



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. 1584 of 2004
& C.M.P. No. 12446 of 2004
& Cros. Obj. No. SR28819 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 / Respondent
in S.A. No. 1584 of 2004.

/versus/

K. Kuppusamy,
W/o. Kuppusamy Gounder,
31/B, Kovai Road,
Kangeyam Town,
Kangeyam Village,
Kangeyam Taluk. ... Respondent / Claimant
in S.A. No. 1584 of 2004

K. Kuppusamy,
W/o. Kuppusamy Gounder,
31/B, Kovai Road,
Kangeyam Town,
Kangeyam Village,
Kangeyam Taluk. ... Cross Objector
in Cros. Obj. No. SR28819 of 2006

/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.SR.28819 of 2006

Prayer in S.A.No.1584 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 dated 19.02.2004 made in C.M.A.No.9 of 1998 on the file of Subordinate Court, Dharapuram modifying the Award dated 06.02.1998 made in Award No.9/97-98 passed by the Special Tahsildar (ADW) Kangeyam.

Prayer in Cros.Obj.No.SR.28819 of 2006:- Cross Objections is filed under Order 41 Rule 22 of Civil Procedure Code, against the judgment and decree of the Subordinate Court, Dharapuram in C.M.A.No.9 of 1998 dated 19.02.2004.

S.A.No.1584 of 2004

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

For Respondent : Mr.S.Saravanan

Cros.Obj.No.SR.28819 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 enhancing the market value of the land acquired from Rs.60,000/- per acre to Rs.1,40,000/- per acre.

2. The Respondent on receipt of the notice has preferred cross objection aggrieved by the denial of interest for the solatium amount and to fix the market value of the land at the rate of Rs.1,50,000/-per acre instead of Rs.1,40,000/- per acre.

3. The brief facts leading to the appeal:-

The state vide Government Gazette notification dated 28.09.1996 had acquired 1.26.5 hectares of land owned by the respondent herein in S.No.588/3A, 3C, 3D in Sivanmalai Village, Kangayam Taluk, Erode District. After conducting enquiry, the award was passed on 06.02.1998 by the Special Tahsildar, (ADW), Kangayam Taluk under the award No.9/97-98. The Land Acquisition Authority has fixed Rs.60,000/-per acre as market value of the land and awarded Rs.1,87,200/- for the 3.12 acres of land acquired from the respondent. In addition 15% solatium was awarded.

4. Aggrieved by the award the respondent/land owner has preferred an appeal before the Sub Court, Dharapuram in C.M.A.No.9/98 seeking higher compensation.

5. After considering the data documents relied by the state and the data documents relied by the respondent/landlord for the land sold prior to acquisition proceedings in and around the subject land has held that while the state has relied upon the transaction registered in document No.2130/95 dated 14.09.1996, wherein, 0.50 cents of land in S.No.573/3 was sold for Rs.30,000/-. The contra document relied by the respondent/landlord relates to a sale transaction in respect of 20 cents of land sold in S.No.521/2, for the sale price of Rs.30,000/-.

6. Accepting the evidence adduced by the respondent land owner in respect of the said sale transaction and the other evidence, the Lower Court has held that when identical land in the neighbourhood was sold at the rate of Rs.1,50,000/- per acre. The appellant has omitted to consider the said transaction and fixed lesser price as market value. Therefore, fixed the market value, at the rate of Rs.1,40,000/- per acre for the land acquired, along with 15 % solatium and 6 % interest to the market value.

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

8. The respondent/landowner has preferred cross objection contending that when the market value of the acquired property has been established to be Rs.1,50,000/- per acre. As per Ex.A.1 to Ex.A.4, the lower Appellate Court ought to have fixed the market value of land acquired as Rs.1,50,000/- per acre. Further, it is contended that the Lower Appellate Court ought to have awarded interest for the solatium amount also in tune with Section 7 of the Act 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.

9. 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 exceeded 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?

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

11. Perused the grounds of appeal and the cross objection along with the other records. The contention of the appellant that permitting respondents to let in oral evidence and allowing them to mark documents 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."

12. Nowhere in this Section, the 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 the 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.

13. The evidence relied by the parties discloses that the land acquired by the state and the previous sale transaction taken for fixation of value, all belong to same category and within 1 kilometre radius. It is has been elicited through witness that the properties are all assessed at same rate and they are all of same quality and category. While so, it is incorrect to plead that the data document Ex.A.1 to Ex.A.4 relied upon by the respondent are residential area of lesser extend and the data document relied by the state is the Agricultural land. In fact, it is pointed out by the Lower Appellate Court that the data value relied by the respondent/landlord is not a minuscule piece of land. 20 cents of neighbouring land has been sold for a sum of Rs.30,000/- which works out to Rs.1,50,000/- per acre. Whereas, the total extent of land acquired from the respondent is 3 acres 12 cents. Therefore, comparison is made only with identical nature of property and the substantially a larger extent of land.

14. As far as the cross objection is concerned, this Court finds that when the data document indicates the value of the neighbouring land is 1,50,000/-per acre, the Lower Appellate Court has reasonable fixed at the rate of Rs.1,40,000/- per acre. There is no necessity to enhance the value any further. However, the landlord is entitled for interest not only for the value of the land but for 15% solatium amount also as claimed in the cross objection as provided under Section 12 of the Act which reads as below:- सत्यमेव जयते

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.

15. 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."

16. 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.

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.9/1998 on account 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. Consequently, connected Miscellaneous Petition is closed. 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,
The Government of Tamil Nadu,
Erode District, Erode.
 3. The Special Tahsildar (ADW),
Kangayam Taluk, Kangayam.
 4. The Section Officer,
VR Section, High Court, Madras.
- +1 cc to Mr.S.Saravanan, Advocate, S.R.No.8029
- +1 cc to the Government Advocate, S.R.No.8441

Second Appeal No.1584 of 2004
& C.M.P.No.12446 of 2004
& Cros.Obj.No.28819 of 2006

SJM(CO)
SSM(06/05/2019).

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