IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

A.S.Nos.864 and 865 of 2009
and Cross Objection Nos.156 and 157 of 2010

M/s.Flakt India Ltd.,
Poonamallee High Road,
Puliampedu Village,
Chennai - 77. .. Appellant in both the appeals/Requisitioning Body

Vs

1.T.N.Sivasankaran (deceased)
2.Vijayakumar
3.Prema Sivasankaran
4.Suchithra
5.The Revenue Divisional Officer,
Saidapet, Chennai - 15.
Now In Charge R.D.O., Ponneri. .. Respondents in A.S.No.864 of 2009/Claimants 1 to 4

1.Shanmughavel
2.Sudharsan
3.Karthick
4.The Revenue Divisional Officer,
Saidapet, Chennai - 15.
Now In Charge R.D.O., Ponneri. .. Respondents in A.S.No.865 of 2009//Claimants 1 to 4

1.T.N.Sivasankaran (deceased)
2.S.Vijayakumar
3.Prema Sivasankaran
4.Suchithra .. Cross Objectors in Cross Objn. No.156 of 2010

1.T.N.Shanmughavel
2.S.Sudharsan
3.S.Karthick .. Cross Objectors in Cross Objn. No.157 of 2010

Vs.

1.M/s.Flakt India Ltd.,
Poonamallee High Road,
Puliampedu Village,
Chennai - 77.

2.The Revenue Divisional Officer,
Saidapet, Chennai - 15.
Now In Charge R.D.O., Ponneri. .. Respondents in both Cross Objections

Appeals filed under Section 54 of the Land Acquisition Act and Cross Objections filed under Order 41 Rule 22 CPC against the judgment and decree in L.A.O.P.Nos.112 of 1989 and 40 of 1994 dated 31.12.2008 passed by the Additional District Sessions Judge cum Fast Track Court No.1, Poonamallee.

Cross Objection Nos.156 of 2010 & 157 of 2010 : Petitions praying to modify the judgment and decree of the Trial Court and allow the Cross Objections and fix the market value of the lands acquired at Rs.1400/- per cent and grant the benefits of the amended provisions of the Land Acquisition act by awarding (i) 30% solatium on the market value under Section 23(2), ii) 12% additional amount on the market value under Section 23 (1A) from the date of the 4(1) notification to the date of award and iii) grant interest on the entire compensation amount (Market value + Solaitum + Additional amount) at 9% per annum for one year from the date of taking possession and thereafter 15% till payment under Section 34 of the Land Acquisition Act.

For Appellant .. No appearance in both the appeals

For Respondents .. Mr.M.S.Subramanian for R2 to R4 in A.S.No.864 of 2009 for R2 & R3 in A.S.No.865 of 2009 R1 died in AS 864/2009

For Cross Objectors .. Mr.M.S.Subramanian in both the Cross Objections

For Respondents .. No appearance for R1 in both the Cross Objections

COMMON JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

Heard the learned counsel appearing for the cross objectors. The matter has been adjourned from time to time at the request of the learned counsel for the appellant.

2.On 27.09.2019, this Court passed the following order removing the caption from dismissal:

> At request of appellant's counsel, adjd. by two (2) weeks. Registry is directed to remove the caption 'for dismissal'.

Thereafter, on 17.10.2019. the following order has been passed:

> At request, adjd. by two (2) weeks. Registry is directed to remove the caption 'for dismissal'.

Further order was also passed on 02.01.2020, which is placed hereunder:

> No representation on behalf of the appellant. Heard the learned counsel appearing for the cross objector. Post 'for orders' on 06.01.2020.

Once again on 06.01.2020, we have passed the following order:

> Learned counsel for the appellants submits that he has given change of vakalat. Even on the last occasion, there was no representation for the appellants. Names of the appellants have also been printed in the cause list. Therefore, we are inclined to proceed with the matter on merits. However, as a final chance, post the matter on 20.01.2020. Learned counsel for the appellants is directed to inform the appellants about the hearing of the appeal on 20.01.2020.

3.Learned counsel appearing for the appellant once again reiterated the stand taken earlier. On a query, it is informed that the appellant has been duly informed. Therefore, we are proceeding with the matter on merits. We are conscious of the settled position of law that when the learned counsel for the appellant reports no instructions, normally, the appeal should be dismissed for non-prosecution and therefore, it is not expected to go into the merits of the case. However, we are dealing with the case where cross objections have also been filed. When once the cross objection is filed, it partakes the character of normal appeal and therefore, such a cross objector would become the appellant. Thus, considering the abovesaid position, we are dealing with the matter on merits.

4.An extent of 13.06 acres belonging to the cross objectors situated in Saidapet Taluk, Puliambedu Village have been acquired pursuant to the Notification issued on 24.07.1985. An Award was passed in Award No.2 of 1988 on 11.08.1988. The Land Acquisition Officer fixed the compensation at Rs.450/- per cent. Needless to state that the lands acquired were agricultural lands. The lands are to be used for the industrial purpose in favour of the appellant.

5.Aggrieved over the compensation granted, the cross objectors made reference to the Reference Court. The Reference Court placing reliance upon Ex.C5 has fixed the compensation at Rs.1,200/- per cent. Aggrieved over the same, the present appeals have been preferred. Seeking enhancement of Rs.1,400/- per cent, the cross objections have been filed.

6.Learned counsel appearing for the cross objectors submits that the question of escalation has not been considered. The data sale deed mentioned in Ex.C5 is dated 15.09.1984. Therefore, no amount has been given for escalation. There is nothing wrong in the Reference Court in relying upon Ex.C3, which is obviously subsequent to the date of Section 4(1) Notification. Though certain statutory deductions will have to be made, considering the fact that the acquisition is for industrial purpose, 10% deduction would be sufficient. In support of his submission, he relied on the judgment of the Apex Court in Sunder Vs. Union of India ((2001) 7 SCC 211).

7.As there is no representation on behalf of the appellant, we are constrained to dismiss the appeals in A.S.Nos.864 and 865 of 2009 for non-prosecution. No costs.

8.Insofar as the cross objections are concerned, we do not find any merit. The Reference Court rightly took Ex.C5 for fixing the higher rate while rejecting the data sale deed produced on behalf of the acquisitioning body. Obviously, the sale deed which is beneficial to the land owner will have to be considered by the Court by sitting in the arm chair of the intending seller and purchaser, which has been rightly done. However, we find that no deduction has been made. We are of the view that sale deed relied upon - Ex.C5 was only for an extent of 01.05 1/2 cents, which is equivalent to 2348.1/2 sq. ft.. The lands acquired are agricultural lands.

9.In such view of the matter, we are of the view that the

Reference Court has committed an error in not reducing the amount towards statutory deductions. There is no need for escalation. The date of 4(1) Notification was 24.07.1985 whereas the date of Ex.C5 is 15.09.1984. Perhaps, the cross objectors would lose something more if the statutory deductions are adopted. However, we do not propose to do so since the appeals are being dismissed for non-prosecution. Reference Court has rightly rejected the subsequent document relied upon. The subsequent document also, admittedly, is one for a larger extent and it is also applied as against the agricultural lands of the cross objectors. Secondly, there are admittedly other documents available which are differential in nature. This document such as Ex.C5 which is the highest has been taken into consideration rightly by the Reference Court. The judgment relied upon by the learned counsel for the cross objectors will have to be seen contextually on its own facts. We also note that the requisitioning body has also not filed any appeal.

10.However, we find force in the submission made by the learned counsel for the cross objectors. Placing reliance upon the decision of the Larger Bench of the Apex Court (cited supra), the learned counsel submitted that no amount has been awarded towards the interest on solatium and additional amount. In such view of the matter, we make it clear that the cross objectors are entitled for interest on solatium and additional amount as held in Sunder Vs. Union of India ((2001) 7 SCC 211), as per the provisions of the Land Acquisition Act. Accordingly, the Cross Objections in Cross Objection Nos.156 and 157 of 2010 are partly allowed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

mmi

To

1.The Revenue Divisional Officer,
Saidapet, Chennai - 15.
Now In Charge R.D.O., Ponneri.

2.The Additional District Sessions Judge
cum Fast Track Court No.1, Poonamallee.

Copy to

The Section Officer,
VR Section, High Court, Madras.

+4cc to M.S.Subramanian, Advocate SR.No.3343, 3344

A.S.Nos.864 and 865 of 2009 and Cross Objection Nos.156 and 157 of 2010

SAI(CO)
GMY(25/08/2020)