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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

A.S.(MD)No.21 of 2014

and

M.P.(MD)No.1 of 2014

Revenue Divisional Officer,
(Land Acquisition),
Kodaikanal,
Dindigul District.

... Appellant/Referring Officer

-Vs-

Mangalagandhi

...Respondent/Claimant

PRAYER: Appeal Suit is filed under Section 54 of the Land Acquisition Act, against the judgment and decree dated 08.04.2011 passed in L.A.O.P.No.5 of 1996 on the file of the Sub Court, Palani camp at Kodaikanal.

For Appellant	: Mr.Aayiram K.Selvakumar Additional Government Pleader
For Respondent	: Mr.B.Saravanan for Mr.N.Satheeshkumar

JUDGMENT

This appeal is preferred by the Revenue Divisional Officer / Land Acquisition Officer, Kodaikanal, as against the award of the Sub Court, Palani "Camp at Kodaikanal" in L.A.O.P.No.05 of 1996.

2.The brief facts that are necessary for the disposal of this appeal are as follows:-

An extent of 5.45.0 hectares of land in Thandikudi Village, Kodaikanal Taluk was acquired by the State for the formation of Central Propagation Nursery. The notification under Section 4 of the Land Acquisition Act was issued on 15.04.1987 and the same was published in the local dailies on 29.04.1987. The Land Acquisition Officer namely, the appellant, in this appeal passed an award on 21.02.1990, fixing the compensation at the rate of Rs.230/- per cent. Aggrieved by the quantum, fixed by the Land Acquisition Officer, the claimant namely, the respondent sought for reference under Section 18 of the Land Acquisition Act, 1894 and the matter was referred to the Sub Court, Palani "Camp at Kodaikanal" in L.A.O.P.No.5 of 1996. The Reference Court fixed the compensation at the rate of Rs.650/- per cent and passed an award directing the respondent to pay the compensation at the rate of Rs.650/- per cent, apart from other statutory benefits. Aggrieved by the award of the Sub Court, Palani "Camp at Dindigul", the present appeal has been preferred by the Land Acquisition Officer.



3. The learned Additional Government Pleader appearing for the appellant submitted that the Reference Court has fixed compensation by relying upon a sale deed/Ex.A.1 marked by the respondent, dated 14.08.1987.

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4. The learned Additional Government Pleader appearing for the appellant submitted that since the sale deed/Ex.A-1 relied upon by the Reference Court is after publication of the 4(1) notification, the Reference Court has erred in fixing the compensation which is not sustainable. The learned Additional Government Pleader further submitted that the property under Ex.A.1 is not located any way near the subject matter of award and therefore, the Reference Court has erred in enhancing the compensation without any material. The learned Additional Government Pleader further submitted that the sale exemplar relied upon by the Court is only in respect of 11 cents and that the sale deed cannot be a deciding factor when compensation is fixed for a large extent of lands acquired.

5. The learned counsel appearing for the respondent submitted that the Land Acquisition Officer has passed an award fixing the compensation on the basis of the sale deed, dated 29.11.1987 and that the acceptance of the sale exemplar, namely, Ex.A1 by the Reference Court is proper and can be sustained. It is further submitted that the market value has to be assessed on the basis of the documents and materials produced by the parties before the Court and that the appellant has not filed any document before the Reference Court and therefore, the appellant cannot question the award of the Reference Court. It is also submitted by the learned counsel for the respondent that in land acquisition compensation cases, the Court has to decide the award on the basis of the materials available on record.

6. In this case, it is nobody's case that the document Ex.A1 was fabricated or fraudulently obtained only for the purpose of getting higher compensation or that the sale transaction is not a *bona fide* one. In such circumstances, the learned counsel appearing for the respondent submitted that the compensation of the lower Court relying upon the Exs.A1 and A2 cannot be faulted. The learned counsel for the respondent further submitted that the Reference Court has already deducted 30% towards development and therefore, the contention of the learned Additional Government Pleader that the document pertaining to smaller extent cannot be considered for measuring 13 acres is untenable.

7. This Court has considered the rival submissions, apart from the factual details that are given above.

8. This Court is also able to see that the acquisition by issuance of 4(1) notification was initiated in the year 1987. Though the award has been passed in the year 1990, the Reference



Court has decided the compensation only in the year 2011. Thereafter, this appeal has been filed for more than three years later. Thus, the compensation fixed by the lower Court is yet to be paid to the claimant and the delay of 30 years has affected the rights of the claimant considerably.

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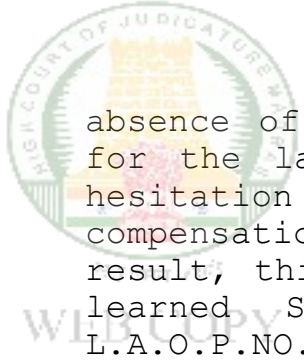
9.The fact that the land Acquisition Officer has relied upon the document pertaining to the sale transaction after the 4(1) notification is not in dispute.

10.Based on the sale deed dated 29.11.1987, the Land Acquisition Officer has decided to fix compensation for the acquired land in April 1994. Though it is not desirable to fix compensation by relying upon the sale exemplars which were registered after the 4 (1) notification, it is not a rule. In appropriate cases, where bona fide of the transaction is not in dispute, the Court can rely upon the sale exemplars which were registered after the 4(1) notification.

11.In this case, no issue was raised before the Lower Court regarding the bona fide of the transactions under Ex.A1 and A2. As per the document Ex.A1, dated 14.08.1987, 11 cents of land has been sold at the rate of Rs.1000/- per cent and as per Ex.A2, dated 16.09.1981, 21 cents of land has been sold at the rate of Rs.840/- per cent. Though the second document was not accepted by the Lower Court, no reasons were assigned for rejecting the document.

12.Having regard to the peculiar facts of the present case, where there no other document or evidence is let in to show the market value of the lands under 4(1) notification by the respondent, the document relied upon by the respondent/ claimant under Exs.A1 and A2 cannot be rejected. Though Ex.A1 is registered, only after the 4(1) notification, the same is not questioned on the ground that it is not a bonafide transaction.

13.Taking into account the fact that the document under Ex.A2, even though the subject matter of the sale deed is stated to be far away cannot be discarded in view of the fact that no evidence is let in to show the value reflected from Ex.A2 cannot be taken. However, the learned counsel appearing for the respondent himself is not specific to rely on the sale deed Ex.A2 to fix the market value for the acquired land. This Court is unable to discard the document Ex.A1, even though it is a sale deed, which was registered after the 4(1) notification, as the genuineness of the transaction is not questioned. If the market value is fixed on the basis of the document Ex.A2, dated 16.09.1981, the claimant is entitled for enhancing the compensation due to escalation of price and there should be hike at 10% per annum due to raise in price. Hence, the market value can be fixed 60% more than the sale price reflected in Ex.A2. In such case, the compensation will be more than Rs.1300/- per cent. Since the claimant is awarded only a sum of Rs.650/- per cent, this Court do not find any merit in this appeal. In the



absence of any document or material to show that the compensation for the land is less than Rs.650/- per cent, this Court has no hesitation to hold that the award of the Reference Court, fixing compensation at the rate of 650/- per cent is not arbitrary. As a result, this appeal is dismissed and the judgment and decree of the learned Subordinate Judge, Palani "camp at Kodaikanal" in L.A.O.P.NO.5 of 1986 is confirmed. Consequently, connected miscellaneous petition is closed.

14.It is pointed out that the claimant has withdrawn some amount which was deposited to the credit of Lower Court proceedings. Since the appellant is liable to pay the interest, at least for a period of 29 years at the rate of 15% per annum, the claimant is entitled to withdraw the same. The appellant is directed to deposit the remaining amount as per the award of the lower Court within a period of three months from the date of receipt of a copy of this judgment.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The Sub Court, Palani(camp at Kodaikanal)
2. The Section Officer, (2 copies)
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.Satheeshkumar,Advocate Sr.No.73925
+1cc to The Spl. Government Pleader Sr.No.74249

RMI

VB/RSK/SAR2/22/10/2018/4P/6c

Judgment made in
A.S.(MD)No.21 of 2014
and
M.P.(MD)No.1 of 2014
19.07.2018