

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.11.2019

PRONOUNCED ON :15.11.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

A.S.No.212 of 2013

and

M.P.No.1 of 2013

The Special Tahsildar,
Land Acquisition Officer,
Saidapet Taluk,
Chengalpattu District. Appellant/Referring Officer

Vs.

Narasimmalu Respondent/2nd Claimant

Prayer: First Appeal filed under Section 54 of the Land Acquisition Act, against the judgment and Decree of the Additional District Court, F.T.C.IV, Poonamalle in L.A.O.P.No.771 of 1987, dated 05.01.2004.

For Appellant : Mr.J.Balagopal,
Special Government Pleader (CS)

For Respondent: Mr.S.Sudhan
for M/s.S.Thankasivan

सत्यमेव जयते
J U D G M E N T

Aggrieved over the Judgment and Decree dated 05.01.2004 passed in L.A.O.P.No.771 of 1987 on the file of the Additional District Court / Fast Track Court No.IV, Poonamalle, the referring officer has preferred this Appeal.

2. Shorn of unnecessary details, it is found that the lands belonging to the respondent as well as the lands belonging to others had been acquired for the construction of Barracks for the Tamil Nadu Special Armed Police, Avadi and in this connection, it is found that Section 4(1) Notification of the Act had come to be published on 08.03.1985 and thereafter

following the procedures contemplated under the Act and after conducting enquiry, based on the sales statistics secured, during the relevant period, the Land Acquisition Officer had fixed the market value of the lands acquired at Rs.65/- per cent and accordingly determined the compensation payable to the owners of the acquired lands. The respondent received the award fixed by the Land Acquisition Officer under the protest and resultantly, the reference has been made to the Referral Court for determining the reasonable and just compensation payable to the respondent.

3. The Referral Court based on the materials putforth by the respective parties and the submissions made, determined the value of the acquired lands belonging to the second respondent at the rate of Rs.1000/- per cent and accordingly granted the enhanced compensation in favour of the respondent. Impugning the same, the First Appeal has been preferred by the Referring Officer.

4. The following points arise for determination in the First Appeal:

i. Whether the value of the acquired lands belonging to the second respondent as determined by the Referral Court is reasonable and just?

ii. To what relief the appellant is entitled to?

iii. To what relief the respondent is entitled to?

Point No:1

5. It is not in dispute that inclusive of the lands belonging to the respondent, the various lands in the Morai village, in all measuring 49.48 acres had been acquired for the purpose of construction of Barracks for the Tamil Nadu Special Armed Police, Avadi. The notification under section 4(1) of the Act with reference to the same had been published on 08.03.1985. Following the same, it is seen that the other procedures had been complied with as contemplated under the Act for assessing the value of the acquired lands. The Land Acquisition Officer had secured about 557 sale transactions preceding the three years of the date of Section 4(1) Notification and of them, further proceeded to rely upon the sale transactions in Serial Nos.9, 44 and 47 as detailed in the award and accordingly basing on the value contained in the abovesaid sale transactions proceeded to determine the value of the acquired lands at Rs.65/- per cent and accordingly determined the compensation payable to the owners of the acquired lands.

6. Inasmuch as, the respondent had challenged the same, the reference had been made to the Referral Court for fixing the just compensation.

7. Before the Referral Court, the respondent/claimant has been examined himself as C.W.1 and Exs.C1 to C3 were marked on his side. On the side of the Land Acquisition Officer, R.W.1 was examined and the award passed by him has been marked as Ex.R1.

8. According to the respondent, the lands belonging to him are lying adjacent to the Veerapuram Road and the National Highways is also lying close to the same and the lands are fit for converting into house sites and having water facility and in and around the acquired lands, various industries are functioning and the neighboring lands have been converted as house sites, constructions had been put up and further also pleaded that in the near vicinity of the acquired lands, Vel Engineering College, C.R.P.F Quarters, Indian Airport are functioning and thereby contended that even prior to the notification, the acquired lands were fetching the value at the rate of Rs.10,000/- per cent and therefore prayed for the determination of the value of the acquired lands at Rs.5,000/- per cent and determine the award payable to him.

9. Per contra, the Land Acquisition Officer had urged that only based upon the proper data sale deeds, the value of the acquired lands had been fixed at Rs.65/- per cent and no interference is called for with reference to the award fixed by him.

10. The Referral Court had considered the lie of the acquired lands belonging to the respondent and found that the same is fit for converting into house sites and also found that the neighborhood area had been converted into house sites and various industries are running in and around the acquired lands and the acquired lands are capable of transport facility and various institutions are functioning in the vicinity of the acquired lands and on that basis and further by relying upon the sale deeds projected by the claimant marked as Exs.C1 and C2 and based on the value mentioned therein, proceeded to hold that the value of the acquired lands would be Rs.1000/- per cent and thereby determined the award payable to the respondent.

11. The Government Pleader appearing for the appellant contended that the Referral Court had taken into consideration the sale deeds which had emanated after Section 4(1) Notification and the same cannot be the basis for determining the value of the acquired lands on the date of the notification and according to him, naturally there would be upward surge in the prices of the neighborhood properties after the commencement of the Acquisition proceedings and in such view of the matter,

the sale deed which is dated post notification should not have been relied upon by the Referral court and ought to have ignored the same and resultantly fixed the value as determined by the Land Acquisition Officer.

12. Considering the sale deeds projected by the respondent, it is found that both the sale deeds projected by him had come into existence after the date of Section 4(1) of Notification and when the respondent has not been placed any evidence or material to the effect that there was no fluctuation in the prices between the date of the Notification and the date of the abovesaid sale transactions and there is no upward surge in the prices in the interregnum, in the light of the above position, as contended by the Government Pleader, the respondent having failed to establish the abovesaid factors, the Referral Court is found to have erred in relying upon the abovesaid sale deeds for fixing the value of the acquired lands. In this connection, a useful reference may be made to the decision reported in 2010 (9) SCC 118 [A.Natesasm Pillai Vs. Special Tahsildar, Land Acquisition, Tiruchy] and the position of law with reference to the same has been explained in the abovesaid said decision and the same is extracted below:

D. Land Acquisition Act, 1984 - Ss.4 and 23 - Compensation -Post- notification sale deed of adjacent land - Whether to be considered - Held, any sale deed which is dated post-notification is generally ignored, unless evidence is led to show that there was no increase in price despite such acquisition - Market value of adjacent land would generally go up after the acquisition and such post-notification transaction may not be a sound criterion to determine and assess value of acquired land. (Paras 11,12 and 14) Administrator General of W.B Vs. Collector, Varanasi (1988) 2 SCC 150 relied on State of U.P. Vs. Major Jitendra Kumar, (1982) 2 SCC 382 referred to

11. It is important to note that Ex.A1 and Ex.A4 are sale deeds executed subsequent to the date of notification under Section 4(1) and for this reason, the High Court held these to be irrelevant for the purpose of determining compensation. The first clause of Section 23 of the Act clearly provides that the amount of compensation awarded for the land acquired is required to be determined on the basis of market value of the land at the time of publication of the notification under Section 4 of the Act. Therefore, it is the duty of both the Land Acquisition Officer as also of the court to determine the actual compensation payable for the land acquired by referring to evidence

regarding fair and just compensation nearabout the proximate date or on the date itself of the publication of the notification under Section 4.

12. At times, in order to prove the actual, fair and just compensation for the land acquired, sale deeds of the adjacent land or nearabout adjacent land are produced to indicate the trend of the value of the land within the near vicinity of the acquired land. Such sale deeds are taken notice of generally when they are prior in point of time to the date of notification, and any sale deed which is post-notification dated is generally ignored, unless evidence is led to show that there was no increase in price despite such acquisition.

13. This Court in Administrator General of W.B Vs. Collector, Varanasi has held: (SCC p.158, para 13)

"13... Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purpose of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value. This Court in State of U.P. Vs. Major Jitendra Kumar observed: (SCC p.383, para 3)

"3. ... It is true that the sale deed Ex.21 upon which the High Court has relied is of a date three years later than the notification under Section 4 but no material was produced before the court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex.21 under which the Housing Society itself had purchased land in the neighborhood of the land in dispute. On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ex.21.

But this principle could be appealed to only where there is evidence to the effect that there was no upward surge in the prices in the interregnum. The burden of establishing this would be squarely on the party relying on such subsequent transaction." (emphasis applied)

14. As a result of such acquisition, the market value of the adjacent land would generally, and in most cases, go up and therefore, such post-notification transaction may not be a sound criterion to determine and assess the value of the acquired land. In the present case, the appellant has also not adduced any evidence to show that the market value of the adjacent land has not increased in the interregnum. The Reference Court and the High Court were justified in rejecting these sale deeds from consideration. We must, therefore, keep the aforesaid two sale deeds outside our consideration while assessing and determining the just and fair compensation for the acquired land. Ex.A2 is also a sale deed but the same also is not a safe guide as the price for the land covered therein was later on increased to make it in parity with the government prescribed rate.

13. However, considering the fact that the acquired lands are capable of converting into house sites and lying adjacent to the road and in and around of the acquired lands, neighborhood area had been converted as house sites and construction had been put up and industries are also flourishing and also various facilities are available, in such view of the matter, the value fixed by the Land Acquisition Officer based on the data sale deeds, in my considered opinion, is found to be very very low. Furthermore, the Government Pleader has also putforth in the grounds of the Appeal that in another batch of L.A.O.Ps relating to the same acquisition, the Court which has dealt with the same, had fixed the compensation at Rs.200/- per cent in respect of the same village.

14. Considering the developments which had occurred in and around the acquired lands as well as the potential value of the acquired lands and the acquired lands being reasonably capable of being put in better use in the immediate or near future, in all, in my considered opinion, the interest of justice would be served, if the value of the acquired lands is fixed at Rs.200/- per cent.

15. For the reasons aforestated, the value fixed by the Referral Court for the acquired lands is not reasonable and just and on the other hand, the value of the acquired lands is fixed at Rs.200/- per cent. Accordingly the Point No.1 is answered.

Point Nos.2 and 3:

16. For the reasons aforesated, the Judgment and Decree dated 05.01.2004 passed in L.A.O.P.No.771 of 1987 on the file of the Additional District Court / Fast Track Court No.IV, Poonamalle are modified and the value of the acquired lands is fixed at Rs.200/- per cent and accordingly the compensation is ordered to be paid to the respondent in tune with the other terms of judgment and decree of the Referral Court. Accordingly, the First Appeal is disposed of. Considering the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

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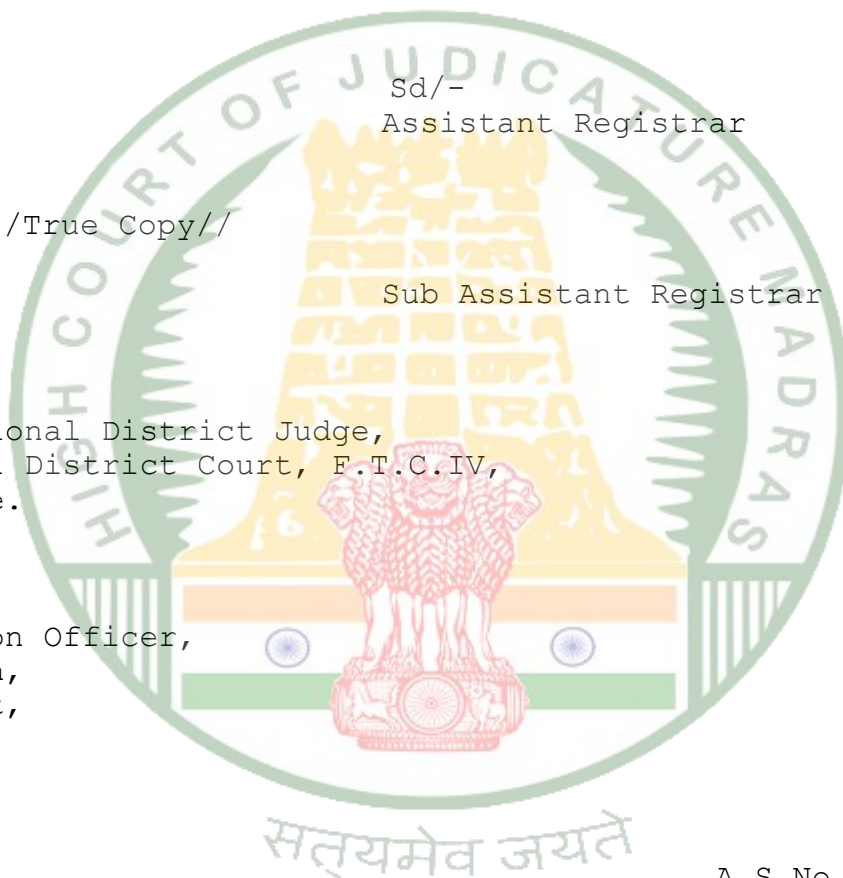
Sub Assistant Registrar

To

The Additional District Judge,
Additional District Court, F.T.C.IV,
Poonamalle.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.



A.S.No.212 of 2013
and
M.P.No.1 of 2013

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