IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.Nos.234 of 2017
and
C.M.P.Nos.13123, 9440 of 2017 & CROS.OBJ.No.45 of 2018

The Special Tahsildar,
(Land Acquisition),
Ariyalur Cement Factory,
Ariyalur.
..Appellant/1st Respondent in Cross Objection 45/2018

Vs.

1.Appadurai ..Respondent/Cross Objector

2.Tamil Nadu Cements Corporation Ltd.,
Ariyalur Cement Works, Ariyalur
Rep.by its Unit Head. ..2nd Respondents/2nd Respondent in Cross Objection 45/2018

Appeal filed under Section 54 of the Land Acquisition Act, to set aside the judgement and decree passed in LAOP.No.112 of 2000 dated 22.03.2011 on the file of the Sub Court, Ariyalur.

Prayer in Cross Objection 45/2018: To enhance the Compensation fixed by the reference court in LAOP.No.112/2000 dated 22/03/2011 from Rs.1,25,000/-per acre and fix the compensation to the rate of Rs.1,50,000/-per acre as claimed in the reference along with proportionate accrued interest at the rate of 24% per annum from the date of notification.

For Appellant : Mr.J.Balagopal
Special Government Pleader(AS)

For Respondents : Mr.R.Gokulakrishnan for R1
Mr.A.Sivaji for R2.

O R D E R

The appeal suit is filed, challenging the judgement and decree passed by the Sub-Court, Ariyalur in L.A.O.P.No.112 of 2000 dated 22.03.2011.

2. The land acquisition proceedings were initiated by the Special Tahsildar in order to establish a Government cement factory for the public purposes. Acquisition of 300 acres were done in that particular area and the Land Acquisition Officer relying on three documents in respect of the sale of adjacent lands, fixed the compensation as Rs.300/- per cent. Those three sale deeds referred by the Land Acquisition Officer were pertains to the private sale between two private persons and the sale occurred without having any knowledge about the acquisition or the establishment of a Government cement factory in that locality. Thus, it is to be construed that the sale was executed without understanding the fact regarding the possible hike in cost in respect of the lands acquired. Subsequently, the lands were acquired and the cement factory is established and it is an admitted fact that the Government cement factory is situated adjacent to the Ramco Cements and under those circumstances, the LAOP Court relied on two sale deeds registered by the Management of Ramco Cements, wherein the sale consideration was Rs.1,500/- and Rs.1,363/- respectively. These two documents were relied on by the claimants. Ramco Cements situated adjacent to the cement factory, executed a sale in favour of the some private lands owners. Those two documents were marked by the claimants before the trial Court and accordingly Rs.1,500/- per cent in one document and Rs.1,363/- in another document is found. The Trial Court weighed the nature of the documents and the sale executed between these properties in respect of the documents marked as documents by both the parties. On one hand, three documents were relied upon by the Land Acquisition Officer and those three documents are in relation to private sale and occurred without having any knowledge about the development of Government cement factory or otherwise. As far as the other two documents are concerned, the adjacent cement factory Management namely Ramco Cements, executed a sale deed and purchased the portion of the land from Private persons and the Ramco Cements paid Rs.1,500/- per cent and Rs.1,363/- per cent respectively. Taking note of these documents, LAOP Court arrived a conclusion that Rs.1,200/- would be the just compensation for the claimants to be paid by the Government. The trial Court considered the nature of the documents as well as the locational advantages and also the character of the land, which was acquired. The trial Court in clear terms, arrived a conclusion that the compensation of

Rs.300/- per cent is very less and absolutely inadequate. Rs.300/- per cent is not only unacceptable. It is not a fair fixation by the Land Acquisition Officer. After arrived such a conclusion, the LAOP Court further proceeded in considering two documents filed by the claimants and three documents filed by the LAOP officer. While considering these documents, the trial Court made a finding that the three documents relied on by the Land Acquisition Officer, where the private transactions between the Private persons and those persons were unaware of the fact regarding the establishment of a Government Cement factory. Therefore, such a sale cannot be considered as a bench mark for the purpose of fixing a just compensation for the claimants. However, the genuinity of the transactions made by the Management of Ramco Cements can be relied upon as the Ramco Cements company is situated adjacent to the Government cement factory and the nature of the establishment is also one and the same. Thus, the trial Court had taken a decision to rely on these two documents filed by the claimants, one stating that Rs.1,500/- per cent is the sale consideration and another Rs.1,363/- per cent as sale consideration. Taking note of these two documents, the trial Court arrived a conclusion that Rs.1,200/- per cent, would be the just compensation.

3. The learned Special Government Pleader appearing on behalf of the appellant reiterated that there is no reason to consider those two documents as the distance between the acquired lands as well as the purchased lands by the Ramco Cements is far away and therefore, the enhancement of compensation is perverse. The Land Acquisition Officer produced three documents in respect of the sale took place in the adjacent lands and those documents are to be taken into consideration for the purpose of fixing the compensation.

4. The learned counsel appearing on behalf of the respondent claimant disputed the contentions by stating that various factors are considered by the LAOP Court and more specifically, the nature of the land is similar and the acquired lands are also to be utilized for the purpose of establishing a cement factory and the sale document produced by the claimants are also in relation to the sale of land to the adjacent cement factory. Thus, there is no infirmity as such and the trial Court rightly fixed the compensation of Rs.1,200/- per cent and consequently, the appeal suits are liable to be rejected.

5. Considering all these factors, this Court is of an opinion that it is an admitted fact that the lands were acquired for establishing a Government cement factory. Further it is admitted that adjacent to the acquired land, the Ramco Cements is also running a cement factory. Thus, both the acquired land as well as the Ramco Cements campus is situated adjacent and accordingly, the trial Court had taken the sale document submitted by the claimants, wherein they could able to establish that the Ramco Cements purchased the land, which is adjacent to the acquired land for Rs.1,500/- per cent and Rs.1,363/- per cent. With reference to the other three documents filed by the Land Acquisition Officer, it is brought to the Notice of this Court that the sale took place prior to the acquisition and the purchaser and the seller, who all are the private persons, did not aware of the fact regarding the establishment of a Government cement factory in that locality. Thus, the sale consideration in that document cannot be relied upon as the value of the land was correctly assessed in the case of Ramco Cements sale and under these circumstances, the Trial Court also relied upon those two sale deeds submitted by the claimants and arrived a conclusion that Rs.1,200/- per cent would be appropriate and a just compensation.

6. This Court is of the considered opinion that distance alone cannot be the criteria for the purpose of fixing a just compensation. Even in case, where the distance is less, the character and nature of the land may differ in some cases, where there is a distance. The nature of the land may be one and the same and under those circumstances, the value fixed for that land is to be fixed for the acquired land. The factors leading for fixation are to be the considered for granting compensation. The factors in respect of the present case is concerned, not only the distance, but the nature of the land and the purpose, for which, the land is acquired as well as the nature of the documents produced by the respective parties before the trial Court. The lands are acquired admittedly for the purpose of establishing a cement factory. Ramco Cements is situated adjacent to the acquired land. Ramco Cements just before the acquisition, purchased the land for a consideration of Rs.1,500/- per cent and Rs.1,363/- per cent. Further, it is brought to the notice of this Court that the sale of private persons was done without having the knowledge regarding establishing a Government Cement Factory in that locality. Taking note of all these factors and considering the nature of the land and for the purpose for which it is established, this Court is of an opinion that there is no perversity or infirmity in respect of the enhancement of compensation made by the LAOP

Court as against the compensation awarded by the Land Acquisition Officer.

7. The Courts have to adopt a liberal approach in respect of fixing a just compensation for the land losers, who all are contributing their land for public purposes. Undoubtedly, right of property being a constitutional right, the land acquisition is an exception for the purpose of acquiring the land to utilize the same for public purposes. Under these circumstances, the land losers are loosing their property right and fixation of just compensation is of paramount importance. At any cost, the claimant should not feel that they have not received an adequate compensation for their property. Under those circumstances, what would be the best value for the land, is to be ascertained carefully by the acquisition officer and as well as by the Courts, while dealing with the enhancement or fixation of compensation.

8. In the present case, admittedly, the acquired lands is utilized for the purpose of establishing a cement factory. Cement factory is a commercial venture. No doubt, the products are going on to be utilized for public purposes. Still it is a commercial venture and therefore, the Court should consider that the fixation of compensation should not be less than that of the one, which shall be adequate and with reference to the land value of the adjacent lands, which all are situated nearby to that locality.

9. This being the facts and circumstances to be considered for fixing of fair and just compensation, this Court has no hesitation in arriving a conclusion that the LAOP Court has not committed any error or perversity in respect of considering the two documents filed by the claimants, which all are nothing but the sale deeds executed by the Management of Ramco Cements for purchase of lands for the explanation of their cement factory. Thus, the guidelines adopted by the trial Court is in consonance with the established principles and taking note of the value fixed in these two documents, the trial Court fixed Rs.1,200/-, which is less than that of the consideration fixed in those two documents produced by the claimants. Under these circumstances, this Court is not inclined to interfere with the quantum of compensation enhanced by the trial Court and accordingly, the enhancement stands confirmed.

10. The learned Special Government Pleader made a submission that the LAOP Court has committed an error in not deducting the development charges, which is mandatory as per the statute. The Hon'ble Supreme Court of India, in several judgments, held that the development charges may be fixed up to 75%, considering the facts and circumstances as well as the purpose, for which, the lands are acquired. Thus, the deduction of development charges is mandatory and the quantum of deduction can be ascertained based on the nature of the land and for the purpose, for which, the lands are acquired.

11. In the present case, the lands are acquired for developing a cement factory, which is a commercial project and therefore, it cannot be construed as a non profitable industry. The Government may not yield more profit. However, it is to be considered that a cement factory is established and under these circumstances, it would be appropriate to fix 25% as development charges. This being the factum, the judgment and decree passed by the Sub Court, Ariyalur in the L.A.O.P.Nos.112 of 2000 dated 22.03.2011 is confirmed to the extent of enhancement of compensation as Rs.1,200/- per cent. However, the appellant is permitted to deduct the development charges of 25% proportionately with reference to the lands acquired from the respective claimants. It is made clear that in respect of all other aspects, the claimants are entitled to get the benefit as per the decree passed by the Trial Court. The appellants are directed to settle the entire compensation amount within a period of twelve weeks from the date of receipt of a copy of this judgment.

12. With this modification, the judgment and decree passed by the Sub Court, Ariyalur in L.A.O.P.No.112 of 2000 dated 22.03.2011 stands confirmed. Consequently, the first appeal stands partly-allowed. However, there shall be no order as to costs. Connected civil miscellaneous petitions are closed and Cross Objection No.45 of 2018 is also dismissed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

ssb

To

1.The Sub Judge,
Sub Court,
Ariyalur.

2.The Special Tahsildar (Land Acquisition)
Ariyalur Cement factory
Ariyalur

+1 cc to Mr.A.Sivaji Advocate sr105127
+1 cc to Mr.Gokulakrishnan advocate sr105187
+1 cc to Special Government Pleader sr105088

A.S.No.234 of 2017

svl(co)
aa05/10/2020