

S.A. No. 779 of 2016
&
Cross Objection No. 14 of 2020

N. KIRUBAKARAN,J.

AND

ABDUL QUDDHOSE,J.

(Order of the Court was made by N. KIRUBAKARAN,J.)

The matters have been listed under the caption "For Being Mentioned".

2. The Second Appeal filed by the Government was dismissed by judgment dated 04.01.2019 and subsequently, it was brought to the notice of this Court that the total extent of the acquired land was 76,461.32 sq.ft only, but it was wrongly mentioned as 76,761.32 sq.ft in the order passed by the Trial Court as well as in the judgment of this Court. Accordingly, it was clarified on 27.08.2019 that in the judgment dated 04.01.2019, the total extent of the acquired land should be replaced as 76,461.32, wherever it is found, instead of 76,761.32 sq. ft. and a fresh order copy was directed to be issued after incorporating the same.

3. Since the extent of the acquired land was alone clarified by order dated 27.08.2019, today, the matters have been brought by way of "being mentioned" to rectify the corresponding calculation and entries, which find place

in paragraph Nos. 11 to 12 of the original judgment dated 04.01.2019. Accordingly, paragraph Nos. 11 to 13 and the concluding paragraph of the original judgment passed in S.A.No.779 of 2016 dated 04.01.2019 shall read as hereunder:

"11.However, which value has to be taken is the question, when the values varies from Rs.80/- to Rs.112.22/-. When this Court intended to take average value of the aforesaid four sale deeds, Mr.K.Elango, learned counsel appearing for the Respondent/Cross Objector relied upon the Judgment of the Hon'ble Supreme Court in Mehrawal Khewaji Trust (Regd.), Faridkot & Others reported in 2012 (3) CTC 396 (SC) and pointed out that taking average price for calculating the acquired land has been deprecated by the Hon'ble Supreme Court in the above Judgment. A perusal of the above Judgment would reveal that the Hon'ble Supreme Court held that if various sale deeds are relied upon, value of the highest exemplar should be taken into consideration and based on that, values to be determined. Paragraphs 8 and 9 of the said Judgment is usefully extracted as follows:

"8.The Reference Court has taken into consideration three sale exemplars which are Ext.A-48, Ext.A-52 and Ext.A61. It is the grievance of the Appellants that in the place of relying upon the highest exemplars, the Reference Court erroneously determined the market price of the Appellants land by averaging the prices of all the three exemplars and thereby awarded a compensation of '1 lakh per acre. The high Court upheld the said order of the Reference Court.

9.The Appellants are aggrieved on two aspects, firstly the highest

exemplar, namely, Ext.A-61 should have been relied upon in the place of averaging the prices and secondly, the Reference Court did not grant interest on solatium”

When the average value has to be avoided, the only method to determine the value of the property is the highest exemplar. In this case, admittedly, the highest exemplar is Ex.A3/sale deed dated 23.02.1989, conveying the property comprised in survey No.687 at the rate of Rs.112.22/- per sq. ft. Therefore, following the said judgment, this Court has to determine the value of the acquired land at Rs.112.22/-. The value fixed by the civil Court approximately at Rs.60/- is without even relying upon any sale deed and is contrary to law. The civil Court should have relied upon Ex.A3, Ex.A5, Ex.A6 or Ex.A.7. Without any reasons, the civil Court approximately fixed Rs.60/-, which is not sustainable. Therefore, the sale deed dated 23.02.1989/Ex.A3 is the highest exemplar and this Court determines the value of the acquired land at Rs.112.22/- per sq. ft. The land value to the extent of 76461.32 sq. ft. at the rate of Rs.112.22/- sq. ft., comes to Rs.85,80,489/-, 30% of solatium as per Section 22(A) of Land Acquisition Act, comes to Rs.25,74,146/- and as per Section 22(1)(A) of the act, additional market value for 570 days, comes to Rs.16,07,960/- and the total compensation comes to Rs.1,27,62,595/-, along with interest at the rate of 15% as per Section 34 of the Act from the date of 4(1) notification (ie.,) 17.05.1989.

S.No	Description	Calculation	Value in Rupees
1	Land value at the rate of Rs.112.22/- per sq. ft.	76461.32 x 112.22	85,80,489
2	30% of solatium	85,80,489 x (30/100)	25,74,146
3	12% of additional market value for 570 days	{[8580489 x (12/100)]/365} x 570	16,07,960
	Total		1,27,62,595

12. Therefore, the appellants are directed to pay a sum of Rs.1,27,62,595/- along with interest at the rate of 15% from 17.05.1989 to the respondent, after deducting the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order, failing which the appellants shall appear before this Court on 30.06.2021.

13. Accordingly, the Second Appeal is dismissed and the Cross Objection is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

For reporting compliance or for appearance of the appellants, call the matter on 30.06.2021."

4. Office is to incorporate the necessary corrections and issue fresh order copy forthwith.

(N.K.K.,J.) (A.Q.,J.)
30.03.2021

nv

S.A. No. 779 of 2016

N. KIRUBAKARAN,J.
AND
ABDUL QUDDHOSE,J.

nv



S.A. No. 779 of 2016
&
Cross Objection No. 14 of 2020

WEB COPY

Dated : 30.03.2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A.No.779 of 2016 &
C.M.P.No.23582 of 2018
and
Cros. Obj. No.sr30768 of 2018

1.The Special Tahsildar,
Adi Dravidar Welfare and Land Acquisition Officer,
Dharmapuri.

2.The District Collector,
Dharmapuri.

... Appellants
Vs

R.Abdul Khadar, S/o.Rasool Sahib,
Pattu Nool Kara Street,
Pennaragarm Taluk,
Dharmapuri District.

... Respondent

PRAYER: Second Appeal against the Judgment and Decree dated 29.03.2016

made in L.A.C.M.A.No.81 of 2004 on the file of Sub Court, Dharmapuri,
modifying the award No.2/1991-92 in Na.Ka.No.3172/87-(A), dated 21.01.1991,
on the file of the Special Tahsildar (ADW) and Land Acquisition Officer,
Dharmapuri.

For Appellant :Mr.A.Dev Narendran
Government Advocate
For Respondents :Mr.K.Elango

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 authorities against fixing of land value of the acquired property at Rs.60/- per sq. ft. in L.A.C.M.A.No.81 of 2004 on the file of Sub Court, Dharmapuri, against award No.2/1991-92 in Na.Ka.No.3172/87-(A), dated 21.01.1991, on the file of the Special Tahsildar (ADW) and Land Acquisition Officer, Dharmapuri.

2.The respondent's properties comprised in S.Nos.671/1, 672/1 to an extent of 0.71.0 hectares viz., 1.76 acres were acquired for the purpose of providing free housing plots to Adi Dravidars and Arunthathiars under the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act 1978. Notice was issued on 17.05.1989 under Section 4(1) of the Act. On 21.01.1991, the Land Acquisition Officer passed an award fixing the value of the acquired property at Rs.15,000/- per acre, relying upon the sale deed dated 03.11.1988, which conveyed the property comprised in survey No.706/1F. Against the said award passed by the Special Officer, an appeal has been filed before the Civil Court. On contest, the Civil Court determined the value of the property at Rs.60/- per sq. ft., relying upon the sale deeds dated 23.02.1989 and 09.02.1989, conveying the property comprised in survey No.687; sale deed dated 02.03.1989, conveying the property comprised in survey No.681/1 and sale

deed dated 22.09.1990, conveying the property comprised in survey No.64, even though the value per square feet varies from Rs.80/- to Rs.112.22/- . Therefore, the Government has come before this Court by way of this Second Appeal.

3.Cross Objection has also been filed by the respondent/land owner, contending that the amount has to be enhanced from Rs.60/- to Rs.112.22/- as per sale deed 23.02.1989.

4.Heard Mr.Dev Narendran, learned Government Advocate, appearing for the appellant and Mr.K.Elango, learned counsel appearing for the respondent/cross objector.

5.A perusal of records would reveal that the property to an extent of 1.76 acres, comprised in survey Nos.671/1 and 671//2, located in Parvathanahalli village, Pennaharam Taluk, Dharmapuri District was acquired by virtue of 4(1) notification dated 17.05.1989 for the purpose of providing free housing plots to Adi Dravidars and Arunthathiars under the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act 1978. The Land Acquisition Officer relying upon the sale deed dated 03.11.1988, conveying a property to an extent of 0.20.0 hectare, comprised in survey No.706/1F,

determined the value of the property at Rs.15,000/- per acre.

6.Mr.Dev Narendran, learned Government Advocate would submit that Rs.15,000/- per acre determined by the Land Acquisition Officer is very reasonable, as the property is located very near to the acquired land. Moreover, larger extents of land have been conveyed. Hence, the value determined by the land acquisition officer should be restored. He would also submit that sale deed dated 22.09.1990/Ex.A7 cannot be relied upon as the document was executed subsequent to 4(1) notification.

7.On the other hand, Mr.K.Elango, learned counsel appearing for the Respondent/Cross Objector would rely upon the judgment of the Hon'ble Supreme Court in *Hari Shankar Rastogi Vs. Sham Manohar and others* reported in 2005 (3) Supreme Court Cases 761, to stress the point that Cross Objection is maintainable in Second Appeal. He would submit that the civil Court determined only Rs.60/- per sq. ft., when the lands conveyed under data sale deeds relied upon by the respondent/cross objector are valued at Rs.112.22/-, Rs.71/-, Rs.99.3/- and Rs.80/-. According to him, the highest exemplar viz., sale deed dated 23.02.1989/Ex.A3 should have been taken and the value of the acquired land should have been determined at Rs.112.22/-. He would also submit that the average value has to be avoided. In this regard he relied upon

the judgment of the Honourable Supreme Court in *Mehrawal Khewaji Trust (Regd.), Faridkot & Others* reported in 2012 (3) CTC 396 (SC). Therefore, he seeks to allow the cross objection.

8.A perusal of layout sketch would show that both the properties are more or less close to the acquired land, comprised in survey Nos.671/1 and 672/1 situated at Parvathanahalli Village, Pennagaram Taluk, Dharmapuri District. It reveals that location of the properties relied upon by both the appellants as well as objector are similar in nature. Moreover, civil Court relied upon RW1/Official's evidence and held that the acquired property is located very near to Parvathanahalli Village and also located very near to Pennagaram-Dhasampatti road and Government Offices, Schools are located in the same area. RW1 also admitted that the property is surrounded by Cinema Theatre, Government Transport Corporation's Depot, Electricity Board office and commercial complexes. From the above, it is clear that the property is located in a commercial area.

9.The only question to be decided is whether this Court has to take the value as per the data sale deed relied upon by the Tahsildar. Even though the Land Acquisition Officer relied upon the sale deed dated 03.11.1988, actually the sale deed was not exhibited and he only relied upon the statistics regarding

the sale deed/Ex.R3. In the absence of actual sale deed and without going through the sale deed, the Land Acquisition Officer merely fixed the value based on the sale deed details, which cannot be permitted unless the sale deed is exhibited before the Land Acquisition Officer and perused by him. Then only it is possible to rely upon the value based on that sale deed. Mere sale details is not enough. Therefore, the determination made by the Land Acquisition Officer based on document, which was not produced before him is not sustainable.

10.The respondent produced four data sale deeds viz., Ex.A3/sale deed dated 23.02.1989, conveying property comprised in survey No.687 at the rate of Rs.112.22/- per sq. ft.; Ex.A5/sale deed dated 09.02.1989, conveying property comprised in survey No.687 at the rate of Rs.71/- per sq. ft.; Ex.A6/sale deed dated 02.03.1989, conveying property comprised in survey No.681/1 at the rate of Rs.99.3/- per sq. ft. and Ex.A7/sale deed dated 22.09.1990, conveying property comprised in survey No.64 at the rate of Rs.80/- per sq. ft. Based on the above sale deeds, the Civil Court determined the value at Rs.60/- per sq. ft. Ex.A3, Ex.5 and Ex.A6 are prior to 4(1) notification and the last one Ex.A7 is after 4(1) notification. All these documents have been exhibited before the civil Court and the parties have spoken about the documents. Moreover the properties conveyed are also

located very near to the acquired property. Therefore, the values shown in the document would reflect the values as on the date of acquisition.

11. However, which value has to be taken is the question, when the values varies from Rs.80/- to Rs.112.22/-. When this Court intended to take average value of the aforesaid four sale deeds, Mr.K.Elango, learned counsel appearing for the Respondent/Cross Objector relied upon the Judgment of the Hon'ble Supreme Court in *Mehrawal Khewaji Trust (Regd.), Faridkot & Others* reported in 2012 (3) CTC 396 (SC) and pointed out that taking average price for calculating the acquired land has been deprecated by the Hon'ble Supreme Court in the above Judgment. A perusal of the above Judgment would reveal that the Hon'ble Supreme Court held that if various sale deeds are relied upon, value of the highest exemplar should be taken into consideration and based on that, values to be determined. Paragraphs 8 and 9 of the said Judgment is usefully extracted as follows:

“8. The Reference Court has taken into consideration three sale exemplars which are Ext.A-48, Ext.A-52 and Ext.A61. It is the grievance of the Appellants that in the place of relying upon the highest exemplars, the Reference Court erroneously determined the market price of the Appellants land by averaging the prices of all the three exemplars and thereby awarded a compensation of '1 lakh per acre. The high Court upheld the said order of the

Reference Court.

9.The Appellants are aggrieved on two aspects, firstly the highest exemplar, namely, Ext.A-61 should have been relied upon in the place of averaging the prices and secondly, the Reference Court did not grant interest on solatium”

When the average value has to be avoided, the only method to determine the value of the property is the highest exemplar. In this case, admittedly, the highest exemplar is Ex.A3/sale deed dated 23.02.1989, conveying the property comprised in survey No.687 at the rate of Rs.112.22/- per sq. ft. Therefore, following the said judgment, this Court has to determine the value of the acquired land at Rs.112.22/-. The value fixed by the civil Court approximately at Rs.60/- is without even relying upon any sale deed and is contrary to law. The civil Court should have relied upon Ex.A3, Ex.A5, Ex.A6 or Ex.A.7. Without any reasons, the civil Court approximately fixed Rs.60/-, which is not sustainable. Therefore, the sale deed dated 23.02.1989/Ex.A3 is the highest exemplar and this Court determines the value of the acquired land at Rs.112.22/- per sq. ft. The land value to the extent of 76761.32 sq. ft. at the rate of Rs.112.22/- sq. ft., comes to Rs.86,14,155/-, 30% of solatium as per Section 22(A) of Land Acquisition Act, comes to Rs.25,84,246/- and as per Section 22(1)(A) of the act, additional market value for 570 days, comes to Rs.16,14,269/- and the total compensation comes to Rs.1,28,12,670/-, along with interest at the rate of 15% as per Section 34 of the Act from the date of

4(1) notification (ie.,) 17.05.1989.

S.No	Description	Calculation	Value in Rupees
1	Land value at the rate of Rs.112.22/- per sq. ft.	76761.32×112.22	8614155
2	30% of solatium	$8614155 \times (30/100)$	2584246
3	12% of additional market value for 570 days	$\{[8614155 \times (12/100)]/365\} \times 570$	1614269
	Total		12812670

12. Therefore, the appellants are directed to pay a sum of Rs.1,28,12,670/-, along with interest at the rate of 15% from 17.05.1989 to the respondent, after deducting the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this order, failing which the appellants shall appear before this Court on 07.06.2019.

13. Accordingly, the Second Appeal is dismissed and the Cross Objection is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

For reporting compliance or for appearance of the appellants, call the matter on 07.06.2019.

(NKKJ)

(AQJ)

04.01.2019

sai

To

1.The Sub Court, Dharmapuri.

2.The Special Tahsildar,
Adi Dravidar Welfare and Land Acquisition Officer,
Dharmapuri.

3.The District Collector,
Dharmapuri.



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