

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :31.01.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

SECOND APPEAL Nos.2077 to 2079 of 2004 and 481 of 2005
and
C.M.P.No.7608 of 2005

1.The Collector of South Arcot,
Cuddalore.

2.The Special Land Acquisition Officer,
Harijan, Welfare, Cuddalore.

.. Appellants in
S.A.Nos.2077 to 2079 of
2004 and 481 of 2005

/versus/

Selvaganapathi

.. Respondent in
S.A.No.2077 of 2004

Natesa Mudaliar

.. Respondent in
S.A.No.2078 of 2004

Kuppusamy

.. Respondent in
S.A.No.2079 of 2004

1.Sigamani

2.Royar

.. Respondents in
S.A.No.481 of 2005

Common Prayer: Second Appeals have been filed under Section 100 of the Civil Procedure Code against the judgments and decrees dated 09.08.2002 made in L.A.C.M.A.Nos.26 of 1996, 25 of 1996, 27 of 1996 and 24/1996 respectively, on the file of the Sub Court, Cuddalore, modifying the award dated 23.02.1996 made in award No.4/1995-96 by the Special Tahsildar (ADW), Cuddalore.

For Appellants :Mr.N.Maniakandan, GA
(in all the appeals)

For Respondent :Mr.R.Gururaj
(S.A.No.2077 of 2004)

For Respondent :No appearance
(S.A.No.2078 of 2004)

For Respondent :No appearance
(S.A.No.2079 of 2004)

For Respondents :R1-died
No appearance for R2
(S.A.No.481 of 2005)

COMMON JUDGMENT

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. These four second appeals are directed against the enhanced compensation awarded by the Sub Court, Cuddalore in connection with the land acquired from the respondents for the Welfare of Harijan under Harijan Welfare Scheme Act.

3. In order to provide house sites to the Adhidraavidar in Karunkuzhi, Mettukuppam and Kolakkudi Village of Cuddalore Taluk, then South Arcot District, the appellants have published notification in the Government Gazette dated 14.11.1995 under Section 4(1) of the Act and after calling for objections from the land owners, the Special Tahsildar for Harijan Welfare had fixed the market value of the land acquired at the rate of Rs.344/- per cent. The respondents have received money under protest. During the enquiry proceedings, they have claimed a sum of Rs.1,500/- per cent, which was negatived by the Special Tahsildar.

4. Aggrieved by the award dated 23.02.1996, the land owners have preferred Civil Miscellaneous Appeals before the Sub Court, Cuddalore, seeking enhanced compensation for the land acquired from them.

5. After hearing the parties and affording opportunities to them, the lower appellate Court has considered the data value of the sale deed covered under Ex.A2 in respect of the sale transaction, which took place three years earlier to the acquisition proceedings. Fixed a sum of Rs.1,250/- as market value of the property acquired. While holding so, the lower

appellate Court has negatived the submissions made by the State that the data value taken for consideration does not relates to agriculture land and the value of the residential area in respect of a small extent of the land should not be applied for a larger extent of land acquired for the scheme. When admittedly, the land being an agricultural land, the market value ought not to have been assessed by cents.

6. The Courts below have negatived the said plea that the larger extent of land, which was acquired have all the potential to be put to urban use and the said potentialities of the land acquired should not be ignored in the determination of market value.

7. Relying upon the judgment of the Hon'ble Supreme Court rendered in Administrator General of West Bengal v. Collector of Varanasi reported in ARI 1988 Supreme Court Cases 943, the lower appellate Court had fixed the market value of the land acquired at the rate of Rs.1,250/- per cent with solatium and interest thereon. Aggrieved by the enhanced market value for the land acquired, the State had preferred the second appeal.

8. This Court while admitting the second appeal has formulated the following Substantial Questions of Law:-

(1) Whether the lower appellate Court exceeded in its jurisdiction in entertaining the oral and documentary evidences let in by the respondent herein, eventhough, there is no power conferred to the appellate authority under Section 9 of the Act?

(2) Whether the lower appellate Court was not right in deducting the 1/3rd amount of the market value towards the deducting charges held by the Apex Court reported in 1990 S.C.P.1028?

9. The contention of the learned Government Advocate appearing for the appellants that the lower appellate Court ought not to have permitted the parties to let in fresh evidence in the appellate proceedings does not carry any legal force, since Section 9 of the Act does not bar the Court from entertaining evidence to ascertain the market value of the land acquired. The judgment of the lower court indicates that not only the respondents herein but also the appellants were permitted to let in evidence and allowed to introduce documents. Only after appreciating the evidence both oral and documents adduced by respective parties, the lower appellate Court has

partly allowed the appeal fixing compensation at the enhanced rate of Rs.1,250/- per cent. In respect of the plea of reducing 1/3 value towards improvement charge, the said plea taken belatedly at the second appeal stage cannot be countenanced.

10. Therefore, this Court finds no illegality or Substantial Questions of Law to be decided in the appeal. Hence, these Second Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Subordinate Judge, Cuddalore.

2.The Special Tahsildar(ADW), Cuddalore.

Copy To

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

+3cc to Mr.R.Gururaj, Advocate SR.No.8623, 8624, 8625

+4cc to Special Government Pleader (CS)SR.No.8442,8443,8444,8445

S.A.Nos.2077 to 2079/2004 & 481 of 2005
and

सत्यमेव जयते

C.M.P.No.7608 of 2005

SSV(CO)

GMV(17/10/2019)

GMV(18/11/2019)

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