IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22/1/2020

C O R A M

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

A.S.No.812 of 2009
a n d
A.S.No.39 of 2010

A.S.No.812 of 2009

M/s. Sagar Builders
rep. By its Proprietor
Mr.Vimalchand
Karaikal. ... Appellant/Petitioner in A.S.No. 812 of 2009

a n d

1. G. Jayaraman

2. J. Vijayakumar

3. J. Arun Kumar

4. J. Sathish Kumar ... Appellants/Petitioners in A.S.No. 39 of 2010

Vs

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

2. The Deputy Collector (Revenue)-cum-
Land Acquisition Officer
Karaikal. ... Respondents/Respondents in both the suits

Prayer: Appeal Suits filed under Section 54 of the Land Acquisition Act, against the judgment made in L.A.O.P.Nos.1 of 2004 and 24 of 2003, dated 5/2/2009, on the file of the Additional District Judge, Karaikal.

For appellants ... Mr.T.R.Rajagopalan
Senior Counsel
for Mrs.P.Veena Suresh

For respondents ... Ms.N.Mala
Special Government Pleader
(Pondicherry).

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

(Delivered by M.M.SUNDRESH,J)

As the issues involved in both the appeals are one and the same, they have been taken up together and disposed of by a common judgment.

2. Lands have been acquired by the Land Acquisition Officer, for the purpose of setting up of Helipad, at Oduthurai Revenue Village, in Karaikal. Accordingly, an extent of 6-94-50 and 0-36-60 hectares of land, which are the subject matters of A.S.No.812/2009 and A.S.No.39 of 2010, respectively, have been acquired from the appellants. These lands situate in T.S.No.61/2 and Sy.60/2, respectively.

3. 4 (1) Notification, dated 8/3/2002, has been approved by the Government, under Section 4 (1) of the Land Acquisition Act in G.O.Ms.No.14. Publications have been made in Tamil Daily (Malai Malar) and English Daily (The Hindu), on 9/3/2002 and 10/3/2002, respectively. Government Order was published in Official State Gazette No.47, dated 12/3/2002. Locality publication has been made on 15/3/2002. Section 6 Declaration has been passed in G.O.Ms.No.15, dated 19/3/2002.

4. Land Acquisition Officer, while rejecting the sale in S.Nos.5, 6, 12, 16, 17 and 36, placed reliance upon the data sale deed, dated 22/11/2001. Accordingly, two different amounts have been fixed per ares at Rs.36,141/- and Rs.40,000/-, respectively, because of the excess factor. Resultantly, appellants in A.S.No.812 of 2009 and A.S.No.39 of 2010 have been awarded with a sum of Rs.3,48,00,185/- and Rs.20,29,786/-.

5. In view of the objections made, the Land Acquisition Officer has made a reference. The Reference Court, accepting

the contention of the respondents confirmed the award passed in L.A.O.P.Nos.1 of 2004 and 24 of 2003. Challenging the above, present appeals are before us.

6. Heard Mr.T.R.Rajagopalan, learned Senior Counsel for the appellants and Ms.N.Mala, learned Special Government Pleader (Pondicherry) for the respondents.

7. Learned Senior Counsel appearing for the appellants would submit that potentiality of the land along with future utility has not been considered. There is an administrative building viz., Government of Pondicherry situated very near to the acquiring land. In the east, there is a highway 100 feet away from the acquired land called Nagoor - Karaikal road; in the South by Karukkalacherry main road. The northern road lies to the seashore in which P.W.D Office, Radio Street School and other Commissioner buildings are situated. Without any basis, Land Acquisition Officer, rejected Exs.A.1 to A.6. Reference Court has not considered the facts in their perspective. On the contrary, it merely accepted the case as projected by the Land Acquisition Officer. Therefore, the appeals will have to be allowed.

8. Learned Special Government Pleader (Pondicherry) appearing for the respondents would submit that findings of the fact rendered by the Land Acquisition Officer were rightly approved by the Reference Court. The acquired land has been surrounded by river, Government land and other lands without access. No development charges has been deducted while fixing the valuation. The Land Acquisition Officer rightly took into the consideration of data sale deed which found favourably with Reference Court. Sale deeds of the appellants are of the year 1997 would clearly show that valuation cannot be made as they seek for. In support to that contention reliance has been placed on {(1975) 2 SUPREME COURT CASES - 730} (THE DOLLAR COMPANY, MADRAS Vs. COLLECTOR OF MADRAS).

9. It is further submitted by the learned Senior Counsel that a different yard stick has been adopted by fixing different valuation among the lands acquired from the same area on the basis of access. Learned counsel appearing for the learned Special Government Pleader submitted that Reference Court has rightly considered the same and therefore, the reasoning adopted will have to be sustained.

10. We have perused the materials available on record including the sketch.

11. From the submissions made, we are of the view that the acquired lands do have substantial potential. Precisely for this

reason, the Land Acquisition Officer himself has taken a small plot for consideration though while rejecting the other plot which were fetching higher amounts. On perusal, we find that data sale deed relied upon is neither the nearest one to the acquired land nor the sale deeds relied upon by the appellants are far away. We would only reiterate the settled position of law that while arriving at a just compensation, one has to sit in the arm chair of an intending seller and purchaser. Therefore, the document which is not only nearer but fetches higher amount will have to be preferred as against the lesser one. This has not done in the present case.

12. However, we do not find that any deduction has been made towards the developmental charges. In the case on hand, the lands have been acquired for setting up of Helipad and therefore, there need not be a substantial deduction even when a data sale deed is also for a smaller plot. As he himself has not made any deduction, we are inclined to deduct 10% alone towards the development charges on the larger issue pertaining to the fixation of the value. As stated, the Land Acquisition Officer has erroneously rejected Exs.A.1 to A.6. On a perusal of the value mentioned in these documents per ares, varies from Rs.50,000/- to Rs.55,000/-. Thus, on a conservative estimate, we take the value at Rs.50,000/-. Out of these amounts, we add 10%, as the sale deed relied upon is of the year 2001. Ex.A.6 dated 8/3/2001 whereas the date of Notification under Section 4 (1) is 9/3/2002. Similarly, Ex.A.2 is dated 30/1/2002 in which the sale consideration or hectare is mentioned at Rs.52,251/- and Ex.A.6 valued at Rs.51,121/-. Thus, we arrive at a compensation payable at Rs.49,500/- per ares.

13. The acquisitions have been made as a whole. The nature of the lands involved in both the appeals are one and the same. Purpose of acquisition of the land is also one and the same. Therefore, the classification sought to be made, in our considered view is only technical. After all, the lands have been acquired is agriculture or unused lands. In such a view of the matter, we are of the view that the appellants in both the appeals are entitled for the same compensation.

14. The contention of the learned Special Government Pleader appearing for the respondents by placing reliance upon the judgment of the Apex Court in {(1975) 2 SUPREME COURT CASES - 730} (THE DOLLAR COMPANY, MADRAS Vs. COLLECTOR OF MADRAS), cannot be countenanced for the reason that purchase by the land owner in that case was very recent to the date of 4 (1) Notification. In the case on hand, sale deeds were executed in favour of the appellants, in the year 1997, whereas the acquisition was in the year 2002. It appears that developments which have taken place very recently. From the records, we

could see that certainly there are some developments which have taken place. Secondly, as stated earlier, even the land Acquisition Officer has taken into consideration of the said data sale deed which is of a plot. In fact, most of the sale deeds rejected and approved by the Land Acquisition Officer are only for a very small extent. These factors by themselves would clearly show the potential value of the land. We also note that no such plea has been raised on behalf of the respondents by placing reliance upon the sale deeds of the appellants and in fact, valuation has been fixed based upon the data sale deeds taken by the Land Acquisition Officer.

15. In such a view of the matter, we are of the view that the reasoning adopted by the Land Acquisition Officer has approved by the Reference Court cannot be sustained in the eye of law and accordingly, we are inclined to allow the appeals in part, by fixing the valuation of the acquired lands, belonging to the appellants, at Rs.49,500/- per ares. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

2.The Deputy Collector (Revenue)-Cum Land
Acquisition Officer, Karaikal.

+2cc to M/s.P.Veena Suresh, Advocate Sr.4433 and 4434
+1cc to the Government Pleader (Pondicherry) Sr.4471

A.S.No.812 of 2009
and
A.S.No.39 of 2010

mr[co]
srg 24/08/2020