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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2020

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

A.S. No.340 of 2010

Revenue Divisional Officer,
Cuddalore.

... Appellant/Referring Officer

Versus

1.Devadas

... 1st Respondent/claimant

2.The Director and Chairman,
T.N.H.B. Scheme,
Nandanam, Madras.

3.The Executive Engineer,
T.N.H.B. Scheme,
Ashok Nagar, Madras.

... Respondents 2 & 3 / Respondents 2 & 3

Appeal suit filed under Section 54 of Land Acquisition Act against the judgment and decree of the Subordinate Judge of Cuddalore in L.A.O.P. No.25/90 dated the 25th day of September 1991.

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

For Respondent -1 : Mr. T.S.Baskaran

JUDGMENT

The Revenue Divisional Officer / Land Acquisition Officer is the appellant in this appeal challenging the judgment and Decree of the learned Subordinate Judge, Cuddalore in L.A.O.P. No.25/90 dated 25.09.1991.

2. The lands belonged to the first respondent / claimant and several others, to an extent of 17 Acres and 22,541 Sq.ft. in Vilvarayanatham Village at Cuddalore Taluk were acquired for the purpose of Neighbourhood Scheme formed by TNHB by notification under Section 4(1) of the Land Acquisition Act, published in Tamil Nadu Government Gazette dated 17.08.1983. All the lands are situated in Villvarayanatham Village in Cuddalore Taluk. Though the lands are comprised in different survey



numbers, the Land Acquisition Officer fixed the market value at Rs.3/- per Sq.ft., based on the sale deed dated 13.01.1989 which is in respect of a land in T.S. No.2222 in the same village.

3. Aggrieved by the award of the Land Acquisition Officer, fixing the market value at Rs.3/- per Sq. ft., for the lands acquired, the first respondent claimant has filed a petition under Section 18 of the Land Acquisition Act for determination of just compensation by Civil Court. Accordingly, the matter was referred to the Sub-Court, Cuddalore, along with several other petitions. The reference at the instance of first respondent with regard to his lands was entertained by the learned Sub-Judge, Cuddalore in L.A.O.P. No.25 of 1990. The reference Court, after considering several documents, disposed of L.A.O.P. No.25 of 1990 along with several cases, after holding that the market value of the land acquired should be fixed at Rs.15/- per Sq.ft.

4. The common order passed in several L.A.O.P's. was the subject matter of batch of appeals before this Court in A.S. No.98,311 of 1994, A.S. No.564 of 1997 and A.S. No.390 of 2000. It is to be noted that there was delay in filing some of the appeals preferred by the Land Acquisition Officer and the petition filed to condone the delay in preferring those appeals were dismissed. As a result, the compensation fixed by the Reference Court in some of the L.A.O.P's has become final. In other words, the award of the Land Acquisition Tribunal by reference under Section 18 of the Land Acquisition Act (hereinafter referred as 'Act') fixing compensation at the rate of Rs.15/- per Sq.ft. has attained finality in several cases. The Division Bench of this Court in its judgment dated 30.04.2003, referred to the fact that in several other matters, in respect of the same notification issued under Section 4(1) of the Act, some of the appeals were closed by dismissing the petition to condone the delay in preferring the appeals within time. In paragraph 5 of the Division Bench judgment dated 30.04.2003, it has been observed as follows:

"As against the judgment and award in the said 15 L.A.O.P's., appeals were preferred by the Land Acquisition Officer, Eight of the appeals were preferred with inordinate delay and the applications taken out in this respect to condone the delay in preferring the appeals as against L.A.O.P's 19,20,21,30,31,22,23,25,26,27,28,29 and 18 of 1990 were already dismissed. In respect of the said 8 L.A.O.P's., the judgment and respective award passed by the learned Subordinate Judge of Cuddalore has reached finality. The above appeals have been preferred by the Land Acquisition Officer challenging the enhancement in the market value as fixed by the learned Subordinate Judge at Rs.15/- per Sq.ft., in



three appeals and Rs.11/- per Sq.ft., in L.A.O.P. No.32 of 1990."

5. Learned counsel for the respondents submitted that the Government has not preferred the appeals as against the award of the Land Acquisition Tribunal in several L.A.O.P's. and that some of the appeals were presented with the delay and the delay petitions were dismissed. It was further submitted that judgment and decree of the Subordinate Judge, Cuddalore, in two of the L.A.O.P's preferred by the first respondent's brothers have become final as the petitions to condone the delay as against those judgments and decrees were dismissed. It is further submitted by the learned counsel for the respondent that the order passed by the learned Subordinate Judge in respect of the lands owned by the respondent's brothers will operate as res judicata and therefore, the present appeal is also liable to be dismissed. In other words, the logical submission of the learned counsel for the respondent is that the Government cannot fix two different market value for the same piece of land shared by the first respondent and his brothers. When two of the appeals have been dismissed confirming the judgment and decree of the reference Court, it is contented that the above appeal is also liable to be dismissed.

6. The Land Acquisition Act contemplates a statutory remedy for the aggrieved land owners to get just compensation by seeking reference to the Civil Court under Section 18 of the Act. Even if a person does not seek reference, it is open to the claimant land owner to seek redetermination of compensation under Section 28(A) of the Act.

7. The Court has to assess the market value as on the date of notification issued under Section 4(1) of the Act and while deciding the petition under reference each parcel of land is different and the market value need not be the same for two plots even though they are contiguous, adjacent as the determination of market value will be based on several factors. Secondly, the parties are not same when they seek reference under Section 18 of the Act. Each individual has to file a petition seeking just compensation under Section 18 of the Act. Without filing a petition under Section 18 of the Act, a person is not entitled to get the compensation that is awarded in respect of other lands owned by other persons who have filed petition seeking reference under Section 18 of the Act. To apply the principle of res judicata, there should be identity of parties and identity of subject matter. Though to some extent, the contention of the respondent that the compensation in this case should be uniform in all cases and the sale exemplar adopted by the reference Court are common in all cases indicating that there was identity in relation to the subject

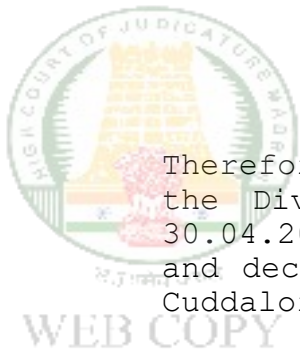


matter, there is no scope for extending the principle of res judicata as the parties are different. When connected appeals are disposed of on merits, the value adopted can be followed in subsequent appeals. The fact that no further appeal is preferred leads to the presumption that the appellant has no serious grievance against quantum.

8. Though this Court is not inclined to accept the argument of learned counsel for the first respondent to apply res judicata, this Court has reasons to dismiss the appeal on other grounds. The Land Acquisition proceedings were initiated way back in the year 1983. The award was passed in the year 1988. The reference Court decided the issue with regard to just compensation by judgment and decree dated 25.09.1991. The appeal was preferred by the Land Acquisition Officer in this case only in the year 2010. Taking advantage of the disposal of the connected appeals in the year 2003, the Land Acquisition Officer appears to have thought of giving life to the rest of the cases. As submitted earlier by the learned counsel for the respondent, several appeals have been preferred as against the common order way back in the year 1984, 1997 and 2000. Those appeals have been disposed of by a common judgment dated 30.04.2003, re-fixing or reducing the market value from Rs.15/- to Rs.6/-. However, the market value fixed by the reference Court in many other cases have become final as the petition to condone the delay in filing appeals were dismissed in relation to several other cases. Having regard to the long delay of nearly 19 years in numbering the appeal, reducing the compensation after this length of time may not be appropriate as the first respondent will be put to hardship and other difficulties in view of the long delay.

9. It is to be noted that Division Bench of this Court while disposing of batch of cases dated 30.04.2003, has noted the factual position about the dismissal of several applications filed by the Land Acquisition Officer in respect of connected cases preferred to condone the delay in filing the appeals as against the order in L.A.O.P's. After taking note of the proceedings that have become final as against connected L.A.O.P's, the Division Bench has proceeded to dispose of the appeal in A.S. Nos.98, 311 of 1994 on merits. Hence, the judgment of the division bench is against the counsel appearing for the respondent. However, this Court, in view of the inordinate delay in filing and numbering this appeal, is not inclined to reduce the compensation.

10. In view of the steep rise in market price in the last two decades, by the long delay in preferring the appeal and getting disposal after this length of time, the claimant first respondent is put to a great prejudice due to several factors.



Therefore, this Court is not inclined to follow the judgment of the Division Bench of this Court in batch of appeals dated 30.04.2003. As a result, the first appeal fails and the judgment and decree in L.A.O.P. No.25 of 1990, on the file of Sub Court, Cuddalore, dated 25.09.1991 is confirmed.

Accordingly, the Appeal Suit is dismissed. No costs.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Bkn

To

1. The Sub Court, Cuddalore.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.T.S.Baskaran, Advocate, S.R.No.38370
+1cc to the Special Government Pleader(AS), S.R.No. 38746

A.S. No.340 of 2010

MP(CO)
GN(27/08/2021)