

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.597 of 2016

Dharmalingam (died)

1. Vijaya

2. Poonguzhali

3. D.Purushothaman

4. D.Dhilli

..Proposed Appellants

Cause title accepted vide order of
Court dated 27.02.2014 made in
MP No.1/2011 in SA SR No.36848/09

Vs.

The Special Tahsildar (Adi Dravidar Welfare Scheme)
Ponneri Division,
Ambattur, Chennai 600 053.

..Respondent/Respondent

PRAYER: Second Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, praying to modify the fair and decreetal order dated 22.09.2008 passed in C.M.A.No.13 of 2001 on the file of Subordinate Judge at Ponneri thereby fixing the market value of the lands acquired at Rs.6000/- per cent as claimed in CMA No.13 of 2001 before the lower court.

For Appellants : Mr. N.R.Anantha Ramakrishnan

For Respondent : Mr. Y.T.Aravind Gosh
Additional Govt. Pleader

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

This Appeal is at the instance of the land owners whose lands were acquired under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 31 of 1978. Notice under Section 4(2) of the said Act was published on 30.11.1998. It was followed by a notification under Section 4(1) on 02.01.1999. An extent of 1.96.5 hectares equivalent to 4 acres and 84 cents situate in Survey No.144 of Thandalacherry Village, of

Gummidipoondi Taluk was sought to be acquired for provision of free house sites to Adi Dravidars of Thandaalacherry Village. By an award dated 19.03.1999, the Land Acquisition Officer awarded a sum of Rs.298.50 per cent along with all attendant statutory benefits, viz. 15% solatium and interest at 6%. The Land Acquisition Officer took a Sale Deed dated 08.01.1998 under which the land in Survey No.189/15 of the said Village measuring about 2 acres and 11 cents was sold for a sum of Rs.63,000/-. On the strength of the said document, the Land Acquisition Officer arrived at the compensation as stated above.

2. Complaining that the compensation was low, the land owner preferred an Appeal in CMA No.13 of 2001 on the file of the Sub Court, Ponneri. Before the Sub Court, the land owner produced at least five Sale Deeds relating to lands situate in various Survey Numbers in the said Village. Apart from examining himself, the land Owner examined one Palani, an independent witness also to prove the Sale Deeds. There was no oral or documentary evidence let in by the acquiring Authorities.

3. The learned Subordinate Judge upon examination of the evidence on record faulted the Land Acquisition Tahsildar for adopting the value in the Sale Deed dated 08.01.1988, which was with reference to Survey No.189/15, since the land in Survey No.189/15 was situate inside and it was a land locked property, whereas, the land in Survey No.144, viz., the acquired land was abutting the road and there was a direct access from the Sathyavedu - Kavaraipettai Road to the land in Survey No.144. The Court also took note of the fact that the award Officer had in his award itself observed that the land acquired is ready for being occupied as house sites without any further improvement and the beneficiaries have also sought for allotment of this land only.

4. After rejecting the document relied upon by the Land Acquisition Tahsildar, the learned Subordinate Judge examined the documents produced by the claimant before him, viz., Exhibits P1, P4 and P5. The learned Subordinate Judge rejected Ex.P1, which related to Survey No.209 and accepted Exhibits P4 and P5, which related to Survey No.206. The learned Subordinate Judge also found that the acquired land is similarly situate with the land in Survey No.206. After so observing the learned Subordinate Judge fixed the value of the land at Rs.1,744/- per cent, basing his conclusion on the Sale Deeds Exs. P4 and P5 which reflected the said value for an extent of 9 cents each that was sold under those two documents.

5. The learned Subordinate Judge, however did not award any solatium. Claiming that the learned Subordinate Judge should have adopted the value reflected in Ex.P1 and awarded solatium

at 15%, the land owner has come up with this Appeal.

6. The following questions of law were framed at the time of admission.

a) Whether the Court below and the respondent herein were right in not awarding 30% solatium to the appellant for mandatory acquisition for the appellant's land as envisaged under Section 10(2) of the Tamil Nadu Land Acquisition for Harijan Welfare Schemes Act, 1978, read with Section 13 (2) of the Land Acquisition Act, 1984.

b) Whether the Court below as well as the respondent herein were right in not awarding interest to the appellant on the compensation plus solatium amount at 12% per annum as envisaged under Section 10 (2) of the Tamil Nadu Land Acquisition for Harijan Welfare Act, 1978, read with Section 23(1-A) of the Land Acquisition Act, 1984.

(c) Whether the Court below was justified in enhancing the market value of the lands acquired to only Rs.1744/- from Rs.298.50 fixed by the respondent when M.Dharmalingam the erstwhile land owner had produced substantial material determining the market value at Rs.6,000/- per cent.

7. I have heard Mr.N.R.Anantha Ramakrishnan, learned counsel appearing for the appellant and Mr.Y.T.Aravind Gosh, learned Additional Government Pleader appearing for the respondent.

8. As regards the first two questions of law, the answer is imminent. Section 7(2) of the Act provides for solatium at 15%, therefore the learned Subordinate Judge should have granted solatium at 15%, non grant of solatium is an error on the face of the judgment. As regards interest, Section 12 of the Act, provides for payment of 6% interest, from the date of taking possession till date of payment. Therefore, the questions of law (a) and (b) are answered in favour of the appellant concluding that the appellant would be entitled to 15% solatium and 6% interest as provided under Sections 7(2) and 12 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 31 of 1978.

9. Addressing the third question of law, Mr.N.R.Anantha Ramakrishnan would vehemently contend that the learned Subordinate Judge must have taken the value reflected under

Ex.P1 Sale Deed dated 09.12.1998. His contentions in support of the said argument is that the said Sale Deed is more proximate to the date of notification and it reflects the highest value. He would rely upon the judgment of the Hon'ble Supreme Court in *Mahrawal Khewaji Trust v. State of Punjab and others*, reported in 2012 (5) SCC 432. Drawing my attention to paragraph 12 of the said judgment which reads as follows:

"12. As pointed out above, the Reference Court failed to take note of the highest exemplar, namely, the sale transaction under Ext.A-61 dated 22.07.1977. In this regard, it is useful to refer the decision of this Court in *Sri Rani M. Vijayalakshamma Rao Bahadur, Ranees of Vuyyur v. Collector of Madras* (1969) 1 MLJ 45 (SC). In this case, this Court has held thus:

... where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

Mr.N.R.Anatha Ramakrishnan would submit that the claimant is entitled to the highest value reflected by exemplars.

10. In *The Special Tahsildar (LA), Krishna Water Supply Project Unit-3, Tiruvallur v. Rathinareddi*, reported in 2003 (2) LW 267, a Division Bench of this Court had also held that while fixing the value of the land in cases of compulsory acquisition, the land owner would be invariably entitled to the highest compensation that is reflected by the Sale Deeds provided the Sale Deeds are of land comparable to that of the acquired land. The Hon'ble Division Bench has observed as follows in paragraph 10 of the said judgment:

"10. It is settled law, while fixing the market value, the comparable sale transaction which fetched maximum price and which is the most advantageous to the Claimants, alone should be taken into consideration, since the guideline and principle laid down is that Court should see at what price a willing seller will sell. {Refer [i] 1969 (1) MLJ SC 45 (*Ranees of Vuyyur v. Collector of Madras*); [ii] AIR 1972 Madras 170 = 85 L.W.158 : (*State v. P. Seetharamammal*); and [iii] AIR 1989 SC 2051 (*Mehta Ravindraraaj Ajitraj v. State of Gujarat*)}"

11. The Reference Court has held that land in Survey No.206 is nearer to the acquired land and has got same features. The Authorities have not produced the Topo sketch of the property to show the lie of the land. The Reference Court has rejected the data Sale Deed on the ground that the land covered by it is situate interior and it is land locked.

12. The learned Subordinate Judge has also referred to various advantages possessed by the land in Survey No.144 viz., the acquired land in comparison to the land in Survey No.206, viz., the land sold under Exs.P4 and P5. The Topo sketch has been produced by the learned counsel for the appellant. It shows that the land in Survey No.209 has also similar advantages as that of the land in Survey No.206. It is situate a little farther away from Survey No.206. The learned Subordinate Judge, who dealt with the Appeal, had rejected Ex.P1 on the ground it is situate far away from the acquired land. A look at the Topo sketch belies the said statement of the learned Subordinate Judge. He has adopted the value of the land in Survey No.206, the land in Survey No.209 is just two survey fields away from Survey No.206 and the land in Survey No.209 also abutts the main road, as in the case of the land in Survey No.206 and the land in Survey No.144.

13. I therefore find that the rejection of the sale deed Ex.P1 which deals with land in Survey No.209 is not correct. Now let me examine the valuation as offered by the Sale Deed Ex.P1. Ex.P1 Sale Deed is dated 09.12.1998. The extent of land sold therein is only 10 cents and the value of the land sold is Rs.64,300/- i.e. Rs.6,430/- per cent. Taking into account the extent of the land sold and the extent of the land acquired there has to be necessarily some deduction for largeness in area. The land sold under Ex.P1 is only 10 cents, whereas the land acquired is 4 acres and 84 cents. The percentage of deduction has to be determined.

14. Courts have held that for largeness in area there can be a deduction of one third of the value reflected by the exemplar sale deed . I am not looking at any deductions for development purposes, since there is material on record to show that the acquired land is ready to be used as house sites. There is also one more aspect which will have to be taken into account while fixing the compensation. The perusal of the Topo sketch shows that the extent of land abutting the road in Survey No.144 is much lesser than the extent of land abutting the road in Survey No.209 or 206. This will also be a contributing factor in determining the value of the land. Land with wider road frontage will definitely fetch a higher price, whereas, land with lesser road frontage will fetch a lower price. Taking into account all

these aspects, I am of the considered opinion that a deduction of 40% would be just and proper while fixing the value of the acquired land. The value of the land per cent as per Ex.P1 is Rs.6,430/-. Since I have concluded that there should be a deduction of 40% in order to equalise the value of the acquired land with that of the data land in Survey No.209, the working will be as follows:

$RS.6,430.00 \times 60/100 = Rs.3,858/-$

Therefore, the value of one cent of land in Survey No.144 is fixed at Rs.3,858/-. The value of the land for the entire area that is 4 acres 84 cents, works out to Rs.18,67,272/-.

15. The third question of law is answered in favour of the appellant to the effect that the learned Subordinate Judge was not right in rejecting EX.P1, on an unavailable reason. The compensation payable is fixed at Rs.18,67,272/-. The claimant would be entitled to 15% solatium and 6% interest on the amount awarded and the solatium i.e. Rs.21,47,362.80 from the date of taking possession till date of payment. The Second Appeal is allowed in terms indicated above. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Subordinate Judge
at Ponneri

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

+1cc to M/s.N.R.Anantha Ramakrishnan, Advocate SR.32914

+1cc to Spl Government Pleader SR.32932

S.A.No.597 of 2016

RLD(CO)
CB(07/04/2021)