IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2020

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

A.S.No.518,689,690,519,521,520,719,725,715,718,716 & 717 of 2010
and A.S. Nos.524, 525 & 526 of 2012 & 838 of 2009

1.Union of India
rep. By Secretary to Government (Revenue),
Pondicherry.

2.The Deputy Collector (Rev) – cum – Land Acquisition Officer,
Karaikal. ...Appellants in
A.S.No.518,689,690,519,521,520,
719,725,715,718,716, 717/2010

Vs.

S. Vengadachalapathy ..Respondents in A.S.No.524/12th Appellant

1.S. Umapathy
2.S. Venkatachalapathy
..Respondents in A.S.525/2012

1.S. Umapathy
2.S. Venkatachalapathy
3.Pasupathy ...Respondents in A.S.526/2012

S. Umapathy ...Respondent in A.S.838/2009

Gopalakrishnan ..Respondent/Petitioner in A.S.518/2010

Alamelumangai ..Respondent/Petitioner in A.S.689/2010

A. Ahamadu Natchial ..Respondent/Petitioner in A.S.690/2010

Sagunathalan ..Respondent/Petitioner in A.S.519/2010

Neelavathi ..Respondent/Petitioner in A.S.521/2010

Veerapillai ..Respondent/Petitioner in A.S.520/2010

Deenadayalan ..Respondent/Petitioner in A.S.719/2010

1.Pattammal(Deceased)

2.K. Arunachalam ..Respondent/Petitioner in A.S.725/2010
(impleaded as 2nd Respondent vide
order of the Court dated 31.08.2010 made in
M.P. No. 2/2010 in A.S.SR. No. 85714/2009)

Nagarajan ..Respondent/Petitioner in A.S.715/2010
Thirumaran ..Respondent/Petitioner in A.S.718/2010
Chitharanjan ..Respondent/Petitioner in A.S.716/2010
Muthaiyan ..Respondent/Petitioner in A.S.717/2010

Appeal Suit filed under Section 54 of the Land Acquisition Act against the judgment and decree dated 31.10.2007 in L.A.O.P. No.77 of 2001, 54/2001, 109/2001, 82, 84, 83, 105, 81/2001, 10/2003, 86/2001, 11/2003, 85/2001, 48/2001 dated 31.10.2006) 53/2001(dated 31/10/2006) 55/2001(31/10/2006 (49/2001(dated 31/10/2006) on the file of the Additional District Judge, Pondicherry at Karaikal.

Petitioner Counsel:

M/s.N. Mala, AGP(P) in A.S.518, 689, 690, 519, 521, 520, 719, 725, 715 to 718/2010

Mr.R. Natarajan in A.S.524/2012 to 526/2012 and 838/2009

Respondent Counsel:

Ms. Gopika Nambiar in A.S.518, 521/2010
No Appearance in A.S.689, 690/2010
Mr.T. Sai Krishnan in A.S.519, 520/2010
Mr.S. Kishore Kumar in A.S.719, 725, 715 to 718/2010
M/s.N. Mala, AGP(P) in A.S.524 to 526/2012 & 838/2009.

C O M M O N J U D G M E N T

These appeals have been preferred by the Union of India represented by Secretary to Government of Pondicherry, as against the judgment and decree of reference Court in L.A.O.P. Nos. 48,49,53,54,55,77,81,82,83,84,85,86,105,109 of 2001 and 10 & 11 of 2003. All these appeals are connected and therefore, this Court is inclined to dispose of all these appeals by a common judgment.

2. A total extent of 3.76.50 Hectares was acquired by the Government of Pondicherry for the construction of Second Market Sandhai at Karaikal. It is to be noted that the entire block of land was classified as wet land. The notification under Section

4(1) of the Land Acquisition Act (hereinafter referred as "Act"), was published on 02.06.1998. The Land Acquisition Officer considered 211 sale deeds in respect of adjoining lands. All the data sale deeds were within one year prior to the notification issued under Section 4(1) of the Act. After discarding about 211 sale deeds, the Land Acquisition Officer fixed compensation at the rate of Rs.60,000/- per are, on the basis of guideline value. The award under Section 11(1) of the Act was passed on 29.09.2000.

3. Aggrieved by the quantum of compensation, the land owners sought for reference under Section 18 of the Act. The reference Court entertained the references in L.A.O.P. Nos. 48, 49, 53, 54, 55, 77, 81, 82, 83, 84, 85, 86, 105, 109 of 2001,and 10 & 11 of 2003. It is to be seen that the reference court adopted two different values. In respect of the lands acquired from the appellants in A.S. Nos., 524 to 526 of 2012 & 838 of 2009 , the reference Court fixed the market value at the rate of Rs.63,095/- per Are. Whereas in all other cases, the reference Court fixed the compensation at Rs.76,022/- per Are.

4. The learned District Judge, relied upon a sale deed vide document No.1289 of 1997 dated 11.08.1997, in respect of land measuring an extent of 0.01.81 Hectares. The consideration for the sale transaction was Rs.95,027.62/- Relying upon the said document, the reference Court, in many of the cases determined the compensation by taking into account the market value at Rs.76,022/- per Are after deducting the development charges 20%. It is unfortunate to notice that the same judicial officer who decided batch of cases by fixing compensation at the rate of Rs.76,022/- per Are determined the market value in respect of four other cases at the rate of Rs.63,095/- per Are. In respect of other cases where the market value was arrived at Rs.63,095/- by the reference Court, a sale deed which was marked as Ex.B5 in L.A.O.P. No.28 of 2002 and batch was relied upon. After finding that the Land Acquisition Officer fixed the market value for the lands on the basis of Ex. B5, said document which was marked as Ex.B5 cannot be the basis when there are other documents. The reference Court strangely fixed the market value at Rs.63,095/- without giving proper reasons. Aggrieved by the judgment and decree of the reference Court the Government of Pondicherry as well as some of the land owners have preferred the above appeals. The Government of Pondicherry filed appeal against L.A.O.P's. when compensation was determined by taking market value at Rs.76,022/- per Are. Whereas the claimants have challenged the judgments in which the market value was assumed at Rs.63,000/- per Are.

5. Learned Government Pleader (Pondicherry) after referring to the documents submitted that the reference Court has not

adopted a fair procedure pointed out by the Hon'ble Supreme Court in several precedents. He further submitted that the reference Court ought to have deducted 30% towards development charges. It was submitted by the learned Government Pleader that the acquired lands are not developed lands in the sense that they are not formed as house sites. Stating that the sale statistics relied by the reference Court is in respect of a land which was developed as a house site, learned Government Pleader submitted that there must be a deduction of at least 30% towards development charges. Referring the judgment of the Hon'ble Supreme Court in Subh Ram Vs. State of Haryana reported in (2010) 1 SCC 444, it submitted that the Hon'ble Supreme Court has ruled that there must be a deduction up to 30%. It should be remembered that the purpose of acquisition may not play a role in determining the percentage of deduction towards development cost in most of the cases.

6. Learned Government Pleader submitted further that the acquired lands are far way from the developed lands and that the evidence of R.W.1 has not been considered. It is further submitted that the lower Court failed to see that the sale deed relied upon is not comparable considering the difference in the nature of lands acquired and its potentiality. It is further submitted that the data sale deed relied upon by the lower Court was just after the inspection of the site by the Land Acquisition Officer and that therefore, the sale consideration referred to in those documents will not reflect the actual market price for the land at the time of issuance of notification under Section 4(1) of the Act.

7. Learned counsel appearing for the contesting respondents namely the landlords, relied upon several precedents to support their case that the deduction of 20% is just and proper and there cannot be any deduction beyond 20%. It is further submitted that the evidence in this case will disclose the potentiality of the lands. Since the lands have already been developed as capable of being used as house sites, it is contended by counsel for respondent that there cannot be deduction beyond 20%.

8. Mr. R.Natarajan, learned counsel for the appellants in some cases preferred by the land owners, submitted that the reference Court ought not to have adopted different yardsticks in respect of two batch of cases covered under the same notification and that the value fixed at Rs.63,095/- per are cannot be sustained in view of the conclusion reached by the reference Court in respect of cases where the market value is fixed at Rs.76,022/- per Are.

9. This Court considered the award of Land Acquisition Officer, pleadings and the evidence adduced by the parties before the reference Court. Though around 211 sale statistics were available before the Land Acquisition Officer, the sale exemplars were rejected on the ground that the sale exemplars are in respect of small pieces of land. It is now settled that while fixing market value for the acquired lands, a sale exemplar reflecting the highest value should be preferred.

10. The lands were acquired for the construction of a market at Karaikkal. It is not the case of the Land Acquisition Officer that the lands will have to be developed by spending huge amounts towards development before using the lands for the purpose of market. The lands were acquired in May 1998. When the award was passed, the Land Acquisition Officer has collected more than 200 sale statistics and fixed the compensation ultimately on the basis of guideline value. The claimants have relied upon few documents reflecting the market value around Rs.95,000/- per Are. Only after deducting 20% towards the development charges the market value was fixed at Rs.76,022/- per Are. The judgments relied upon by the learned Government Pleader were to support his argument that there should be deduction up to 30% towards development.

11. Several data sale deeds have been referred to. All the lands are classified as Nanjai lands. It indicates that the lands have permanent irrigation facility through Government source. However, it is admitted by both sides that the lands are not used for any agricultural purpose. This would only suggest that the entire area was developed even before acquisition and there was compulsion for the owners of the land to abandon cultivation only because of the development. It is admitted in the course of evidence that several layouts have been formed surrounding the lands acquired. The existence of developed layouts are admitted. The learned Government Pleader pointed that the lower Court has not considered the distance between the acquired lands and the lands in respect of which the sale statistics are given. As against the admission of the officials with regard to the potentiality of the lands, this Court finds no reason to fix different market value for the acquired lands than the value referred to in the sales exemplar relied upon by the reference Court.

12. The notification under Section 4(1) of the Act was published in May 1998. The document which was relied upon by the reference Court was executed in August 1997. There is a time lag of around nine months between the date of sale deed and the notification issued under Section 4(1) of the Act. The Hon'ble Supreme Court has approved an additional increase up to 12% per

year considering the steep increase in price of land. It was pointed out that the notification issued under Section 4(1) of the Act was issued in May 1998 whereas, the sale transaction was around nine months earlier to the notification issued under Section 4(1) of the Act. Considering the principle behind the view expressed by the Hon'ble Supreme Court, this Court is of the view that the submission of the learned Government Pleader to deduct 30% towards development is not helpful to the Government Pleader. It is to be pointed that the Land Acquisition Officer has failed to follow the same yardstick while fixing the value at Rs.63,095/- per Are in the other batch of L.A.O.P's.

13. Having regard to the factors indicated above, this Court is unable to subscribe the view taken by the reference Court determining compensation by fixing market value at Rs.63,095/- per Are for the acquired lands. When the Court has accepted to fix compensation by adopting the value at Rs.76,022/- per are in respect of several cases, it is unfortunate to note that a lesser compensation is fixed in a few cases ignoring the documents and evidence relied upon and the conclusion reached by the same Court in several cases disposed of in favour of the landlords. Having regard to the reasons stated above, this Court is of the view that there is no material irregularity or legality in the judgment and decree of the lower Court fixing market value at the rate of Rs.76,022/- per are.

14. As a result the appeals in A.S. Nos.518, 689, 690, 519, 521, 520, 719, 725, 715, 718, 716 &717 of 2010 are dismissed and the appeals filed by the land owners in A.S. Nos. 524,525 and 526 of 2012 and 838 of 2009 are allowed and the award in L.A.O.P. Nos.48,49,53 & 55 of 2001 are modified by fixing the market value at the rate of Rs.76,022 per Are. No costs. It is made clear that the claimants are entitled to statutory benefits of 30% solatium in addition to the additional interest as contemplated under Section 23(1) (A) of the Act and interest at 9% for the first one year after taking possession and 15% after the first one year of taking possession.

s/d-
Assistant Registrar(I)

True Copy

Sub-Assistant Registrar

bkn

To

1.The Secretary to Government (Revenue),
Pondicherry.

2.The Deputy Collector (Rev) – cum – Land Acquisition Officer,
Karaikal.

3.The Additional District Judge, Karaikal, Pondicherry.

+1 CC to The Government Pleader(P) SR Nos. 39654, 39656, 39657, 39659, 39660, 39668 to 39673
+2 Ccs to Mr.S. Devanathan, Advocate sr 39639 & 39640.
+1 CC to Mr.S. Kishore Kumar, Advocate sr 39615
+1 Cc to M/s. Gopika Nambiar, Advocate sr 39614.

A.S.No.518,689,690,519,521,520,719,725,715,718,716 & 717 of 2010
and A.S. Nos.524, 525 & 526 of 2012 & 838 of 2009

RV(CO)
SP(21/09/2021)