

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Appeal Suit No.270 of 2016

1.T.Muthusamy
T.Duraisamy (Died)
Chennimalai Gounder (Died)
2.R.M.Palanisamy
3.Kandhasamy Gounder
4.Subramani
5.S.Anandakumar
6.S.Shankar ... Appellants 1 to 6/Claimants
7.Arukkani
8.D.Arunachalam ... Appellants 7 & 8/LR of the 2nd
Claimant T.Duraisamy

-Versus-

1.The Special Tahsildar,
(Land Acquisition),
Neighbourhood Scheme,
Erode. ... 1st Respondent/Referring Officer
2.The Executive Engineer & Administrative Officer,
Tamil Nadu Housing Board,
Erode. ... 2nd Respondent/Beneficiary

This appeal suit is filed against the judgement and decree dated 18.09.2015 made in L.A.O.P.No.2 of 2006 by the learned I Additional Subordinate Judge, Erode.

For Appellants : Mr.S.Kaithamalai
Kumaran

For Respondents : Mr.J.Balagopal, AGP
(AS) for R1
Mr.I.Sathish for R2

JUDGMENT

This appeal suit is filed by the land owners not being satisfied with the award dated 18.09.2015 made in L.A.O.P.No.2 of 2006 by the I Additional Subordinate Judge, Erode, enhancing the compensation amount to Rs.28/- per square feet for the lands which were acquired for the Tamil Nadu Housing Board for Erode Neighbourhood Scheme on 20.03.1995 under a notification issued under Section 4(1) of The Land Acquisition Act, 1894.

2. The case of the appellants is that in the year 1995, the lands belonged to them along with vast extent of lands were acquired for the Tamil Nadu Housing Board, for Erode Neighbourhood Scheme by a notification dated 20.03.1995. Thereafter, an award came to be passed fixing compensation at Rs.50,000/- per acre for the acquired lands. Aggrieved over the same, the appellants had sought for reference under Section 18 of the Land Acquisition Act (in short, the Act") and the reference court by Award dated 18.09.2015 made in L.A.O.P.No.2 of 2006 enhanced the compensation amount from Rs.50,000/- per acre to Rs.12,19,680/- per acre (Rs.28/- per square feet). Aggrieved over the same, the appellants have come up with this appeal suit.

3. The learned counsel appearing for the appellants would contend that vast extent of land comprised in various survey fields situated at Kasipalayam village was acquired by the 1s respondents on behalf of the 2nd respondent for Erode Neighbourhood Scheme and an award was also passed for the for the acquired lands. Not being satisfied with the compensation amount, some of the lands owners had sought for reference under Section 18 of the Act and the reference court had enhanced the award amount. When the lands owners had taken the mater on appeal, a Division Bench of this court modified the award of the reference court and fixed compensation ranging from Rs.16 per square feet to Rs.20/- per square feet depending upon the date of Notification issued under Section 4(1) of the Act. Further aggrieved over the same, the lands owners approached the Hon'ble Supreme Court and the Hon'ble Supreme Court by judgement in Valliammal v. Tahsildar reported in (2011) 8 SCC 91 enhanced the award amount and in respect of Section 4(1) notification, dated 15.03.1995, the Hon'ble Supreme court has fixed compensation at Rs.30/- per square feet besides all other statutory benefits with a deduction of one third amount towards development cost on the value of the land. Therefore, according to the learned counsel, the appellants, whose lands were similarly placed, are also entitled to Rs.30/- per square with other statutory benefits.

4. Per contra, the learned counsel for the respective respondents would vehemently contend that the appellants, who were not parties to the proceedings before the Hon'ble Supreme Court, relied upon by the learned counsel for the appellants, are not entitled for enhanced compensation as per the judgement of the Hon'ble Supreme Court. The learned counsel would further contend that the appellants' lands were acquired by a different notification which was not the subject matter of challenge before the Hon'ble Supreme Court and the appellants, who were bound to establish the fact that their lands were also similarly placed with that of the lands covered under Notification dated 15.03.1995, had failed to establish the same before the reference court and therefore, they are not entitled to the benefits in the judgement of the Hon'ble Supreme Court (cited supra).

5. On considering the rival submissions, the only question that arises for consideration in this appeal suit is:-

Whether the appellants are entitled for enhanced compensation for their land which were acquired for Erode Neighbourhood Scheme as per the judgement of the Hon'ble Supreme court in Valliammal v. Tahsildar (2011) 8 SCC 91 ?

6. In Valliyammal v. Tahsildar (2011) 8 SCC 91, the Hon'ble Supreme Court has held as follows:-

"26. In the result, the appeals are allowed and market value of the acquired land is fixed as under:

(i) For the acquisition made vide Notification dated 9-10-1990, the base document will be sale deed dated 4-9-1990 vide which land was sold at the rate of Rs 20 per square foot. One-third of Rs 20 comes to Rs 6.6 per square foot. After deducting Rs 6.6 from Rs 20, market value of the acquired land will be Rs 13.4 per square foot which is rounded off to Rs 14 per square foot.

(ii) For the acquisitions made by the Notifications issued on 15-4-1991, 16-4-1991 and 27-5-1991, the base document will be sale deed dated 8-2-1991 vide which land was sold at the rate of Rs 30 per square foot. One-third of Rs 30 is equal to Rs 10 per square foot. After deducting Rs 10 from Rs 30, market value will be Rs 20 per square foot.

(iii) For the acquisition made vide Notification dated 8-4-1992, the base document will be sale deed dated 8-2-1991 vide which

land was sold at the rate of Rs 30 per square foot. By adding 10% per annum in lieu of escalation in the land prices and deducting 1/3rd towards development cost, market value of the acquired land will be Rs 29.2 per square foot which is rounded off to Rs 30 per square foot.

(iv) For the acquisition made vide Notification dated 15-3-1995, the base document will be sale deed dated 8-2-1991 vide which land was sold at the rate of Rs 30 per square foot. By adding 10% per annum in lieu of escalation in the land prices and deducting 1/3rd towards development cost, market value of the acquired land will be Rs 29.2 per square foot which is rounded off to Rs 30 per square foot.

[Italics supplied]

(v) For the acquisitions made by the Notifications issued on 17-1-1997 and 19-3-1997, the base document will be sale deed dated 8-2-1991 vide which land was sold at the rate of Rs 30 per square foot. If 10% per annum is added in lieu of escalation in the land prices and 1/3rd is deducted towards development charges, market value of the acquired land will be Rs 35.3 per square foot which is rounded off to Rs 36 per square foot.

The appellants shall get solatium, interest and other statutory benefits in accordance with the provisions of the Act."

7. Admittedly, the lands covered in Valliyammal's case cited supra were also acquired for the same Erode Neighbourhood Scheme, but, under different notifications. As the lands were acquired under different notifications, the Hon'ble Supreme Court in Valliyammal's case, cited supra, fixed market value based on the date of notification. So far as the appellants lands are concerned, they were acquired by way of notification dated 20.03.1995 and in respect of notification issued during the relevant period namely on 15.03.1995, the Hon'ble Supreme Court had fixed market value for the acquired land at Rs.30/- per square. It is not in dispute that the lands of the appellants also lie in the same village and adjacent to the lands covered in Valliyammal's case. Despite the judgement of the Hon'ble Supreme Court was brought to the notice of the reference court, the same was not considered is the grievance of the appellants.

8. Considering the fact that in Valliyammal's case cited supra for the lands covered under notification dated 15.03.1995, the Hon'ble Supreme court had fixed the market value at Rs.30/- per square feet, the appellants, whose lands are similarly placed as that of the lands covered under the notification dated 15.03.1995, are also entitled at Rs.30/- per square feet with all other statutory benefits as per the judgement of the Hon'ble Supreme Court.

9. In the result, this appeal suit is allowed; the Award/Order and Decree dated 18.09.2015 made in L.A.O.P.No.2 of 2006 by the learned I Additional Subordinate Judge, Erode, are set aside; the market value is fixed at Rs.30/- per square feet; and the appellants are also entitled for solatium, interest and other statutory benefits in accordance with the provisions of the Act. The respective parties shall bear their own costs throughout.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The I Additional Subordinate Judge, Erode, Erode District.

Copy To: The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.S.Kaithamalaikumaran, Advocate, Sr.No. 28353

सत्यमेव जयते

Appeal Suit No.240 of 2016

BR(CO)
CSL/17.06.2019

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