



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 16.07.2019

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CORAM :

THE HONOURABLE MR.JUSTICE **S . S . SUNDAR**

Second Appeal (MD) No.412 of 2015

M.Khaja Mohideen : Appellant/Claimant/Petitioner

-Vs-

The Special Tahsildar,
Adi-Dravidar Welfare (Land Acquisition),
Periyakulam,
Theni District. : Respondent/Respondent/Land
Acquisition Officer

Prayer: Second Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 r/w. Section 100 of the Code of the Civil Procedure, 1908, praying to allow the Second Appeal and set aside the judgment and decree dated 21.02.2007 made in L.A.O.P.No.7 of 1994 on the file of Additional District Court, (Fast Track Court No.4), Periyakulam and enhance the compensation as prayed for.

For Appellant : Mr.V.George Raja
for M/s.Ajmal Associates

For Respondent : Mr.R.Sethuraman
Special Government Pleader

JUDGMENT

This Second Appeal is preferred as against the judgment and decree of the Additional District Court (Fast Track Court No.4), Periyakulam, by the claimant in L.A.O.P.No.7 of 1994.

2.The brief facts that are necessary for the disposal of the Second Appeal are as follows:

2.1.The appellant's land measuring an extent of 1.36.0 hectares of dry land in Survey No.75/2 in E.Pudukkottai Village in Periyakulam Taluk, was acquired for providing house sites to Adi-
<https://hcservices.mca.gov.in/hcservices/>



Dravidars under the Central Act namely the Land Acquisition Act, 1884. The notification under Section 4(1) of the Act was issued on 29.01.1994. The substance of 4(1) notification was published in and around the locality on 29.01.1994. Though the notification under Section 4(1) of the Act was published on the gazette on 26.07.1993, the Land Acquisition Officer passed an award on 15.03.1994 by fixing compensation for the acquired land at the rate of Rs.151/- per cent. The Land Acquisition Officer though referred to several documents of sale pertaining to the period upto 3 years prior to 4(1) notification, discarded almost all documents on the ground that the sale exemplars are in respect of small pieces of land or on the ground that the land is located far away from the acquired land. Aggrieved by the award, the appellant sought for reference under Section 18 of the Act. Accordingly, the matter was referred to the Additional District Court (Fast Track Court No.4), Periyakulam for fixing just compensation and the land Acquisition Tribunal entertained the reference in L.A.O.P.No.7 of 1994 and fixed the compensation at the rate of Rs.1,000/- per cent. The claimant relied upon Ex.C1 to C5. All the exhibits viz., Ex.C1 to C4 were sale deeds registered in the year 1992 whereas Ex.C5 is a document that was registered in 1993. As per Ex.C1 an extent of 9 cents of land were sold for the price of Rs.11,760/- in respect of a land in Survey No.185/2. The land in survey No.34/2 and 35/1 and 2, it was sold for a price of Rs.7,200/- per cent as per document marked as Ex.C2, dated 05.03.1992. However, it is stated that the distance between the acquired land and the land covered under the sale deed under Ex.C1 dated 17.02.1992 is about $\frac{1}{2}$ a Kilometere. Ex.C2, dated 05.03.1992 is a document pertaining to the sale in respect of the land measuring an extent of 3 cents in Survey No.34/2 and 35/1 and 2. Three cents of land was sold for Rs.7,200/- under Ex.C2. It is stated that the distance between the land acquired and the land covered under Ex.C2 is only about 200 ft. The claimants filed Ex.C3, dated 18.07.1992 which is a sale deed in respect of a land in Survey No.24/2. As per Ex.C3 an extent of 3 cents of land was sold for a sum of Rs.6,540/-. Ex.C4 is dated 01.02.1992 and under this document, an extent of 872 sq. ft. of land in Survey No.11 and 16/2 have been sold for a sum of Rs.2,834/-. Another document relied on by the claimant is Ex.C5 dated 19.01.1993. As per Ex.C5 an extent of 871 square feet of land equivalent to 2 cents have been sold for a price of Rs.6,104/-. All the sale deeds are pertaining to the lands very near to the acquired land. The lower Court fixed Rs.1,000/- per cent on the basis of the price for which the land was sold under Exs.C1 to C5. It is to be seen that in all the documents under Ex.C1 to C5, the value of the land is between Rs.1,500/- to Rs.3,000/-. Without assigning any reason, the compensation was fixed at Rs.1,000/- per cent by approximisation without even adopting the average sale price.



3.The learned Counsel appearing for the claimant submitted that the land conveyed under Ex.C2 shows the price at Rs.2,400/- per cent and it lies within 200 feet from the acquired land. Ex.C5 is another document that would show that the cost of adjoining land in Survey No.39 is Rs.3,000/- per cent. It is admitted before the lower Court that at the time of acquiring the land belonging to the claimant, harijan colony was formed in the adjacent locality by acquiring lands for the said purpose. From the documents, it is seen that the lands in the nearby vicinity are sold as house plots and therefore, the acquired lands are capable of being used as residential plots. It can be inferred that the acquired land is potential and hence, all the sale deeds relied upon by the claimants show their value above Rs.2,000/- per cent. It is also stated that the acquired land is adjacent to the Kumbakkarai - Periyakulam main road. Considering the document Ex.C2 and C5 and the position that there can be a small enhancement of rate due to the allowance that is permissible at the rate of 12% per annum towards appreciation of value if the sale exemplar is anterior in point of time i.e., prior to the 4(1) notification, this Court fix the market rate at the rate of Rs.2,800/- per cent. Since the sale exemplars are in respect of smaller pieces of lands and the lands have been sold as house site plots, a deduction of 40% will be appropriate. Hence, this Court fix the market value of the acquired land at the rate of Rs.1,680/- per cent. The award of the Land Acquisition Tribunal in L.A.O.P.No.7 of 1994 is modified by enhancing the market value from Rs.1,000/- to Rs.1,680/- per cent. The claimants are entitled to other statutory benefits in accordance with the provisions of the Land Acquisition Act.

4.In the result, this Second Appeal is allowed. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Special Tahsildar,
Adi-Dravidar Welfare (Land Acquisition),
Periyakulam,
Theni District.

2.The Additional District Court, (Fast Track Court No.4),
Periyakulam,
Theni District.

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3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2)

+2 CC to M/s.AJMAL ASSOCIATES, Advocate SR-75764 & 75740.
+1 CC to SPL GP SR-75744.

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