BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

S.A(MD)No.20 of 2019
and
C.M.P(MD)No.1304 of 2019

The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare,
Srivilliputhur,
Virudhunagar District. ... Appellant/Respondent/ Returning Officer

vs.

Rajamani ... Respondent/Appellant/Claimant

Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act No.31 of 1978 read with Section 100 of the Civil Procedure Code, against the judgment and decree made in CMA.No.17 of 2000, dated 22.01.2018, on the file of the Sub Court, Srivilliputhur, reversing the order passed in Award No.8 of 1999-2000, dated 14.12.1999, by the Special Tahsildar, Land Acquisition Officer, Adi Dravidar Welfare, Srivilliputhur.

For Appellant : Mr.J.Gunaseelan Muthiah
Additional Government Pleader

JUDGMENT

Challenging the judgment and decree, dated 22.01.2018, passed in C.M.A.No.17 of 2000, by the Sub Court, Srivilliputhur, the appellant has filed this appeal.

2.The brief facts of the case are as follows:
The respondent is the owner of the lands in S.No.430/1, 3, 4 measuring 0.56.0 hectares situated at Sundarapandiam Village, Srivilliputhur Taluk, Virudhunagar District. The appellant/ the Special Tahsildar (ADW), Srivilliputhur, after following the procedure contemplated under the Act, has acquired the lands of the respondent and based on the sale value of the data land, vide Award No.8 of 1999-2000 dated 14.12.1999, the appellant fixed the compensation at Rs.45,564/- for 0.56.0 hectares by fixing Rs.81,364/- per hectare, along with 15% solatium of Rs.6,835/-, totalling Rs.52,399/-. Seeking enhancement of compensation, the respondent filed CMA.No.17 of 2000 on the file of the Sub Court,

Srivilliputhur. The Sub Court, after hearing the oral and documentary evidence on either side, awarded compensation of Rs.3,600/- per cent along with 15% solatium and also awarded 6% interest from the date of 4(1) notification till the date of payment. Aggrieved by the same, the appellant / the Special Tahsildar(ADW), Srivilliputhur, has filed this appeal.

3. Learned Additional Government Pleader appearing for the appellant would contend that the land mentioned in Ex.C2 is not similar to the land acquired, but the Court below has fixed higher compensation by erroneously relying on Ex.C2 and therefore, the judgment passed by the Court below is liable to be set aside. On the other hand, he would submit that as per the decision in AIR 1998 SC 781, the Tribunal ought to have deducted 40% towards developmental charges, but the Court below has deducted only 30% towards developmental charges.

4. Heard the learned Additional Government Pleader appearing for the appellant and perused the materials available on record.

5. A perusal of the record shows that the appellant has considered about 53 - sale deeds and rejected item Nos.1 to 26, 28 to 53 holding that the lands mentioned in the said sale deeds situated 2 to 4 furlongs away from the acquired land. The appellant has taken into account item No.27 of the data land stating that it is similar to the acquired land in all respects. As per the item No.27, the land in S.No.438/3 to an extent of 0.25.5 were sold on 13.04.1998 at Rs.32,941/- per acre (Rs.81,364/- per hectare) and accordingly, the appellant fixed Rs.81,364/- per hectare. But, the Court below has rejected sale deed mentioned in Item No.27 holding that RW1 himself admitted that the land mentioned in item No.27 is situated 1/4 k.m. away from the road and there is no proper access to the said land, whereas on the southern side of the acquired land, there is a road and nearby the land acquired, there are Adi-dravidar houses with all basic facilities. It is common knowledge that if a land is situate on the side of a road, that land value would be more than the value of the land situated far away from the road. Therefore, the Court below has rejected the data land taken by the appellant for fixing the compensation. This Court does not find any reason to interfere with the said finding of the Court below.

6. Before the Court below, the respondent herein has produced Ex.C1 - sale deed dated 16.04.2008 and Ex.C2 - sale deed, dated 27.05.1996. As Ex.C1 - sale deed relates to the year 2008, the Court below has rightly not taken into account the same. As per Ex.C2, 3 cents of land was sold at Rs.5,400/- per cent. According to the respondent/claimant, there is no road nearby the land mentioned in Ex.C2 and it is 1/2 k.m. away from the acquired land, whereas there are houses and basic facilities nearby the acquired land and therefore, Rs.15,000/- per cent may be fixed as compensation. According to the appellant, as per Ex.C2 only 3 cents have been sold, whereas the acquired land is 1.1/4 acre and therefore, the value mentioned in Ex.C2 cannot be applied for the

acquired land.

7. As stated earlier, there is a road on the southern side of the acquired land and nearby the land acquired, there are houses and other facilities. The Court below has found that the land mentioned in Ex.C2 is not surrounded by any road and the acquired land has locational advantage rather than the land mentioned in Ex.C2. Though the Court below has took a decision that the market value of the acquired lands should be determined based on Ex.C2, considering the fact that a smaller extent was sold under Ex.C2, the Court below has deducted 25% of the market value of the land mentioned in Ex.C2. As per Ex.C2, the land mentioned therein was sold for Rs.5,400/- per cent. After deducting 25%, the Court below fixed the amount as Rs.4,050/- per cent. Admittedly, in this case, 4(1) notification was issued on 06.03.1999. But, the land mentioned in Ex.C2 was sold on 27.05.1996. Considering the developments nearby the acquired land, the Court below held that it would be reasonable to add 10% per year on the market value of the land. Accordingly, from the date of Ex.C2 ie., 27.05.1996 till the date of acquisition proceedings dated 06.03.1999, for a period of 2 years and 10 months, the Court below fixed 27% hike on the market value and fixed the market value of the acquired lands at Rs.5,144/- (Rs.4,050 + 27%). After deducting 30% towards development charges, the Court below arrived at the market value at Rs.3,600/- per cent and awarded the same along with 15% solatium and also awarded 6% interest from the date of 4(1) notification till the date of payment. The Court below has rightly enhanced the award amount by properly appreciating and considering the submission of both the parties. This Court does not find any reason to interfere with the said finding of the Court below.

8. It is contended by the learned Additional Government Pleader appearing for the appellant that the sale deed relating to smaller extent of land cannot be relied upon for determination of compensation for larger extent of land. But, in the decision in **Land Acquisition Officer - Revenue Divisional Officer, Chittor vs. L.Kamalamma dead by LRs and others**, reported in **(1998) 2 SCC 385**, the Hon'ble Supreme Court has held that when the sale transactions relating to smaller extent of lands are produced, after giving necessary deductions, the Court can take into consideration of those documents. Here, in this case, considering the locational advantage of the acquired land and the land mentioned in Ex.C2, the Court below has fixed the market value of the acquired land by deducting 25% of the amount from the market value of Ex.C2 ie., from Rs. 5,400/- and thereafter, deducted 30% towards development charges.

9. In a recent decision in **Kapil Mehra Vs. Union of India (UOI)** reported in **(2015) 2 SCC 262**, the Hon'ble Supreme Court has held that while determining the market value of the acquired land, normally one third deduction i.e. 331/3% towards development charges is allowed. Depending on nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed.

10. Here, in this case, as stated earlier, the Court below has already deducted 30% of the amount towards developmental charges, considering the locational advantage of the acquired land and therefore, the submission of the appellant cannot be sustained. There is no question of law especially substantial question of law arising for consideration. Viewing from any angle, the judgment passed by the Court below is liable to be confirmed.

11. In view of the above, this Second Appeal is dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To

1)The Subordinate Judge,
Srivilliputhur.

2)The Special Tahsildar,
Land Acquisition Officer,
Adi Dravidar Welfare,
Srivilliputhur.

S.A(MD)No.20 of 2019

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