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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.01.2020

Date of Verdict : 28.01.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No.1201 of 2005 and
CMP.No.16666 of 2005

1. The Govt. of Tamilnadu rep. by its
District Collector, Erode District,
O/o.District Collector,
Erode
 2. The District Collector, Erode District,
O/o.District Collector,
Perundurai Road,
Erode-2
 3. Special Tahsildar,
Harijan Welfare Dept.
P.S.G Lodge Building,
Chennimalai Road,
Kangayam
- ...Appellants/Respondents/Referring
Officer

Vs.

1.Selvam

2.Sivanmalai Gounder

...Respondents/Appellants/Claimants

Prayer :- This Second Appeal is filed under Section 13 of the Tamilnadu Acquisition of land for ADW schemes Act 31/78 r/w section 100 of CPC against the judgment and decree dated 12.08.2004, in CMA.No.3 of 2001 on the file of Subordinate Judge, Dharapuram modifying the award made in Award No.5/2000-2001 dated 31.01.2001 passed by the Special Tahsildar, (Adi dravidar Welfare), Kangayam.

For Appellants : Mr.S.Jagannathan,
Government Advocate (CS)

For Respondents

For R1 : Mr.V.I.Prasanth
: R2 - notice served



JUDGMENT

This second appeal is directed as against the judgment and decree dated 12.08.2004, in CMA.No.3 of 2001 on the file of Subordinate Judge, Dharapuram modifying the award made in Award No.5/2000-2001 dated 31.01.2001 passed by the Special Tahsildar, (Adi dravidar Welfare), Kangeyam.

2. For the sake of convenience, the parties are referred to as per their rankings in the award proceedings.

3. The case of the claimant is that the notice under Section 4(1) of Tamil Nadu Act 31/78 was issued stating that an extent of 2.48.0 hectares comprised in R.S.No.194/A1 and 0.93.5 hectares in R.S.No.194/B2 totaling 3.41.5 hectares will be acquired for provision of house sites to Adi-Draviders of Uppupalayam and surrounding villages in Vellakoil in Kangayam Taluk by the third respondent on 06.08.1999. In this regard, the claimant was called for enquiry on 22.01.2001. Though the claimant did not appear for enquiry, the third respondent determined the value of Rs.7,431/- per acre based on the document registered in No.260 of 1997 dated 10.02.1997 in the Office of the Sub Registrar, Vellakoil. The claimant received the said amount with protest and filed appeal as against the award passed by the third respondent. The claimant challenged the award on the ground that the award is not sustainable, since without considering the registration of sale within one year prior to 4 (1) notification. The non consideration of sale at the rate of Rs.2,85,000/- per acre registered near by acquired land is not tenable. Therefore, prayed for enhancement of award at Rs.2,85,000/- per acre along with 30% of solatium and interest at the rate of 15%.

4. Resisting the same, the respondents filed counter and stated that they initiated action to acquire an extent of 2.48.0 hectares in R.S.No.194/A1 and an extent of 0.93.5 hectares in R.S.No.194/B2 totaling to 8.43 ½ acre in Vellakoil village under the Tamil Nadu Act 31/78 for the provision of house sites to Adi Draviders of Uppupalayam and surrounding villages in Vellakoil village in Kangayam Taluk. In this regard, the third respondent issued notification under Section 4 (1) of the Act and the same was published on 06.08.1999 in the said locality on 26.12.2000. Though notice was served on the claimant for enquiry, the claimant did not appear for enquiry on 22.01.2001. The third respondent considering the registered sale in the same locality registered as document No.260 dated 10.02.1997 in the Office of the Sub Registrar, Vellakoil fixed at Rs.7,431/- per acre and passed award to the tune of Rs.72,082/- for the land acquired from the claimant. Therefore, they determined proper value for



the land acquired from the claimant and prayed for dismissal of the appeal.

5. In support of the claimant, P.W.1 to P.W.3 were examined and five documents were marked as Ex.A.1 to Ex.A.5. On the side of the respondents D.W.1 was examined and Ex.B.1 to Ex.B.5 were marked. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the appellate court partly allowed the appeal and fixed at Rs.2,10,000/- per acre and enhanced the award to the tune of Rs.17,71,350/- along with 15% of solatium for the said amount and also ordered interest at the rate of 6% payable from 06.08.1999, namely the date of 4(1) notification. Aggrieved by the same, the respondents have preferred this second appeal.

6. At the time of admission of the second appeal, the following substantial questions of law were framed :-

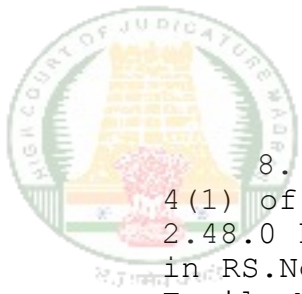
a) Whether the court below had erred in not appreciating the provision of Section 8 of the Act 31/1978 wherein it is made clear that in the fixation of determining the amount of compensation, the purpose for which the land acquired shall not be a criteria and nature of land on the date of 4(1) notification shall be a criteria for determining the compensation?

b) Whether the court below had erred in not appreciating the fact that the appeal not having been properly stamped under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act, 1955 was not maintainable?

c) Whether the court below had erred in placing reliance on document dated 05.12.1997 and 26.11.1997 to which the claimant is a party as the vendor and nature of land sold is a house site?

d) Whether the court below had erred in not deducting 1/3rd amount of the market value towards developmental charges as held by the Apex Court reported in 1993 (4) SCC 245?

7. Heard Mr.S.Jagannathan, Government Advocate(CS) appearing for the appellants and Mr.V.I.Prasanth, learned counsel appearing for the first respondent.



8. The third respondent issued notification under Section 4(1) of Tamil Nadu Act 31/78 to acquire the land to an extent of 2.48.0 hectares in RS.No.194/A1 and an extent of 0.93.5 hectares in RS.No.194/B2 totaling 8.43 ½ acres in Vellakoil village under Tamil Nadu Act 31/78 for provision of house sites to Adi Dravidians of Uppupalayam and surrounding villages in Vellakoil village in Kangayam Taluk. It was published on 06.08.1999 in a local newspaper and the publication was made on 26.12.2000. The third respondent issued notice calling upon the claimant to appear for enquiry for passing of award. After receipt of the notice, the claimant failed to appear for the award enquiry and on the basis of the registered sale deed as document No.260 of 1997 dated 10.02.1997 in the Office of the Sub Registrar, Vellakoil, the third respondent fixed at the rate of Rs.7,431/- per acre and awarded compensation for a sum of Rs.72,082/-.

9. Further the third respondent stated that the land was classified as 'Ryathwari Dry' in village and Taluk accounts, it is not an assigned land, and not covered by Land Reforms Act. There is also no trees, buildings, well, temple, historical monuments in the field. Against which, the claimant preferred appeal and his power agent was examined as P.W.1. He deposed that an extent of 26 cents in R.S.No.191 nearby the acquisition field was sold at the rate of Rs.74,100/- and the rate per acre were valued at Rs.2,85,000/- The said document was marked as Ex.P.4. He further deposed that an extent of 61 cents in R.S.No.194 was sold at the rate of Rs.85,400/- and thereby the rate per acre valued at Rs.1,40,000/- and which was marked as Ex.P.5. PW2 and PW3 corroborated the evidence of PW1 and confirmed the sale of Ex.P.4 and Ex.P.5. Ex.P.4 and Ex.P.5 were the registered sale deeds registered on 06.02.1997 and 18.11.1997 and are very much before the issuance of notification under Section 4(1).

10. Whereas the respondents contended that the Ex.P.4 and Ex.P.5 are containing the sale of very small piece of land and as such it cannot be considered as basis for fixing the land value for the land which was acquired by the respondents. In fact, PW1 to PW3 categorically deposed that there is a road abutting the acquisition field and factories are available at a distance of 4 kilometers away. Further no proper reason for rejection has been recorded by the acquisition officer and Ex.P.4 and Ex.P.5 are unimpeachable documents and as such the first appellate court rightly took into consideration of Ex.P.4 and Ex.P.5 and correctly determined the value of acquired land belongs to the claimant.

11. In view of the above, this Court does not find any valid reason to interfere with the reasonings and findings rendered by the first appellate court and the first appellate



court analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and allowed the appeal filed by the claimant. Accordingly, this Court is of the considered opinion that no substantial questions of law are involved in this second appeal. Be that as it may, all the substantial questions of law, formulated by this Court in this Second Appeal, are answered in favour of the claimant and as against the appellants.

12. Accordingly, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Subordinate Judge,
Dharapuram
2. The Special Tahsildar,
(Adi dravidar Welfare),
Kangeyam.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 CC to The Special Government Pleader(CS) sr 6296.

S.A.No.1201 of 2005

RSK(CO)
SP(21/08/2020)