BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.11.2020

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THE HON'BLE MR.JUSTICE M.GOVINDARAJ
A.S.(MD).No.47 of 2012
and
M.P.(MD)No.1 of 2012

The Revenue Divisional Officer,
Revenue Divisional Office,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District. : Appellant

vs.

T.Rethinaswamy : Respondent

PRAYER :-

Appeal Suit filed under Section 54 of the Land Acquisition Act to set aside the judgment and decree in L.A.O.P.No.1 of 2000, dated 24.11.2011 on the file of Principal Sub Court, Nagercoil and allow the appeal.

For Appellant : Mr.J.Gunaseelan Muthiah,
Additional Government Pleader

For Respondent : Mr.A.Sivaji

JUDGMENT

The present Appeal Suit has been filed against the judgment and decree of the Principal Sub Court, Nagercoil, in L.A.O.P.No.1 of 2000, dated 24.11.2011.

2. Heard the submissions made on either side and perused the materials available on record.

3. The appellant acquired the land to an extent of 1.82.0 hectares in S.No.460/1B, Kanyakumari Village, for formation of Chinnamuttom fishing harbour. A notification under Section 4(1) of the Land Acquisition Act was issued on 26.03.1987. The land was

acquired and an award was passed on 24.05.1990. The Land Acquisition Officer fixed the market value of the land at Rs.300/- per cent and gave 30 % Solatium and 12 % interest of the land value from the date of 4(1) notification. Not satisfied with the amount, the claimant had raised objection and reference was made pursuant to the order passed in W.P.No.10011 of 1996 by this Court. Thereafter, the matter was referred to the learned Principal Sub Court, Nagercoil.

4. Before the Principal Sub Court, Nagercoil, on the side of the claimant, C.W.1 to C.W.3 were examined and Exs.C.1 to C.4. were marked. On the side of the appellant, Exs.R.1 to R.14 were marked.

5. Before the Principal Sub Court, C.W.1 had let in evidence that the Land Acquisition Officer had granted Rs.1,500/- per cent to the nearby land, whereas he had fixed at the rate of Rs.300/- per cent for his land, which is very meagre. On the other hand, Ex.C.1 bearing registration No.1470/1986, dated 04.07.1986, a sale deed for sale of a property measuring 85 cents shows the market value of the land at the rate of Rs.3,000/- per cent. Considering the above, the Court below awarded a sum of Rs.3,000/- per cent.

6. Aggrieved over the same, the appellant have preferred this Appeal Suit on the ground that the land does not exist in potential area and it does not situate within the limits of Kanyakumari Town Panchayat. Ex.C.1/sale deed states that the land is situated 2 k.m. away from the acquired land and development charges were also not deducted.

7. The learned Additional Government Pleader would contend that at the time of acquisition, the land situated in Special Grade Town Panchayat and not within the limits of Kanyakumari Town Panchayat. Therefore, the value fixed on the basis of subsequent development will not reflect the true market value of the land. Therefore, the market value fixed by the Principal Sub Court is too excessive. Further, the land was acquired for formation of fishing harbour, which requires development, but there is no deduction given towards development charges. Further, the claimant had requested for provision of pathway. This factor was not taken into consideration. Therefore, he would pray that the award passed by the Principal Sub Court in enhancing the market value from Rs.300/- per cent to Rs.3,000/- per cent warrants interference.

8. I have given my anxious consideration to the submissions of the learned Additional Government Pleader.

9. At the out set, whether the property is situated in potential area or not should be ascertained by the documents marked by the claimant. Ex.C.4 is the certificate issued by the Executive Officer of Kanyakumari Special Grade Town Panchayat, which discloses

that S.Nos.615/11, 460/1B and 642/1 situate within the limits of Kanyakumari Special Grade Panchayat. In that event, there shall be some contra evidence to show that the property does not situate within the Kanyakumari Town Panchayat. Even assuming that the Town Panchayat is upgraded, that does not change situation of the land. Potentiality for development had been taken into consideration by the Tribunal on the basis of the evidence given by the claimant. There is no contra evidence rebutting the same by the appellant/respondent. Therefore, the ground that the land does not situate in potential area cannot be accepted. Further, insofar as the contention with regard to deduction towards development charges is concerned, the land was acquired for formation of fishing harbour. The land situates within the Town Panchayat and the fact is not disputed and there is no evidence that the land is shallow land, which requires development. More so, for formation of fishing harbour, I do not find any reason for doing any development. It is pertinent to note that the appellant/respondent had not let in any evidence that the land requires development for formation of fishing harbour. In the absence of any evidence for development and it is obvious for formation of fishing harbour, the land does not require any development. Therefore, this Court is not inclined to accept the contention that the there shall be deduction towards development charges.

10. Insofar as the market value of the land is concerned, vide Ex.C.1/sale deed, dated 04.07.1986, relied on by the learned Principal Sub Court, 85 cents were sold for sale consideration of Rs.3,529/- per cent. As admitted by the appellant/respondent side evidence, for the nearby places, compensation was given at the rate of Rs.1,500/- per cent. Insofar as the acquired land is concerned, there is cogent evidence on the side of the claimant that the land fetches more than Rs.3,000/- per cent. The Tribunal had considered that there is no contra evidence by the appellant/respondent to show that that market value of the land is far lesser than the one claimed by the claimant vide Ex.C.1. The documents marked on the side of the appellant/respondent disclose mostly the official communication and the certificate issued by the officials. Ex.R.3/settlement deed was issued in the year 1997 whereas the notification for land acquisition under Section 4(1) of the Land Acquisition Act was issued on 26.03.1987 and Ex.C.1 is dated 04.07.1986 which was prior to acquisition. It is relevant to rely on the document, which is prior to the date of notification, whereas this Court cannot rely on the document which is seven years after the date of notification for acquisition. Therefore, Ex.R.3 cannot be relied on for any purpose.

11. In that view of the matter, the finding of the learned Principal Sub Court is based on evidence both in oral and documents and the compensation awarded is very much reasonable. Hence, this Court is not inclined to interfere with the order passed by the Court below.

12. In the result, the Appeal Suit fails and accordingly, the same stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal Subordinate Judge,
Nagercoil.

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Madurai.

+1 CC to SGP (SR-22348[F] dated 20/11/2020)

Judgment made in
A.S.(MD).No.47 of 2012
Dated:
19.11.2020

SS(CO)
KM (07.12.2020) 4P 5C