would submit that the value fixed by the Reference Court is highly exorbitant and it has not deducted any amount towards development charges while fixing the market value. He would further submit that the small extent of land sold at fancy prices cannot form the basis for determining the market rate, as the acquired land is of a larger extent.

19. The Special Government Pleader (AS) would further submit that the learned I Additional Subordinate Judge, instead of taking note of Ex.C.7 and Ex.C.8, has taken the average value of Exs.C.7 to C.10, which is against the Principles of Land Acquisition Act. Moreover, as per the Land Acquisition Act and also the 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 appeal.

20. Mr.S.N.J.Hariharan, learned counsel appearing for respondents 1, 2, 6 to 12 would submit that the learned I Additional Subordinate Judge Coimbatore, taking into account Exs.C.7 and C.8, which were prior to issuance of 4(1) notification, wherein, it is found that the lands were sold at the rate of Rs.2,000/- and Rs.2,693/- per cent respectively and taking into account Exs.C.9 and C.10, which have been done at developed stage, wherein, it is found that the lands were sold at the rate of Rs.4,000/- and Rs.3,326/- per cent respectively and held that according to Exs.C.7 and C.8, the average rate of sale is at Rs.2,349/- and according to Exs.C.9 and C.10, the average rate of sale is at Rs.3,663/- and he has taken average rate of sale from Exs.C.7, Ex.C.8, Ex.C.9 and Ex.C.10 i.e from Rs.2,349/- and Rs.3,663/- per cent and accordingly, fixed the market value of acquired lands at Rs.3,000/- per cent.

21. The learned counsel for the respondents 1, 2, 6 to 12 further submitted that, the Reference Court, after considering the documents filed on behalf of the claimants, nature of the adjacent lands, development of the land at the relevant point of time and the potentialities of the land, rightly fixed Rs.3,000/- per cent for the acquired lands and therefore, there is no need to interfere with the award passed by the Court below. Hence, the appeal is liable to be dismissed.

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



23. It is seen that the Reference Court has taken Exs.C.7 and C.8, the sale deeds dated 09.09.1983, 18.03.1984, which were prior to 4(1) notification and C.9 and C.10, the sale deeds dated 15.05.1985 and 14.06.1985, which have been sold at the developed stage, wherein the lands have been sold at the rate of Rs.2,000/-, Rs.2,693/-, Rs.4,000/- and Rs.3,326/- per cent and it has taken average rate of sale from Exs.C.7, Ex.C.8, Ex.C.9 and Ex.C.10 i.e from Rs.2,349/- and Rs.3,663/- per cent and fixed Rs.3,000/- per cent as the market value for the acquired land.

24. It is further seen that the Reference Court, after analysing all the four sale deeds, namely, Exs.C.7, C.8, C.9 and C.10, enhanced the market value from Rs.120/- per cent to Rs.3,000/- per cent.

25. It appears that the extent covered under the aforesaid sale deeds dated 09.09.1983, 18.03.1984, 15.05.1985 and 14.06.1985 are smaller extents, whereas, the land acquired for construction of staff quarters, Laboratories, Stockyard and formation of road and laying pipeline under Water Supply to Coimbatore local planning and rural areas is of a larger extent i.e 15.65 acres. It is also seen that the Reference Court, while passing the award, has not deducted any amount towards development charges. The Reference Court has not given any deduction taking into account the larger extent of land acquired vis-a-vis the extent shown in the data sale.

26. Therefore, we are of the view that 50% deduction should be given towards development charges. Accordingly, we fix the market value at Rs.1500/- (Rupees One Thousand Five Hundred only) per cent.

27. In the result,

1. The appeal is partly allowed. No costs.
2. The land value is fixed at Rs.1,500/- (Rupees One Thousand Five Hundred only) per cent.
3. The claimants are entitled to all the statutory benefits.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

cla/tar



To

1. The I Additional Subordinate Judge,
Coimbatore.

2. The Executive Engineer,
Tamil Nadu Water Supply,
and Drainage Board,
Vilangurichi Road,
Peelamedu, Coimbatore-4.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.21770

+1cc to Ms.S.Thamizharasi, Advocate, S.R.No.20664

+1cc to the Government Pleader, S.R.No.20957

A.S.No.97 of 2006

&

C.M.P.No.916 of 2008

TM(CO)
CS/27/06/18