

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.139 of 2018
and
C.M.P.No.3333 of 2018
and
CROS.OBJ.No.4 of 2019

S.A.No.139 of 2018

- 1.The State of Tamil Nadu
Rep., by the District Collector,
Erode.
- 2.The District Collector,
Erode District,
Erode-11.
- 3.The Special Tahsildar,
Harijan Welfare,
Erode District. Appellants/Land Acquisite Officer

Vs

- 1.M.Ramalingam
- 2.R.Nagaraj
- 3.M.Varadaraj
- 4.V.Uma
- 5.V.Ramkumar

Respondents represented by power of
Attorney agent of K.C.Mohanasundaram
Amended as per order in I.A.No.336 of 2006,
dated 02.08.2006.

...Respondents/Claimants

PRAYER : Second Appeal filed under Section 13 of Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78 r/w Section 100 of Civil Procedure Code against the Judgment and Decree dated 04.02.2017 made in C.M.A.No.7 of 2017 reviewed as per order in I.A.No.143/2017 on the file of Principal Subordinate Judge, Erode, modifying the Award No.5/2000/A, dated 21.11.2000, on the file of the Special Tahsildar (ADW) and Land Acquisition Officer, Erode District.

For Appellants: Mr.Vijay Narayan, Advocate
General assisted by Mr.A.Dev
Narendran, Government Advocate.

For Respondents: Mr.P.Kannan Kumar.

CROS.OBJ.No.4 of 2019

- 1.M.Ramalingam
- 2.R.Nagaraj
- 3.M.Varadaraj
- 4.V.Uma
- 5.V.Ramkumar

The petitioners are represented by the
Power of Attorney, Mr.K.C.Mohanasundaram.
...Petitioners/Claimants

Vs

- 1.The State of Tamil Nadu
Rep., by the District Collector,
Erode.
- 2.The District Collector,
Erode District,
Erode-11.
- 3.The Special Tahsildar,
Harijan Welfare,
Erode District.

...Respondents/Appellants

PRAYER : Cross Objection filed under Order 41 Rule 22 of the
Civil Procedure Code, to enhance the award amount from Rs.110/-
per Sq.ft to Rs.125/- per Sq.ft., by allowing the above cross
appeal in S.A.No.139 of 2018 on the file of this Court.

For Petitioners:Mr.P.Kannan Kumar.

For Respondents:Mr.Vijay Narayan, Advocate
General assisted by Mr.A.Dev
Narendran, Government Advocate.

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the Government against the
fixation of value of the acquired land at Rs.110 per Sq.ft., as

against Rs.25,000/- per acre fixed by the land acquisition officer.

2.The extent of 2.22.0 Hectare i.e., 5.46 acre comprised in S.No.159/2B situated at Elunoothimangalam Village, Kodumudi Taluk was acquired from the respondents for providing free house sites for Adidraavidars and Arunthathiars under the provisions of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 by issuing notification under Section 4 (1) dated 05.07.2000. The land acquisition officer relied upon the data sale deed dated 13.03.2000 by which 3.95 acre of land comprised in S.No.125/2 in Kodumudi Taluk, was sold for Rs.80,000/-. Therefore, the land acquisition officer, based on the said data sale deed determined the value at Rs.25,000/-, even though as per data sale deed one acre comes about Rs.20,253/-.

3.The land acquisition officer also took into consideration, the guideline value as per SRO which comes about Rs.27,200/-. Aggrieved over the determination of the value of the acquired land at Rs.25,000/- per acre, an appeal has been filed before the Sub Court based on the Judgment passed by the Division Bench in S.A.Nos.200 and 201 of 2003 in which the subject matter of land acquisition was 1.45 acre comprised in S.No.408/1-B of Kodumudi Village by virtue of notification under Section 4 (1) dated 16.02.1999 and determined at Rs.110 per Sq.ft. Based on the Second Appeals' order, the Civil Court determined the value of the acquired land at Rs.110 per Sq.ft., as the acquired property is located within two kilometers from the subject property in S.A.Nos.200 and 201 of 2003 which is also in Kodumudi Village itself. The said order passed by the Sub Court is challenged before this Court by way of this Second Appeal.

4.The questions of law which arose, for consideration in this appeal are,

(i)Whether the first appellate Court is justified in relying upon the order passed by the Division Bench of this Court in S.A.Nos.200 and 201 of 2003 dated 23.12.2011 in which the acquired lands were situated in Kodumudi Village itself, whereas, the acquired land in this case is a land situated in Elunoothimangalam Village, Kodumudi Taluk, two kilometers away from the said subject land of the Division Bench Judgment?

(ii)Whether the first appellate Court erred in not deducting any amount towards development charges, while fixing the value of the land?.

5.A cross objection has also been filed by the respondents/claimants as they are not satisfied with the award of compensation at Rs.110/- per Sq.ft., ordered by the Sub Court and they seek to enhance it to Rs.125/- per Sq.ft. The Second appeal and the cross objection relate only with regard to the

value of the land fixed by the Sub Court.

6. Heard Mr. Vijay Narayan, learned Advocate General and Mr. P. Kannan Kumar, learned Counsel appearing for the respondents. As rightly pointed out by Mr. Vijay Narayan, the acquired property is located in Elunoothimangalam Village and the date of notification under Section 4 (1) is 05.07.2000, whereas, the acquired property which is the subject matter of the Second appeals in S.A.Nos.200 and 201 of 2003 in which this Court determined the value of the land at Rs.110/- per Sq.ft., is situated in Town Panchayat itself which is two kilometers away from Elunoothimangalam Village. Therefore, the said land value cannot be taken as criteria for determining the value of the acquired land. He has also produced topography sketch as well as google map to show the distance between the acquired land and the data land relied upon by the Civil Court.

7. Mr. Kannan Kumar, learned Counsel appearing for the respondents/petitioners would submit that though different village name has been given, the acquired property of Elunoothimangalam Village is adjacent to Kodumudi Village and it is located within two kilometers as admitted by the Tahsildar himself. Moreover, the property is surrounded by Government hospitals, schools, residential areas and all locational advantages and therefore, he seeks for enhancement of the value from Rs.110/- to Rs.125/- per Sq.ft.

8. This Court has considered the rival submissions put forth by either parties.

9. As rightly pointed out by Mr. Vijay Narayan, admittedly, the acquired land is located two kilometers away from the data sale deed relied upon by the first appellate Court which is in Kodumudi village. The google map as well as topography sketch would prove the same. However, as rightly pointed out by Mr. Kannan Kumar, the acquired land is also surrounded by Government hospitals, schools, residential areas and it is in town area. All the advantages in Kodumudi Village are also possessed by Elunoothimangalam Village. However, considering the distance of two kilometers between the properties, this Court is inclined to determine the value at Rs.100/- per Sq.ft., instead of Rs.110/- per Sq.ft.

9. There is no contention towards development charges as pointed out by Mr. Vijay Narayan. Further, Mr. Kannan Kumar would rely upon the Judgment of the Hon'ble Supreme Court in "Atma Singh (dead) through Lrs., and others Vs. State of Haryana and another" reported in "(2008) 2 Supreme Court Cases 568" in which only ten percent was deducted towards development charges.

10. As far as second question of law is concerned,

considering the fact that no development charges have been deducted by first Appellate Court, it is appropriate to make deduction towards development charges. The subject property has been acquired only for the purpose of giving free house flats to Adidraavidars and Arunthathiars for residential purposes. Therefore, as per the Judgment of the Hon'ble Supreme Court in "Atma Singh (dead) through Lrs., and others Vs.State of Haryana and another" reported in "(2008) 2 Supreme Court Cases 568", ten percent is deducted towards development charges. Hence, the second question of law is answered in favour of the Government/appellants.

11.The value is determined at Rs.100/- per Sq.ft., with ten percent deduction towards development charges. Besides, the respondents are entitled to fifteen percent towards solatium and other benefits as well.

12.The appellants are directed to deposit the entire amount after deducting the amount if deposited already, within twelve weeks from the date of receipt of the copy of this order, failing which, the District Collector, Erode and other appellants shall appear before this Court.

13.In the result, both the second appeal and the cross objection are disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is also closed. Post the matter for reporting compliance on 26.04.2019.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.The State of Tamil Nadu
Rep., by the District Collector,
Erode.

2.The District Collector,
Erode District,
Erode-11.

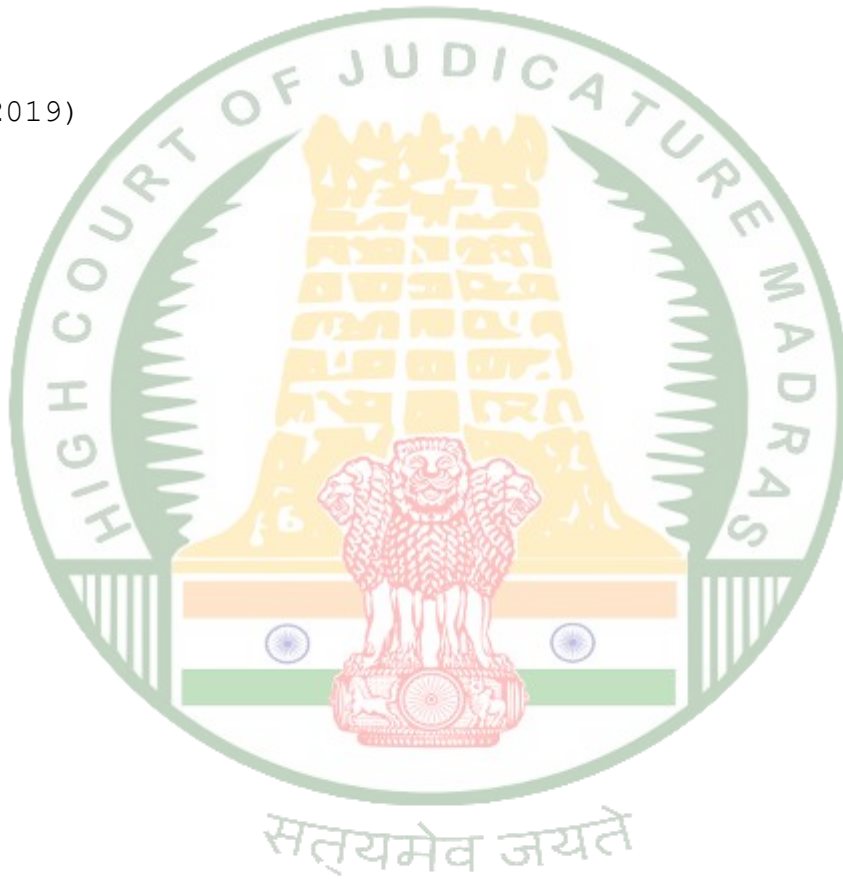
3.The Special Tahsildar,
Harijan Welfare,
Erode District.

4. The Section officer
Judicial Section, High Court, Madras 104.
(for reporting compliance)

+1 CC to Govt. Pleader sr 9339.
+2 CC to M/s.P.Kannan Kumar, Advocate sr 8864

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CNR (CO)
SP (19/03/2019)



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