IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.01.2019	Pronounced on: 31.01.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No.573 of 2005
& Cros.Obj.No.43 of 2013

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/Respondent in S.A.No.573 of 2005

/versus/

1. Sathya Bama,
   W/o.Somasundaram,
   Sulakal Puthur,
   Veeranampalayam Village,
   Kangeyam Taluk.

2. Nandakumar,
   S/o.Somasundaram,
   Sulakal Puthur, Veeranampalayam Village,
   Kangeyam Taluk. ... Respondents in S.A.No.573 of 2005.

/versus/

1. Sathya Bama,
   W/o.Somasundaram,
   Sulakal Puthur,
   Veeranampalayam Village,
   Kangeyam Taluk.

2. Nandakumar,
   S/o.Somasundaram,
   Sulakal Puthur, Veeranampalayam Village,
   Kangeyam Taluk. ... Petitioners in Cros.Obj.43/2013.

Versus

1. The Government of Tamil Nadu,
   rep.by the District Collector,
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3. The Special Tahsildar (ADW),
   Kangeyam Taluk, Kangeyam. ... Respondents
   in Cros.Obj.No.43 of 2013

Prayer in S.A.No.573 of 2005:- 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 dated 19.02.2004 made in C.M.A.No.3/1998 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) Kangeyam.
Prayer in Cros.Obj.No.43 of 2013:- 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.3 of 1998 dated 19.02.2004.

S.A.No.573 of 2005

For Appellants : Mr.DV.Narendaran
Government Advocate

For Respondent : Mr.S.Saravanan

Cros.Obj.No.43 of 2013

For Appellant : Mr.S.Saravanan

For Respondents : Mr.DV.Narendaran
Government Advocate

J U D G M E N T

This Appeal is preferred against the compensation amount enhanced by the Subordinate Court, Dharapuram in the Land Acquisition proceedings initiated by the appellant. According to the appellant, the Lower Appellate Court has erred in entertaining oral and documentary evidence on behalf of the land owner and erroneously enhanced the market value of the property relying on the sale deeds of lesser extent situated in residential area. Further, the Lower Appellate Court has also failed to deduct 1/3th amount from the market value towards the development charges as upheld in the judgment of Hon'ble Supreme Court reported in 1990 SCC page 1028.

2. The brief facts of the case involved in this appeal is that an extent of 5.88 acre in S.No.270/1B at Veeracholapuram Village, Kangeyam Taluk owned by the respondent herein was acquired by the state by Government Gazette by notification dated 28.02.1997 under the provisions of Tamil Nadu Acquisition of Land and Harijan Welfare Scheme Act, 1978.

3. While fixing the market value of the property, the Special Tahsildar (ADW), has selected S.No.275 as a data land, which was sold at the rate of 56,000/- per acre. Accordingly, the compensation was awarded along with 15 % solatium.

4. Aggrieved by that the respondent herein has preferred C.M.A.No.3 of 1998 claiming that the sale statistics of land in and around the property acquired would indicate the market value of the property is around Rs.1,50,000/- per acre. When 55 cents of land in S.No.275/1 was sold for a sum of Rs.75,000/- soon before acquisition, the value of the property per acre ought to have been fixed at Rs.1,50,000/- wherein, the state has awarded only Rs.56,000/- per acre.

5. The Lower Appellate Court based on the records and depositions of the witnesses examined by the respective parties accepted the sale deed Ex.A.2 in respect of S.No.270/1 and Ex.A.1 sale deed dated 11.12.1996 which indicates that the market value of the property acquired should be above Rs.1,50,000/- per acre. Since the Landlord himself has requested only Rs.1,40,000/- per acre, the value of the property was assessed at the rate of Rs.1,40,000/- per acre. Accordingly, the compensation was fixed with 15% solatium.

6. Aggrieved by that the state has preferred the appeal raising the Substantial Questions of law.

> (i). Whether the Lower Appellate Court was correct in allowing the respondent to let in oral evidence and also marking documents in the appellate stage 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 was right in enhancing the market value based on the sale deed of lesser extent of lands, that too, situated in residential area?

(iii). 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 1990 SC page 1028?

7. Heard the learned Government Advocate for the Appellants and the Learned Counsel for the respondent.

8. The contention of the appellant is 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.

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.

9. The perusal of the record reveals that before the Appellate Court both the appellant herein and the respondent herein have let in have let in oral and documentary evidence. Section 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Act, 1978 does not prohibits entertaining evidence. In fact for fixation of fair and just compensation parties should to afforded opportunity to put forth documents in their favour and subject themselves for cross objection. Therefore, the plea of the appellant that the trial Court ought not to have allowed the respondent to let in oral evidence and mark documents in the appellate stage is un-sustainable.

10. Regarding the 2nd grounds of appeal wherein it is contended that the lower Appellate Court has relied upon a lesser extent of land situated in residential area. The perusal of the entries made in Ex.R.3, Ex.A.1 and Ex.A.2 does not gives any impression or inference that they are residential land and of very lesser extent. In fact the extent of land covered under Ex.A.1 & Ex.A.2 is around 55 cents and it is not sold as residential land. While so, this plea of the appellant also not sustainable.

11. 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, for the first time the appellant cannot claim development charges. Further, the data document relied by the appellant is in respect of sale to an extent of 55 cents. Whereas, the respondent herein has relied upon the data document pertaining to S.No.441 and Re-Survey No.270/1 to an extent of 26 cents sold for Rs.50,500/- on 11.11.1996, so it is not factually correct to content the lower Court has considered the data of a transaction with lesser extend and residential land.

12. The Lower Appellate Court considering the respective documents placed by the appellants as well as the respondent rightly fixed a sum of Rs.1,50,000/- per acre as the market value of the property acquired. Hence, the Substantial Questions of Law raised by the appellant is answered accordingly.

13. As far as the cross objection is concerned, this Court finds that the respondent herein has filed the cross objection aggrieved by fixation of market value of the property at the rate of Rs.1,40,000/-per acre instead of Rs.1,52,000/- per acre and for not awarding interest for the solatium. As far as the market value of the property is concerned, this Court finds that there is no ground to claim further enhancement of compensation for the land acquired. However, the respondent herein is entitled for interest for the solatium amount which has been deprived un-reasonably.

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. 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.3 of 1998, on account of deficit Court fees, the decree will be drafted.

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 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

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 8032.
+1 CC to Spl. Govt. Pleader sr 8438.

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