



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.1942 of 2004
& Cros.Obj.No.28821 of 2006

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. ... Appellants/Respondents
in S.A.No.1942 of 2004

/versus/

S.K.Somasundaram,
S/o.Kuppusamy Gounder,
Sulakal puthur,
Veeranampalayam Village,
Kangeyam Taluk. ... Respondent/Claimant
in S.A.No.1942 of 2004

S.K.Somasundaram,
S/o.Kuppusamy Gounder,
Sulakal puthur,
Veeranampalayam Village,
Kangeyam Taluk. ... Cross Objector
in Cros.Obj No.SR28821 of 2006

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.

... Respondents
in Cros.Obj.No.SR28821 of 2006

Prayer in S.A.No.1942 of 2004:- 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.2/98 dated 19.02.2004 made in C.M.A.No.2/98, on the file of Subordinate Court, Dharapuram, modifying the award dated 10.12.1997 made in Award No.4/97-98 passed by the Special Tahsildar (ADW), Kangayam.

Prayer in Cros.Obj.No.SR28821 of 2006:- Cross Objection 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.2 of 1998.

S.A.No.1942 of 2004

For Appellants : Mr.DE.V.Narendaran
Government Advocate

For Respondent : Mr.S.Saravanan

Cros.Obj.No.28821 of 2006

For Appellant : Mr.S.Saravanan

For Respondents : Mr.DE.V.Narendaran
Government Advocate

J U D G M E N T

This Appeal is preferred by the State aggrieved by the enhancement of compensation awarded by the Court below for the land acquired from the respondent under Tamil Nadu Acquisition of land for Harijan Welfare Act, 1978 by fixing the market value of the property acquired at the rate of Rs.1,60,000/- per acre from Rs.56,000/- per acre. The respondent in his cross objection has prayed for interest to the solatium amount.

2. The brief facts leading to the appeal:-

The state vide Government Gazette notification dated 28.02.1997 had acquired 3.41.0 hectares of land at Pachchapalayam Village, in S.No.1447/1 owned by the respondent herein. After conducting enquiry award was passed on 10.12.1997 by the Special Tahsildar (ADW), Kangayam fixing the value of the property at the rate of Rs.56,000/- per acre. The respondent herein has contended that the current market value of the

property is around Rs.1,75,000/-per acre and therefore, received the award amount under protest.

3. Aggrieved by the award the respondent/land owner has preferred an appeal before the Sub Court, Dharapuram in C.M.A.No.2/98 seeking higher compensation.

4. After considering the documents produced by the respondent herein and the data document relied by the Government, the lower Court enhanced the compensation by fixing the market value of the suit land at the rate of Rs.1,60,000/- per acre. The Appellate Court has relied upon the documents produced by the respondent herein, which indicates that 52 cents of adjacent land in S.N.No.1133 has been sold for Rs.1,60,000/- under sale deed marked as Ex.A.6. Therefore, for the total extent of 8.42 acres in S.No.1447/1 for a sum of Rs.13,37,200/- was awarded inclusive of 15% solatium and 6 % interest.

5. Aggrieved by the enhanced compensation, the state has preferred the present appeal.

6. The respondent/landowner has preferred cross objection contending that the market value of the acquired property is proved to be Rs.1,80,000/- per acre through Ex.A.3. While so, the Lower Appellate Court should not have reduced the market value at the rate of Rs.1,60,000/- per acre. Further, it is contended that the Lower Appellate Court ought to have awarded interest for the solatium amount also as per Section 7 of the Act and the law laid down by the Hon'ble Supreme Court. Omission to pay interest for the solatium is contra to law and judicial pronouncement.

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

(i). Whether the Lower Appellate Court was correct in allowing the respondent to let in oral evidence and also marking document in the appellate state, especially when Section 9 of the Act does not contemplate taking any evidence and also when the application of the provisions of C.P.C are explicitly barred?

(ii). Whether the Lower Appellate Court excluded in it's jurisdiction in entertaining the oral and documentary evidence let in by the respondent herein when the lower appellate Court is not empowered in view of Section 9 of the Act?

(iii). Whether the Lower Appellate Court was

right in enhancing the marked value based on the sale deed of lesser extent of lands, that too, situated in residential area?

(iv). Whether the Lower Appellate Court was right in enhancing the market value without assigning any reason?

(v). Whether the Lower Appellate Court was not right in deducting 1/3rd amount of the market value towards developmental charges as held by the Apex Court reported in AIR 1990 SC 1028?

(vi). Whether the Lower Appellate Court was right in enhancing the market value without payment of proper court fee as contemplated under Section 51 of the Tamil Nadu Court fees and suits valuation Act 1955?

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. The contention of the appellant that permitting the respondent to let in oral evidence and allowing them to mark the document at the appellate stage is contrary to Section 9 of the Tamil Nadu Acquisition of land for Harijan Welfare Act, 1978 is legally not sustainable.

10. Under Section 9 of the Act, right to appeal is conferred on the person aggrieved by the quantum of award paid as compensation. The Section reads as below.

Section 9:- Appeal against order of amount determined. The Any person who does not agree to the amount determined by the prescribed authority under sub-section (2) amount of section 7 may prefer an appeal to the Court within such period as may be prescribed.

11. Nowhere in this Section, Court is prohibited from receiving evidence from the parties concerned. Therefore, this plea raised by the appellant is bound to be rejected outright. In an Acquisition proceedings when the award is passed there can be violation of the guidelines or omission of relevant data available for fixing the land value. It is always open to the aggrieved parties to place relevant records as evidence before the Appellate forum to arrive at just and fair compensation. No law can prevent the Appellate forum to entertain evidence to arrive at just and fair conclusion. Furthermore, it is not only the respondent has adduced evidence before the Appellate Court,

the appellant herein had also adduced evidence and marked documents.

12. The evidence relied by the parties indicates that the property acquired in this proceeding is situated at Pachchapalayam Village, in S.No.1147/1. The state has fixed the value of the property at the rate of Rs.56,000/- per acre. The award passed by the Special Tahsildar (AWD), Kangeyam Taluk, Erode District dated 10.12.1997 does not disclose under what basis the market value of the property was fixed to him at the rate of Rs.56,000/-per acre. When the respondent herein has furnished documents to show that the adjoining land in S.No.1133, which is of equal in character and condition was sold at the rate of Rs.1,50,000/- and above. The Appellate Court has rightly relied upon the data's found in the sale register extracts marked as Ex.A.3 and had fixed the compensation at the rate of Rs.1,60,000/- per acre.

13. As far as the cross objection is concerned, this Court finds that the data document marked as Ex.A.3 indicates the value of the property in and around the locality was only around Rs.1,60,000/- per acre, on the date of notification. While so, there is no error in the award of the Lower Appellate Court fixing the compensation of Rs.1,60,000/- per acre, as the market value. However, the Lower Appellate Court has not awarded interest for the solatium amount which, the respondent herein is entitled for, as claim in his cross objection. The landlord is entitled for interest not only for the market value of the land but also for the 15% solatium amount as per Section 12 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 which reads as under:-

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 is entitled to the compensation awarded he is entitled to get the interest on the aggregated amount including solatium.

16. It is contended by the learned counsel for the appellant that the lower Court ought to have deducted 1/3th amount from the market value towards development charges as upheld by the Apex Court. The Apex Court has allowed deduction of improvement charge only when value of the residential land is taken as data value to acquire neighbouring agriculture land. Here is a case where the comparative data is also in respect of agricultural land. Therefore the question of deducting development charge will not arise. Further it is pertinent to point out that while fixing Rs.56,000/- per acre, the Acquisition Authority has not deducted development charges. Therefore, when an higher amount of compensation is awarded by the Appellate Court based on an identical agricultural land situated nearby

which was also relied by the respondent but rejected, the appellant cannot claim development charges.

17. 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.2 of 1998, on payment of deficit Court fees, the decree will be drafted. The Substantial Questions of law framed answered accordingly.

18. 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 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.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

bsm
To,

1.The Subordinate Court, Dharapuram.

2.The District Collector,
Erode District,
Erode.

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

4. The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.S.Saravanan, Advocate Sr.No.8031

judgment in
Second Appeal No.1942 of 2004
& Cros.Obj.No.28821 of 20006

CNR(CO)
CSL/09.05.2019