



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.01.2019	Pronounced on:31.01.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.369 of 2006
& Cros.Obj.No.39 of 2007

1. The Government of Tamil Nadu,
rep.by the District Collector,
Erode District, Erode.
 2. The District Collector,
Erode District,
Erode.
 3. The Special Tahsildar (ADW),
Kangayam Taluk, Kangayam.
... Appellants/Land Acquisition Officer
in S.A.No.369 of 2006
- Vs

Jayasenthilkumar,
S/o.Kandasamy Gounder,
No.7/351, Thiruppur Road,
Kangayam Village & Town,
Kangayam Circle.

... Respondent
in S.A.No.369 of 2006

Jayasenthilkumar,
S/o.Kandasamy Gounder,
No.7/351, Thiruppur Road,
Kangayam Village & Town,
Kangayam Circle.

... Cross Objector
in Cros.Obj No.39 of 2007

/versus/

1. The Government of Tamil Nadu,
rep.by the District Collector,
Erode District, Erode.
2. The District Collector,
Erode District,
Erode.

3. The Special Tahsildar (ADW),
Kangeyam Taluk, Kangeyam.

... Respondents
in Cros.Obj.No.39 of 2007

Prayer in S.A.No.369 of 2006:- Second Appeal has been filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Act 31/78) r/w Section 100 of Civil Procedure Code, against the judgment and decree made in C.M.A.No.17/1998 dated 01.09.2005 on the file of Subordinate Court, Dharapuram modifying the award made in award No.2/98-99, dated 15.09.1998 passed by the Special Tahsildar (ADW) Kangeyam. Prayer in Cros.Obj.No.39 of 2007:- Cross Objections is filed under Order 41 Rule 22 of C.P.C against the judgment and decree of the Subordinate Court, Dharapuram in C.M.A.No.17 of 1998 dated 01.09.2005.

S.A.No.369 of 2006

For Appellants : Mr.DV.Narendaran
Government Advocate

For Respondent : Mr.S.Saravanan

Cros.Obj.No.39 of 2007

For Appellant : Mr.S.Saravanan

For Respondents : Mr.DV.Narendaran
Government Advocate

J U D G M E N T

This Appeal is preferred by the State aggrieved by the compensation awarded by the Court below for the land acquired from the respondent under Tamil Nadu Acquisition of land for Harijan Welfare Act, 1978 enhancing the market value of the property acquired to Rs.1,38,077/- per acre from Rs.35,000/- per acre. Whereas in the cross objection the respondent/land owner has prayed for interest to the solatium amount.

2. The brief facts leading to the appeal:-

The state vide Government Gazette notification dated 10.12.1997 had acquired 1.50.0 hectares of land in S.No.775/1 at Papini Village, Kangeyam Taluk, Erode District. The said land was owned by the respondent herein. Pursuant to the notification issued under 4(1), the respondent herein has participated in the Acquisition Proceedings and objected for fixing the market value at the rate of Rs.35,000/- per acre for compensation and demanded Rs.1,50,000/- per acre. However, the

Special Tahsildar(ADW), Kangeyam has fixed the market value of the property, at the rate of Rs.35,000/- per acre and passed the award adding 15% solatium to the market value.

3. Aggrieved by that the respondent/land owner has preferred an appeal before the Subordinate Court, Dharapuram in C.M.A.No.17/98.

4. The Lower Court, after considering the material evidence placed by the respective parties for fixing the market value of the property has found that the Government has relied upon the sale deed effected two years before the notification in respect of S.No.702/3. Whereas, the respondent herein has relied upon the documents pertaining to S.Nos.972, 973, 974 which are very adjacent to the land acquired under S.No.775/1 and fixed the market value of the property sought to be acquired at the rate of Rs.1,38,077/-. The Lower Court has relied upon Ex.A.1 wherein, 52 cents of land in S.No.972 has been sold for Rs.71,800/- on 07.04.1997, in the chart marked as Ex.R.2 by the Appellant. The list of properties sold in and round the locality during the relevant point of time has been furnished in Ex.P.2, wherein, this particular sale transaction is also been shown in entry 56. However, this transaction and other transactions which are adverse to the appellant has not been taken into consideration, as excessive pricing. On scrutiny of Ex.R.2 which carries data of transactions which took place between 11.12.1995 to 10.12.1997, it is clear from records that the data which has been relied by the Appellant is the oldest transaction in that area. Therefore, the Appellate Court, after considering the material placed before it and the evidence of the respondent that in a connected Acquisition proceedings, the Government has awarded Rs.1,30,000/- per acre as compensation, for the identical piece of land was accepted to fix the compensation at the enhanced rate of Rs.1,38,077/- per acre.

5. Challenging the compensation enhanced by the lower Appellate Court, the state has preferred this appeal.

6. Whereas on receipt of the notice, the respondent has filed cross objection in which he contends that the Lower Appellate Court ought to have awarded interest for the solatium amount also in tune with Section 7 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 and the law laid down by the Hon'ble Supreme Court. Omission to pay interest for the solatium amount is contra to law and judicial pronouncements.

7. In the Second Appeal, the Appellant has raised the following Substantial Questions of law.

(i). Whether the Courts below had erred in not appreciating the provision of Section 8 of the Act 31/78 in fixation of market value?

(ii). Whether the Courts below had erred in placing reliance upon Ex.A.1 in fixation of market value especially when the land acquired and the land conveyed under the said exhibits are not of the same nature and classification and are far away from each other?

(iii). Whether the Courts below had erred in rejecting the data sale deed relied upon by the competent authority especially when the land acquired and the land conveyed under the data sale deed are close in proximity and are of similar nature and classification?

(iv). Whether the Courts below erred in not making any deduction towards development charges especially when reliance is placed upon Ex.A.1 where under a small extent of land was sold and the land acquired is more than 3.7 acres?

8. Heard the Learned Government Advocate for the appellants and the learned counsel for the respondent.

9. Perused the grounds of appeal and the cross objection along with the other records.

11. The Lower Appellate Court has relied upon the evidence let in by the respondent herein in respect of sale transaction Ex.A.2 and the entries found in Ex.R.2, which discloses the transactions which took place during the relevant point of time in and around the land acquired. The sale price of the property is disclosed in those exhibits. The Trial Court has relied upon the sale transaction covered under Ex.A.1. We find the state has relied on Ex.R.2 to fix the market value as Rs.35,000/- per acre. As per the data which is relied by the state is 1 acre 70 cents of land in S.No.702/2 was sold for Rs.59,500/-. Whereas the data relied upon by the Appellate Court to award enhanced compensation is in respect of S.No.972, 977/1, 987/2, 973/1, wherein, 52 cents of land was sold for Rs.71,800/- on 17.04.1997. On scrutiny of this document, this Court finds that during the relevant point of time the transactions soon before the Acquisition proceedings was at higher value than the value of the property sold 2 years before the Acquisition proceedings. In such circumstances, when the Appellate Court has arrived at the market value, based on the document which has no reason to disbelieve, this Court finds no error in awarding the said compensation.

12. Therefore, nothing warrants to interfere in the finding of the Lower Appellate Court as far as the enhanced

compensation is concerned, which is based on the data transaction of same quality and nature of land situated adjacent to the land acquired.

13. As far as the cross objection is concerned, this Court finds that the Appellate Court has not awarded interest to the 15% solatium amount. Therefore, the respondent herein has preferred cross objection seeking interest for the solatium amount. It is contended that the lower Court ought to have awarded interest for the compensation which includes market value and solatium as per Section 12 of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act 1978. The failure to pay interest to the compensation amount is contrary to Section 12 of the Act.

Section 12: Payment of Interest:

When the amount is not paid or deposited on or before taking possession of the land, the prescribed authority shall pay the amount with interest thereon at the rate of six per cent per annum from the time of so taking possession until it shall have been so paid or deposited and such interest shall be paid or deposited by the prescribed authority in the same manner as provided for the amount.

14. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in Sundar Vs. Union of India reported in (2001) 7 SCC 211 wherein, the Constitutional Bench has put at rest the dispute whether the owner is entitled for interest on solatium. In response to the reference made to the Constitutional Bench whether solatium is part of compensation to pay interest, the Constitutional Bench has answered the reference in affirmative referring Section 34 of the Land Acquisition Act, which is analogous to Section 12 of the Tamil Nadu Acquisition of land for Harijan Welfare Act, 1978. The Hon'ble Supreme Court has observed that;

" The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the

Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted."

15. After reiterating the above statement of law recorded by the Hon'ble Division Bench of Punjab and Haryana High Court in State of Harayana Vs.Kailash, the Constitutional Bench has concluded that when a person entitled to the compensation awarded he is entitled to get the interest on the aggregated amount including solatium.

16. The respondent is directed to pay the difference in Court fee payable due to the enhanced compensation before the Subordinate Court, Dharapuram in the account of C.M.A.No.17 of 1998, on payment of deficit Court fees, the decree will be drafted. The Substantial Questions of law framed answered accordingly.

17. Therefore, this Court finds that there is no merit in the Second Appeal. Whereas, the respondent herein who was deprived of interest on the solatium amount is entitled for get interest at the rate of 6% per annum. Accordingly, the Second Appeal is dismissed. The Cross Objection is partly allowed. No order as to costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

bsm

To

1.The Subordinate Court, Dharapuram.

2.The District Collector,
The Government of Tamil Nadu,
Erode District, Erode.

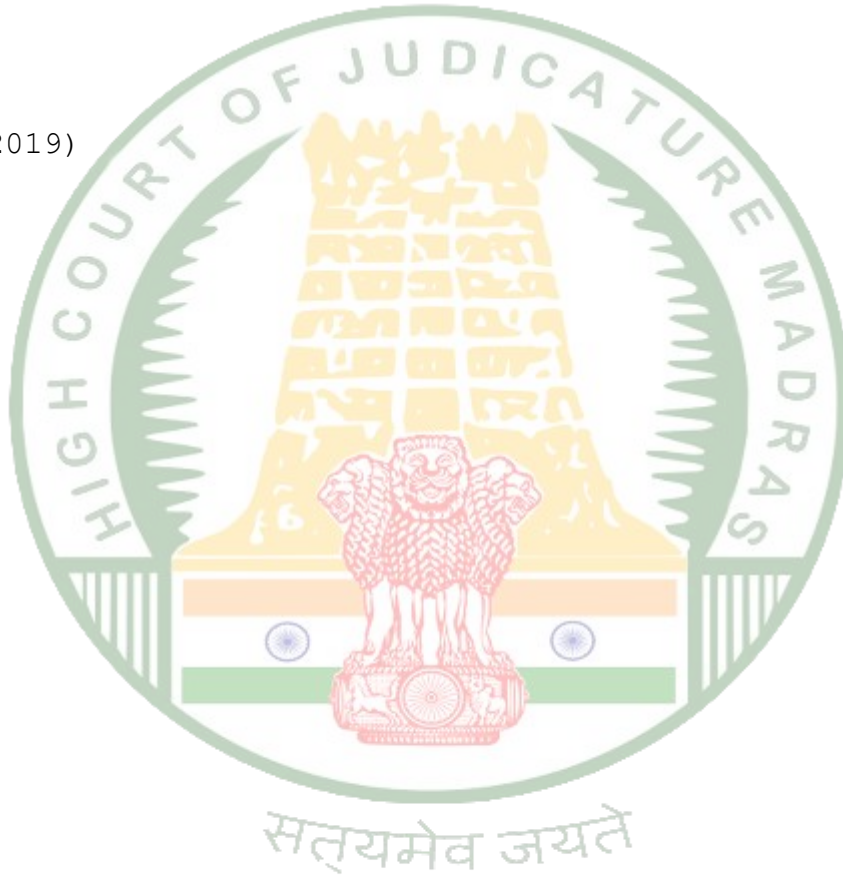
3. The Special Tahsildar (ADW),
Kangeyam Taluk, Kangeyam.

4. The Section officer
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Saravanan, Advocate sr 8033.
+1 CC to Govt. Pleader sr 8439.

Second Appeal No.369 of 2006
& Cros.Obj.No.59 of 2007

CNR (CO)
SP (06/05/2019)



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