



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2019
(Reserved on 19.03.2019)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (NPD) (MD) Nos.1229 and 1742 of 2010
and
M.P (MD) Nos.1 and 2 of 2010

The Special Tahsildar (ADW)
Land Acquisition Officer,
Cheranmahadevi,
Ambasamudram Taluk,
Tirunelveli District.

... Petitioner in CRP.1229/10 &
Respondent in CRP.1742/10

vs.

Murugesan

...Respondent in CRP.1229/10 &
Petitioner in CRP.1742/10

Common Prayer: Petitions filed under Article 227 of the Constitution of India, challenging the judgment and decree passed in CMA.No.6 of 2009 dated 19.11.2009 on the file of the Subordinate Court, Ambasamudram, which was filed against Award No.26/95-96 dated 17.11.1995 passed by the Special Tahsildar, (ADW), Cheranmahadevi.

For Petitioner in CRP.1229/10 &
Respondent in CRP.1742/10

: Mr.J.Gunaseelan Muthiah
Additional Government Pleader

For Respondent in CRP.1229/10 &
Petitioner in CRP.1742/10

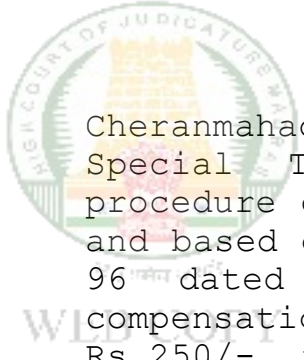
: Mr.T.M.Hariharan

COMMON ORDER

Challenging the judgment and decree dated 19.11.2009 in CMA.No.6 of 2009 on the file of the Sub Court, Ambasamudram, the Special Tahsildar (ADW), Cheranmahadevi, has filed CRP.1229/2010. Seeking enhancement of compensation, the owner of the land has filed CRP.No.1742/2010.

2.The brief facts of the case are as follows:

<https://hcservices.ecourts.gov.in/hcservices/>
The respondent is the owner of the lands in S.No.40/2 measuring 1 acre and 11 cents situate at Cherankovilpathu Village,



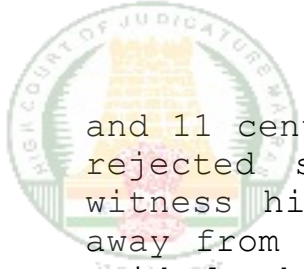
Cheranmahadevi, Ambasamudram Taluk, Tirunelveli District. The Special Tahsildar(ADW), Cheranmahadevi, after following the procedure contemplated under the Act, has acquired the above lands and based on the sale value of the data land, vide Award No.26/95-96 dated 17.11.1995, the Special Tahsildar(ADW) fixed the compensation at Rs.27,750/- for 1 acre and 11 cents, by fixing Rs.250/- per cent, along with 15% solatium of Rs.4,162/-, totalling Rs.31,912/-. Seeking enhancement of compensation, the owner of the land filed CMA.No.6 of 2009 on the file of the Sub Court, Ambasamudram. The Sub Court, after hearing the oral and documentary evidence on either side, awarded compensation at Rs.3,200/- per cent after deducting 20% development charges along with 15% solatium and also awarded 6% interest from the date of possession till the date of payment. Aggrieved by the enhanced compensation, the Special Tahsildar(ADW), Cheranmahadevi, has filed CRP.1229/2010 and seeking enhancement of compensation, the owner of the land has filed CRP.No.1742/2010.

3.Learned Additional Government Pleader appearing for the petitioner in CRP.1229/2010 would contend that the appellate court failed to note that the value of smaller extent of land which were sold as house sites, cannot be considered for fixing the value of larger extent and therefore, the judgment passed by the appellate court is liable to be set aside. He would further contend the appellate court ought to have deducted 50% towards developmental charges instead of 20%. In support of his contention, he relied on a judgment reported in (2003) 12 SCC 334.

4.Learned counsel for the petitioner in CRP.No.1742/2010 would contend that the appellate court having held that under Exs.P1 to P3, properties were sold upto Rs.5,990/- per cent, has miserably erred in fixing the compensation at Rs.4,000/- per cent without any basis. Further, the deduction of 20% towards development charges is excessive and against the judgment reported in 2009 (3) MLJ 180, Land Acquisition Officer vs. Kader Ussain. He also relied on a judgment reported in AIR 1998 SC 781, Land Acquisition Officer, Chittoor vs. L.Kamalamma.

5.Heard the learned counsel for the petitioner as well as the respondent.

6.Perusal of the record shows that the Special Tahsildar(ADW), has considered about 32 - sale deeds in Cherankovilpathu Village and has taken into account the sale deed dated 16.06.1995 vide Document No.211 in respect of S.No.187/2A1 measuring 1 acre and 6½ cents, as data land stating that it is similar to the acquired land in all respects. As per the sale deed dated 16.06.1995, the land in S.No.187/2A1 measuring 1 acre and 6½ cents were sold at Rs.25,000/- per acre) and accordingly, in the present case, the Special Tahsildar(ADW) has fixed Rs.27,750/- for 1 acre

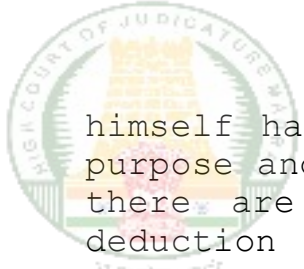


and 11 cents (Rs.25,000/- per acre). But, the appellate court has rejected sale deed dated 16.06.1995 holding that RW1-official witness himself admitted that the data land is situated 2 k.ms. away from the acquired lands and there is no proper access to the said land, whereas in the acquired land, there is a road and nearby it, there are houses with all basic facilities. It is common that the value of the land nearby the road would be high than the value of the land situated far away from the road. Therefore, the appellate court has rejected the data land taken by the Special Tahsildar(ADW) for fixing the market value of the acquired land. This Court does not find any reason to interfere with the said finding of the appellate court.

7.Before the appellate Court, the owner of the land has produced Exs.P1 to P3-sale deeds dated 20.09.1993, 07.08.1995, 29.12.1994 respectively, in respect of the lands in S.Nos.41, 43 and 44 and also produced Exs.P5 & P6-sale deeds dated 03.07.1996. As per Ex.P1, 4½ cents of land in Plot No.41 S.No.43 & 44 were sold at Rs.23,232/- (Rs.5,162/- per cent) on 20.09.1993. As per Ex.P2, 3 cents of land were sold at Rs.18,900/- (Rs.6,300/- per cent) on 29.12.1994 and as per Ex.P3, 5 cents of land in S.No.41/1 were sold at Rs.29,948/- (Rs.5,990/- per cent) on 29.12.1994. The Special Tahsildar(ADW) has produced Ex.R2-layout map in respect of S.Nos.42, 43 and 44 and Ex.R3-Sale Statistics Register in respect of the above survey numbers. As per item No.17 in Ex.R3, 4 cents of land in S.No.41/1 was sold for Rs.8,000/- (Rs.2,000/- per cent) on 18.12.1993.

8.The appellate court considering the oral and documentary evidence, rejected Exs.P4 & P5 as it were subsequent to the acquisition proceedings and the Court relying upon the sale deed in Item No.17 in Ex.R3 and Exs.P1 to P3, held that the market value of the acquired lands was upto Rs.5,990/-, however holding that under Ex.P3, some portion was purchased for pathway with the higher price, the appellate court has fixed the market value of the acquired lands at Rs.4,000/- per cent. In my considered opinion, the approach adopted by the appellate court is erroneous as the market value per cent was Rs.5,999/- which is not inclusive of value of the pathway and there is no separate market value for the pathway. Therefore, this Court is inclined to fix the market value of the acquired land at Rs.5,999/- per cent.

9.As stated earlier, there is a road to reach the acquired lands and there are residential houses nearby the acquired lands. The appellate court finding that there is no such facility nearby the data land and the acquired land has locational advantage, has deducted 20% towards development charges. Though the Special Tahsildar(ADW) has contended that the appellate court ought to have deducted 50% towards development charges, in the Award No.26/95-96 dated 17.11.1995, the Special Tahsildar, (ADW),



himself has stated that the acquired land is fit for residential purpose and has road facilities and adjacent to the acquired land, there are houses with all basic facilities. Therefore, the deduction of 20% towards development charges by the appellate court cannot be faulted.

10. In (2003) 12 SCC 334 relied on by the Special Tahsildar (ADW), the Hon'ble Supreme Court has held that generally, where large area acquired, rates at which smaller plots are sold cannot be a useful guide, but the same cannot be an absolute proposition since where no other material is available for determining the value of such lands, deductions should be made in respect of development expenses, interest on the outlays for the period of determent of realisation of the price, profits on venture, etc. In this case, both sides have not produced the sale statistics of larger extent and the larger extent relied by the Special Tahsildar (ADW) found to be non comparable as it lacks facilities like the acquired land. Therefore, after comparison of various sale deeds of smaller extent relied by both sides, Ex.P3 has been taken into account for fixing the market value of the acquired land and having regard to the developmental activities available surrounding the acquired land, 20% has been rightly deducted towards development charges and therefore, the above decision is not applicable to the present case.

11. Accordingly, the market value of the acquired land is fixed at Rs.5,999/- per cent. After deducting 20% towards development charges and addition of 15% solatium, the compensation for the acquired land is arrived at Rs.6,12,592/-.

12. In the result, C.R.P(MD)No.1229 of 2010 is dismissed and C.R.P(MD)No.1742 of 2010 is allowed. No costs. The interim order already granted is vacated. Consequently, connected miscellaneous petitions are closed.

Sd/-

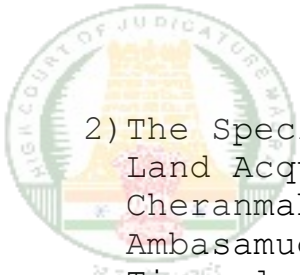
Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

To

1) The Subordinate Judge,
Tirunelveli District.



2) The Special Tahsildar (ADW)
Land Acquisition Officer,
Cheranmahadevi,
Ambasamudram Taluk,
Tirunelveli District.

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+2 CCS to Mr. T.M. HARIHARAN, Advocate (SR-78555, 78556[F] dated
30/07/2019)

+1 CC to SPECIAL GOVERNMENT PLEADER (SR-78853[F] dated
31/07/2019)

C.R.P (NPD) (MD) Nos. 1229
and 1742 of 2010
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