



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

S.A.(MD)No.83 of 2018

and

C.M.P.(MD)No.1773 of 2018

The Special Tahsildar (LA),
Adi Dravidar Welfare,
Tamaraikulam,
Periyakulam,
Vaigai District.

...Appellant/Respondent/Referring Officer

-Vs-

1.Perumal
2.Ramakrishnan(died)
3.Govindalakshmi
4.Govindarajan
5.Sundararajan
6.Manivannan
7.Dhamodharan

...Respondents/Appellants/Claimants

(Respondents 3 to 7 are brought on record as legal representatives of the deceased second respondent vide order dated 19.07.2017, made in C.M.P(MD)Nos.3669 and 3670 of 2016 in SA(MD)SRNo.39642 of 2009).

PRAYER: Second Appeal is filed under Section 13 of the Tamilnadu Acquisition of Land for Harijan Welfare Scheme Act (Act 31/1978) r/w Section 100 of the Civil Procedure Code, against the judgment and decree dated 02.04.2007 made in L.A.C.M.A.No.05 of 1997 on the file of the Subordinate Judge, Periyakulam, which was filed against the Award No.11/95-96, dated 26.03.1996 by the Special Tahsildar, ADW, Periyakulam.

For Appellant	:Mr.A.Thiyagarajan Government Advocate
R2	:Died
For R3 to R7	:Mr.B.Jeyakumar

JUDGMENT

This appeal has been filed as against the judgment and decree of the Sub-Court, Periyakulam, in LACMA No.05 of 1997, allowing the appeal filed by the respondents, who have challenged the award of the appellant.



Thimmarasanayakkanur Village, Andipatti Taluk. It is not in dispute that the lands belonged to the respondents were acquired by the appellant under the Tamilnadu Acquisition of Land for Harijan Welfare Scheme Act (Act 31/1978), for the purpose of providing free house site patta to Adi Dravidars.

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3.The notification under Section 4(1) of the Act was published in the Gazette on 04.03.1996, and an extent of 2.17.0 hectares of lands including the lands of respondents were acquired by the appellant. The appellant passed an award on 26.03.1996 fixing compensation to the respondents and other land owners at the rate of Rs.1,23,500/- per hectare. Challenging the award of the Land Acquisition Officer and Special Tahsildar, Periyakulam, namely, the appellant, fixing compensation, the respondents have preferred an appeal before the Sub-Court, Periyakulam, in LACMA No.05 of 1997. The Sub-Court, Periyakulam, allowed the appeal preferred by the respondents and fixed compensation @ Rs.7,200/- per cent. The Sub-Court, Periyakulam, apart from enhancing compensation from Rs.500/- to Rs.7,200/- per cent, awarded solatium at 30% of the compensation and interest as it is permissible under the Land Acquisition (Central) Act. Challenging the quantum and other statutory benefits given by the lower Court, the above appeal has been preferred by the appellant, namely, the Land Acquisition Officer.

4.The learned Government Advocate appearing for the appellant submitted that enhancement of market value by the lower Court from Rs.500/- per cent to Rs.7,200/- per cent is arbitrary and the conclusion of the trial Court is not supported by any document. It is further pointed out that the learned Sub Judge has failed to allow deduction for payment of lump sum as well as for development. It is also pointed out that the learned Sub Judge, has granted solatium at 30% and further directed the appellant to pay interest at the rate of 9% for the first six months and thereafter at 15%. It is also to be noted that the lower Court has awarded a further interest from the date of 4(1) notification till the date of passing of award as it was contemplated under Section 23(1A) of the Land Acquisition (Central) Act.

5.Though this Court is fully convinced that the lower Court has properly fixed the market value following the sale exemplar, which is appropriate the statutory benefits that was granted by the lower Court is not provided under the Tamilnadu Acquisition of Land for Harijan Welfare Scheme Act (Act 31/1978). As per the provisions of State Act, the land owners are entitled to solatium at 15% and not 30% as it has been awarded by the learned Sub Judge. It is to be noted that the land owners are entitled to only 6% interest from the date of taking possession until payment. The State Act also does not provide interest from the date of notification till the award is passed. In the case of Central Act, Section 23(1A) of the Act provides for interest from the date of 4(1) notification till the passing of award. Hence the judgment and decree of the Sub-Court, Periyakulam in L.A.C.M.A.No.5 of 1997 are required to be modified in

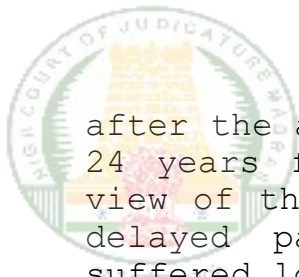


this appeal and the appeal is liable to be allowed at least to this extent.

6.As regard the market value, it is pointed out by the learned Government Advocate that there is no deduction and a sum of Rs.7,200/-, which is found to be the market value as reflected in the sale document Ex-B2, dated 01.12.1994, has been taken by the lower Court to enhance the compensation from Rs.500/- to Rs.7,200/- per cent. It is to be noted that the lower Court, of-course, has not allowed any deduction, which is normally adopted when vast extent of land is acquired and compensation is fixed on the basis of the sale price in respect of smaller piece of land. It is also to be noted that a reasonable deduction is also permissible for development of acquired land. In this case, there was no deduction towards development, while fixing the compensation. However, this Court having regard to some of the admitted facts and circumstances, is not inclined to reduce the compensation from Rs.7,200/ per cent. It is to be noted that the acquisition of land was for the purpose of providing free house site to Adi Dravidars. It cannot be disputed that the acquisition of land is for a public purpose.

7.The Land Acquisition Officer and Special Tahsildar, Periyakulam, during his cross examination admitted that the acquired lands are located very close to National Highways. It is also to be noted that on the immediate north of National Highways, the lands acquired earlier for similar purpose is located and that the acquired lands, which are the subject matter of this appeal, is situated on the north of those lands, which were acquired by the appellant for the same purpose. It is also admitted that the land belongs to the claimants / respondents is adjacent to existing Adi Dravidar Colony and it is admitted before the lower court that the acquired land is located amidst developed residential colony.

8.The acquisition in this case, was finalised on 04.03.1996 by issuing notification under Section 4(1) of the State Act. However, it is be noted that the document, which was relied upon by the lower Court for fixing compensation is dated 01.12.1994. In other words, based on a sale exemplar, dated 01.12.1994, compensation was fixed for the acquisition, which is in March, 1996. Since the Honourable Supreme Court has time and again reiterated that escalation of price from the date of sale exemplar can be taken by adopting 10 to 15% per annum, this Court is able to see that the claimants are entitled to get higher market value by taking into account escalation of price from the documents Ex-B2. An addition of 15 to 18% towards escalation is permissible. It is also to be noted that the acquisition was initiated in the year 1996 and we are now in 2018. More than 22 years have gone, when this appeal is coming up for admission. Though the award was passed in the year 1996, the appeal preferred by the respondent was decided by judgment dated 02.04.2007. The appellant has filed the above appeal only in the year 2009, after a long delay. Since the matter was not followed up, the delay petition was unnecessarily pending till 2017. As a result,



after the acquisition, the claimants were made to wait for more than 24 years for getting the enhanced compensation for the lands. In view of the fact that State Act provides only 6% per annum for the delayed payment of compensation, the respondents have already suffered loss.

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9. The lower Court has recorded a finding that the lands acquired are potential. The acquisition is also for the purpose of providing free house site to the Adi Dravidars. In such circumstances, this Court though accept the case of the appellant for some deduction, having regard to the long delay and the conduct of the appellant in contributing for the long delay, is unable to reduce the amount fixed as compensation for the respondents. As a result, this Court confirm the market value determined by the lower Court as Rs.7,200/- per cent. However, the market value will carry only 15% solatium as the State Act provides only 15% solatium. The respondents are also entitled to interest only at 6% from the date of taking possession as per the State Act.

10. In view of the same, this appeal is partly allowed and the judgment and decree dated 02.04.2007 made in L.A.C.M.A.No.05 of 1997 on the file of the Subordinate Judge, Periyakulam, is modified insofar as the award of solatium at 30% of the compensation (that has been allowed as per Central Act) and the interest portion are concerned. As a result, the judgment and decree in L.A.C.M.A.No.05 of 1997 on the file of the Subordinate Judge, Periyakulam, is modified by directing the appellant to pay solatium at 15% on the market value and interest at 6% from the date of taking possession till the actual payment is made by the appellant, as provided under the State Act. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Periyakulam,
- 2.The Special Tahsildar (LA), Adi Dravidar Welfare, Tamaraikulam, Periyakulam, Vaigai District.

Copy to:

The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai(2 Copies)

+1CC to Mr.B.Jeyakumar, Advocate, SR.No. 56988

+1CC to the Special Government Pleader SR.No.56780

Judgment made in
S.A.(MD)No.83 of 2018
20.03.2018