BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.03.2019

CORAM
THE HONOURABLE MRS. JUSTICE NISHA BANU

SECOND APPEAL (MD) No.50 of 2019
and
C.M.P.(MD).No.1909 of 2019

The Special Tahsildar,
(Adi Dravidar Welfare),
Sivagangai Taluk,
Sivagangai District,
Sivagangai. ... Appellant / Respondent

Vs.

Mohamed Kasim ... Respondent / Appellant

PRAYER: Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 r/w Section 100 of C.P.C., against the judgment and decree, dated 04.10.2016, passed in C.M.A.(L.A.).No.3 of 1999 by the Subordinate Court, Sivagangai.

For appellant ... Mr.J.Gunaseelan Muthaiah, Additional Government Pleader

For respondent ... Mr.R.Suriyanarayanan

JUDGMENT

This appeal arises out of a land acquisition proceedings and the same is preferred by the Government.

2. Pursuant to the 4(1) notification, an extent of 1.80.5 hectares in Survey Nos.45/1A1/ 45/1A2/ and 45/6A, Somanathamangalam, Sivagangai District, was sought to be acquired by the appellant for the purpose of giving free house site patta to the houseless adi-dravidars. The respondent herein was the owner of the property measuring an extent of 1.29.0 hectares in S.No.45/6A. The award was passed on 09.03.1999. The appellant / Land Acquisition Officer, after assessing the data sale deeds, had fixed Rs.13,592/- per acre. Aggrieved by the same, C.M.A.(L.A.) No.3 of 1999 was filed by the respondent on the file of the

Subordinate Court, Sivagangai. In the said appeal, on the side of the respondent/claimant, the respondent himself was examined as PW1 and one Pakkeermusthan was examined as PW2 and Exs.P1 to P3 were marked. On the side of the Court, Exs.C1 to C3 were marked. No oral and documentary evidence have been marked on the side of the appellant/claimant. After assessing the oral and documentary evidence, the Court below had fixed Rs.3,500/- per cent ie., Rs.3,50,000/- per acre. Aggrieved by the same, the above appeal has been filed by the Government.

3. The learned Additional Government Pleader appearing for the appellant submitted that relying upon the sale of smaller extent of land in Exs.A1 and A2, the Court below had erroneously fixed the market value of the land measuring an extent of 1.29.0 hectares. He would further submit that the land acquired is a punja land, but the Court below has not deducted any sum towards developmental charges. Thus, he prayed to reduce the compensation awarded by the Court below.

4. The learned counsel appearing for the respondent/claimant would submit that the total land of the respondent/claimant acquired by the appellant was 3.19 acres. The appellant had fixed only a sum of Rs.13,592/- per acre ie., Rs.136/- per cent by relying upon the data sale deed No.10, which was executed about three kilometer away from the land acquired. The Court below, after analysing the data sale deeds - Exs.A1 and A2 and also the Advocate Commissioner's report and plan, has fixed only a lesser compensation of Rs.3,500/- and therefore, no developmental charges have been deducted. Thus, he prayed to dismiss the appeal.

5. Heard the learned counsel for both sides and perused the records.

6. Admittedly, the respondent/claimant had not appeared before the appellant/Special Tahsildar, even after receipt of notice. The appellant/ Special Tahsildar had taken into consideration about 20 sale deeds registered during the period 30.12.1997 to 29.12.1998. Out of 20 data sale deeds, the appellant had not taken into consideration the sale deed Nos.1, 4, 5, 6, 7, 8, 11, 13, 15 and 19 stating that the potential of lands mentioned in the said sale deeds and the land acquired differs; the sale deed Nos.9, 14 and 16 stating that the lands are situated one kilometer away from the land acquired; and the sale deed Nos.17, 18 and 20 stating that the lands mentioned in the said sale deeds were sold in per square foot range at the higher rate. The appellant had taken into account only the sale deed No.10 stating that the potential of the land mentioned in the said sale deed and land acquired are one and the same, thereby fixed a sum of Rs.13,592/- per acre.

7. The Court below, after analysing revenue records, has held that the sale deed No.10 is situated three kilometer away from the

land acquired and the Court below has further held that on the eastern side of the land acquired, there is a road connecting Kalayarkovil and Natarajapuram. Based on the report of the Advocate Commissioner, the Court has held that there are houses nearer to the land acquired and that some of the lands nearer to the land acquired were plotted out. It is not in dispute that the lands in data sale deed Nos.17, 18 and 20 are situated nearer to the land acquired, rather than the data sale deed No.10. It is also equally not in dispute that the potential of the land cannot be the sole criteria for fixing the market value of the land. In data sale deed Nos.17 and 20, a smaller extent of lands were sold at Rs.1,700/- per cent and Rs.4,140/- per cent respectively. The land in Ex.A1 - sale deed, dated 05.01.1998, is situated within 2 kilometer radius of the acquired land and as per the said sale deed, about 15 cents of land were sold at Rs.7,633/- per cent. Ex.A2 and the data sale deed No.20 are one and the same, and as stated earlier, it has been sold at Rs.4140/- per cent. After considering the above, the Court below has fixed only a lesser amount of Rs.3,500/- per cent.

8. Mainly relying upon the decision of the Hon'ble Supreme Court in AIR 1995 (5) SCC 426, the learned Additional Government Pleader appearing for the appellant submitted 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 is produced, after giving necessary deductions towards development charges, the Court can take into consideration of those documents. In that case, the Hon'ble Supreme Court has given deductions at 40%.

9. The Hon'ble Supreme Court in the decision in **Atma Singh (dead) through LRs and others Vs. State of Haryana and others**, reported in **2008 (2) SCC 568** has held that if there is no other documentary evidence, except the exempler document produced by the claimants, the Court can rely upon such documents, of course after giving necessary deductions. In such event, there cannot be an embargo for relying upon the documents in respect of smaller extent of lands.

10. In similar circumstances, a Division Bench of this Court in the decision in **Special Tahsildar, Neighbourhood Scheme, Erode, Erode District Vs. Jaganathan Gounder and another**, reported in **2009 (5) MLJ 2**, after referring to various decisions of the Hon'ble Supreme Court as well as this Court, held that if the value of the acquired land has been arrived at without giving any development charges, 40% of deduction on the value of the acquired

lands can be given. Further, if the value has been arrived at based on the smaller extent of lands, a further deduction of 20% can be given, thus, totalling 60% deduction can be given.

11. In the decision in **Kapil Mehra Vs. Union of India, 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 ie., 33-1/3% 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.

12. From the above decisions, it is clear that even the sale deed relating to smaller extent of lands can be taken into consideration for fixing value of the land acquired, after giving reasonable deductions towards developmental charges and towards smaller size of plot taken as the basis to arrive at the market value for the larger extent. As there is no standard deduction fixed, according to the locality and suitability of the land, the percentage of deductions can be reasonably fixed and deducted.

13. Here, in this case, it is a punja land and hence, necessary deduction has to be made for developmental charge. But, the appellant himself has not deducted any sum towards developmental charges while passing the award. Even as per the revenue records, there is a road on the eastern side of the land acquired. The data sale deed Nos.17, 18 and 20 disclose that the lands nearer to the land acquired were plotted out and sold even before 4(1) notification. Considering the above and considering the fact that the land nearer to the land acquired was sold upto Rs.7,633/- per cent and the Court below has fixed only lesser amount ie., Rs.3,500/- per cent as compensation, this Court is of the view that no development charge needs to be deducted in this case. Though it is contended that as the value has been arrived at based on the smaller extent of land, a further sum may be deducted for the same, this Court is not inclined to do so in view of the fact that the Court below has fixed only lesser amount as compensation and the respondent/claimant also could have plotted out his larger extent of land and sold the same at the higher rate.

14. In view of the above, no question of law, especially substantial question of law arises for consideration and the judgment passed by the Court below does not warrant any interference of this Court. Accordingly, this second appeal filed by the Government is liable to be dismissed as devoid of any merits.

15. In the result, this second appeal is dismissed without costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Subordinate Court, Sivagangai

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC to The Special Government Pleader SR.No.54616

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