IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

A.S No. 951 of 2015

P.Sampath Raj Jain ... Appellant/Claimant

Vs.

1.The Special Tahsildar(L.A.)
Unit - 5,
Outer Ring Road Scheme,
CMDA,
Koyambedu Complex,
Koyambedu,
Chennai - 600 092. ..1st Respondent/ Land Acquisition Officer

2.The Member Secretary,
CMDA,
Egmore,
Chennai - 600 008. ..Respondent/ Requisition Officer

Prayer: Appeal against the preliminary decree and judgment dated 01.07.2015 made in LAOP No.429/08 on the file of III Additional District Judge, Tiruvallur at Poonamalee.

For Appellant :Mr.A.S.Vijay Anand

For Respondents:Mr.Bala Gopal,
Special Government Pleader for R1

JUDGMENT
(Delivered by M.M.Sundresh,J.)

This appeal is against the award passed by the Court below in LAOP No.429 of 2008 pertaining to the land situated in Survey No.597/1B, Pammadhukulam Village, Ambattur Taluk, Thiruvallur District. The Sub-Court fixed valuation of Rs.10,000/- per cent. Challenging the same, the claimant has filed the appeal seeking enhancement.

2. Pending appeal, the appellant filed CMP No.17408 of 2016 seeking to mark two additional documents, viz., Document No.3005 of 2004 and 4271 of 2004.

3. As there is no serious objection for taking these documents on file, since they have already been considered by a Division Bench of this Court on earlier occasion in The Special Tahsildar v. Dr. Fathima Jalal and another (passed in A.S.Nos. 1 & 2 of 2014 dated 19.03.2018), the petition filed is ordered.

4. Learned counsel appearing for the appellant by placing reliance upon the earlier order passed by the Division Bench in The Special Tahsildar v. N.Ramiya and others (passed in AS No.472 to 480 of 2012 dated 13.10.2015) pertaining to Award No.4/07 has submitted that the said order would govern the case of the appellant as well. In the aforesaid case, the Division Bench took note of the fact that the land is situated on the periphery of the city which is expanding and an amount of Rs.18,000/- was fixed as just and proper compensation. It is further submitted that the subsequent judgment rendered in The Special Tahsildar v. Dr. Fathima Jalal and another (passed in A.S.Nos. 1 & 2 of 2014 dated 19.03.2018) was without reference to the earlier judgment of the Division Bench. Incidentally, the learned counsel has further submitted that the land acquired has already been plotted out and, therefore, there is no need for any deduction towards the development charges.

5. Learned Special Government Pleader appearing for the respondents submitted that the very same documents which are sought to be relied upon by way of additional documents were taken note of by the earlier Division Bench in A.S.Nos. 1 & 2 of 2014 dated 19.03.2018. Further, in the earlier judgment, which the counsel appearing for the appellant relied upon, no deduction has been made towards the development charges. In such view of the matter, the ratio laid down in A.S.Nos. 1 & 2 of 2014 dated 19.03.2018, will have to be followed.

6. There is no dispute on facts. This also includes the reliance upon the documents sought to be marked by the counsel appearing for the appellant. Admittedly, even in subsequent judgment reliance has been made on the aforesaid documents and, therefore, we can safely rely upon the same.

7. In the decision rendered in The Special Tahsildar v. N.Ramaiya and others (supra) passed in A.S.No.472 to 480 of 2012, dated 13.10.2015, admittedly, the Division Bench did not take into consideration of the deduction towards the development charges. The following is the operative portion of the judgment:-

“11.At the outset, it should be pointed out that the village, in which, the acquired lands are located, is situate in Ambattur Taluk, which is within the urban agglomeration of the city of Chennai. The area has already developed fast into an industrial and semi urban area. Even as per the award passed by the Land Acquisition Officer, 408 sale transactions had taken place during a period of three years immediately preceding the date of Notification under Section 4(1). Out of them, more than about 50% related to sale of house sites. This is an indication that the lands ceased to be agricultural lands or rural lands, but had actually become part of urban area. As a matter of fact, portions of land acquired were already part of a layout of house sites known as Vasanth Nagar Layout. Therefore, we are of the considered view that the Additional District Court did not commit any mistake either of fact or of law in enhancing the compensation to Rs.18,000/- per cent.

12. The question as to whether the sale transactions relating to lands of smaller extent can be taken into account or not became a vexed question that comes up again and again before Courts. It is true that in Land Acquisition Officer v. Sreelatha Bhoopal [(1997) 9 SCC 628], the Supreme Court held that while determining the market value of large extent, it is improper to place reliance upon sale deeds relating to small pieces of land. Even in The Executive Officer v. Chandra Bisori [2000 (2) CTC 555], it was held that the adoption of sale value of small pieces of land was impermissible.

13.However, in Trishalal Jain v. State of Uttaranchal [(2011) 6 SCC 47], the Supreme Court held that the value indicated in the sale deeds relating to small pieces of land can also be taken into consideration for determining the value of a large tract of land. However, the said opinion was coupled with a rider that while taking such transactions into account, the Court has to make a reasonable deduction keeping in view the other attendant circumstances. The view taken in Trishalal Jain was follwed in Mehrawal Khewaji Trust v. State of Punjab [2012 4 LW 109].

14. But, in the case on hand, the land was located in an area that had already developed. The village was part of a taluk that was in the peripheries of the city of Chennai. More than 50% of the data sales related to house sites. Therefore, the appellant cannot avoid the adoption of the same value.

15. In view of the above, we find no merit to interfere with the award of the Additional District Court."

7. Further, in the subsequent judgment, passed in The Special Tahsildar v. Dr. Fathima Jalal and another (supra) (passed in A.S.Nos. 1 & 2 of 2014 dated 19.03.2018), which is a recent one, the Division Bench reduced the land value to Rs.9,000/- per cent and it is apposite to refer to the operative portion of the said judgment, which reads thus:-

"23.The Reference Court has taken the sale deeds dated 27.08.2004 and 01.11.2004 bearing Document Nos.3005/2004 and 4721/2004 respectively as guidelines for fixing the market value. Though the documents relate to smaller extent, a perusal of the Sketch produced on the side of the appellant before this Court shows that the sale deeds, which have been taken as data sale are not very nearer to the acquired lands and also not similar in nature.

24.Further, this Court finds that the sale deeds taken to show the market value viz., Ex.C.2, the sale deed executed under Document Nos.3005/2004 in Survey No.601/3A, relates to extent of 700 Sq.ft of land which was sold at the rate of Rs.18,312/- per cent. Likewise, Ex.C.3, the sale deed under Document 4721/2004, covering an extent of 1,320 Sq.ft has been sold at Rs.55,400/-. Both the sale deeds were executed in the year 2004 and are smaller extents of land. The sale deed, Ex.C.2 had taken place before 4(1) notification dated 5.11.2004. Therefore, the Reference Court fixed the value of the proposed acquire lands at Rs.18,000/- per cent.

> 25. It is seen that both the sale deeds (Ex.C.1 and C.2), which have been taken as samples, are smaller extents whereas, the acquired lands is of a larger extent. Further, the Reference Court while passing the award has not deducted any amount towards development charges.
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> 26.The documents dated 27.08.2004 and 1.11.2004, taken as supporting documents of sale by the Court below were executed prior to the issuance of 4(1) notification and the lands covered under the said documents are 700 sq.ft and 1320 sq.ft. On the other hand, the total acquired land is 2.92.5 Hectares. The Reference Court has not given any deduction taking into account the larger extent of land acquired vis-a-vis to the extent shown in the data sale.
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> 27.Therefore, we are of the vie that 50% deduction should be given towards development charges. We therefore fix the market rate at Rs.9,000/- per cent."

8. In the case on hand, the Reference Court fixed the land value at Rs.10,000/- per cent. This fixation has not been appealed against by the respondents. Now, the claimant has filed appeal seeking enhancement. As rightly contended by the learned Special Government Pleader, the earlier Division Bench did not consider the deduction towards the development charges. Though it is contended by the learned counsel appearing for the appellant that the land in question has already been plotted out, it appears that they have been sold as unapproved plots. Therefore, development charges will have to be deducted as a consequence. Similarly, the sale deed for the very same land effected by the appellant depicts very low amount. If that is considered, the appellant will not be entitled to even Rs.10,000/- as land value per cent. However, this Court is not willing to go into the said issue at this stage, as the respondents did not appeal against the land value fixed. In such view of the matter, we are of the view that the ratio laid down by the subsequent Division Bench will have to be applied and if that is done, the Reference Court order does not require any interference.

9. Accordingly, the appeal stands dismissed. No costs. It appears that by way of an interim order 50% of the amount awarded was directed to be deposited out of which 25% was permitted to be withdrawn by the appellant. The appellant is directed to withdraw the remaining 25% which is lying on the

file of Court below. The balance amount will have to be deposited by the respondents within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected CMP No.17408 of 2016 is closed.

ssm

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The III Additional District Judge,
Tiruvallur,
Poonamalee

Copy to:-

The Section Officer,
V.R.Section,
High Court, Madras - 104.

+2cc to Mr.A.S.Vijay Anand, Advocate, SR.No.19766

A.S.No. 951 of 2015

Kak(14/06/2019)