



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2020

(Reserved on 14.11.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.2670 of 2010

Tmt.R.Subbulakshmi (Died)

1) Tmt.K.Chandra

2) Ramasubbu Naicker

3) Subburaj

4) Rengammal

5) Sankarraaj

6) Ganesan

7) Yasodai

8) Venkatachalapathy

... Petitioners

(Cause title accepted vide order

dated 23.10.2010 in MP(MD).No.1 of 2010)

vs.

The Special Tahsildar,

(Land Acquisition Officer [A.D.W])

Sankarankovil,

Sankarankovil Taluk,

Tirunelveli District.

... Respondent

Petition filed under Section 115 of the Civil Procedure Code, against the order and decree of the Sub Court, Sankarankovil, passed in C.M.A.No.3 of 2000, dated 11.12.2000, confirming the award of the Special Tahsildar, (Land Acquisition Officer), A.D.W., Sankarankovil, Sankarankovil Taluk, Tirunelveli District, in Award No.5/98-99, dated 06.11.2000.

For Petitioners

: Mr.A.Sivaji

For Respondent

: Mr.J.Gunaseelan Muthiah

Additional Government Pleader

ORDER

As against the award of Rs.10,000/- per acre, the petitioner claims compensation at Rs.10,000/- per cent, together with solatium and interest at 15% and 6% for the present and solatium at 30% and interest at 9 and 15%, if the final outcome of the W.A.No.659 of 2009 is favourable to the petitioner.



2.The acquired lands originally belonged to one Subalakshmi (D/o.Ramasubbu Naicker and Smt.Chandra, (D/o.Kandasamy Naicker). These lands are located in the village of Karisalkulam Hamket of Aladipatti.

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2.1.In order to provide free house site to 25 families of Adiravidars, the respondent initiated land acquisition proceedings and acquired the lands in R.S.No.12/1, (0.35.5 hectares), R.S.No.12/2, (0.29.5 hectares) and R.S.No.13/1 & 2 (an extent of 0.01.0 for pathway from out of 0.45.0 hectares). The property in R.S.Nos.12/1 and 12/2 belonged to Smt.Subbulakshmi who died pending the proceedings. Her legal representatives are petitioners 2 to 8. The land in R.S.No.13/1 & 2 belonged to Smt.Chandra, the 1st petitioner.

3.The respondent collected sale statistics for a period of one year prior to the sale notification and out of 12 sales, item No.11 was taken as basis for awarding compensation at Rs.100/- per cent or Rs.10,000/- per acre. This award was challenged by the land owners in CMA.No.27 of 1999 before the Sub Court, Tenkasi. Later, the CMA was renumbered as CMA.No.3 of 2000 on account of opening of new Sub Court at Sankarankovil.

4.Before the Sub Court, the land owners/petitioners filed three sale deeds(Exs.C2 to C4) and let in evidence of CWs 1 to 4. On the side of the respondent, the award, sale statistics and rough sketch were marked as Exs.R1 to R3. However, without looking into the merits of the matter and taking erroneous view of the matter, the award was confirmed by the order dated 11.12.2000.

5.Challenging the confirmation of the award, this CRP has been filed.

6.The issue regarding enhancement of compensation, the solatium and interest on solatium have to be decided in this CRP.

7.The first contention of the learned counsel for the petitioner is that though the land acquisition officer relied upon sale deed dated 11.12.1997 (sale consideration Rs.17,000/-), Item No.11 of the sale statistics(Ex.R2) relating to S.F.No.20/2(an extent of 1.19 acres together with Well), as that data sale deed was not at all marked before the Court below, the award placing reliance upon that data sale deed should have been set aside. The learned counsel relied upon Division Bench judgment reported in 2018 Supreme (Madras) 4074, Special Tahsildar, Dharmapuri vs. A.Mohammed Sultan Sayabu. In the said decision, the Civil Court refused to place reliance upon the data sale deed as it was not



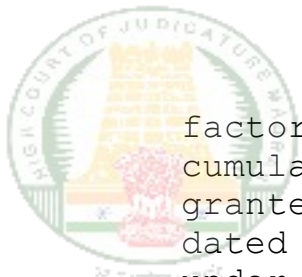
itself. This decision of the Civil Court was upheld by the Madras High Court. The relevant observation in paragraph 7 reads as under:-

''7.It is evident from the records that the land was acquired as early as on 08.03.1996 and the award was passed on 22.11.1996. The Special Tahsildar relied upon the sale data produced by the authorities and relied upon the sale deed dated 27.06.1996, in respect of S.No.466/3 measuring to an extent of 0.65.6.0 hectare. As rightly pointed out by the civil Court, the sale deed dated 27.06.1996 was not produced either before the Special Tahsildar or before the civil Court and therefore, civil Court rightly rejected the reliance made by the Special Tahsildar with regard to sale deed dated 27.06.1996. If it was not marked before the Special Tahsildar, atleast steps should have been taken to exhibit the same before the civil Court. No such steps have been taken by the appellants. Therefore, this Court confirms the decision taken by the civil Court in not relying upon the sale deed dated 27.06.1996, which was not at all received before the civil Court.''

7.1.In this case, unfortunately, the data sale deed has neither been marked before the Special Tahsildar nor before the Civil Court. Therefore, the award based upon the data sale deed has to be set aside.

8.The next contention of the learned counsel for the petitioner is that the Civil Court should have acted upon Exs.C2 to C4, whereunder, the first sale is of the year 1996 and the other two sales are of the year 1997. In other words, the contention is that the finding of the Civil Court that those lands are located far away is not correct. It is pointed out that the 4 (1) notification was issued one year prior to C3 and C4 sale deeds and two years after the sale deed under Ex.C2. The normal increase in price for the above time lag of one year/two year is to be taken at Rs.12% per year based on values reflected under Exs.C2 to C4. Reliance is placed upon the decision of the Hon'ble Supreme Court in Balwant Singh (Died) Through Lrs. vs. The State of Haryana (Civil Appeal No.2736 of 2019, dated 11th March, 2019 and the relevant observation in paragraph 9 reads as under:-

''9. The land acquired under these Notifications is in Sectors 20-A and 20-B, Faridabad. There was a steep increase in the price of land in the 1990s. The material on record suggests that the Secretariat and several other commercial complexes came up just opposite the land acquired during the period. On the basis of the above



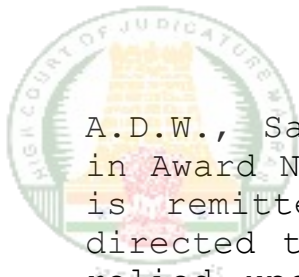
factors, we are of the opinion that 12 per cent per annum cumulative increase on Rs.435/- per square yard can be granted for the land acquired under the Notification dated 5th June, 1992. In respect of the land acquired under the Notifications dated 3rd July, 1995, the Claimants would be entitled for compensation by taking into account a cumulative increase of 12 per cent per annum on Rs.435/- per square yard from the year 1986 to the year 1995. Though this Court in ONGC's case (supra) sounded a note of caution in the adoption of annual increase method to be applied only for a few years, this Court after taking into account the facts and circumstances of the case, applied the cumulative increase for eight years in Wazir v. State of Haryana⁶ and nine years in Ashrafi's case (supra). On an overall appreciation of facts and the material on record, we are of the view that the cumulative increase at the rate of 12% per annum from 1986 to 1995 is just and reasonable.''

9.The next contention is that even the extent of land covered by the sale deeds relied upon is very small, still, if the sale deeds are genuine and no contra evidence is let in, the value reflected in the sale deed can be taken as the basis for fixing the compensation. The decision reported in 2008 0 Supreme (Madras) 3310 is relied upon. It is specifically contended that when Cws.1 to 4 has spoken about the advantages, facilities, benefits, and the existence of road, the Civil Court should have awarded enhancement of compensation.

10.The next contention of the learned counsel for the petitioner is that under the amended Central Act 1894, the solatium is payable with an enhancement from 15% to 30% (Section 23 of Act 1894), additional amount of 12% (Section 23-1A) and interest at 9% for one year and thereafter at Rs.15% (Section 28).

11.The learned counsel for the petitioner has raised question of law with reference to applicability of Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013 to the acquisition in question and other issues. Any opinion expressed by this Court should not be an impediment for the Civil Court to decide the issue.

12.This Court finds that the award has to be set aside as it is not based on a document which was not brought on record. Accordingly, the order and decree of the Sub Court, Sankarankovil, passed in C.M.A.No.3 of 2000, dated 11.12.2000, confirming the award of Special Tahsildar, (Land Acquisition Officer),



A.D.W., Sankarankovil, Sankarankovil Taluk, Tirunelveli District, in Award No.5/98-99, dated 06.11.2000, is set aside and the matter is remitted back to the Civil Court and the Civil Court is directed to fix the amount of compensation *de hors* the sale deed relied upon(unmarked) within a period of three months from the date of receipt of a copy of this order.

With the above direction, the Civil Revision Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1)The Subordinate Judge,
Sankarankovil.

2)The Special Tahsildar,
(Land Acquisition Officer), A.D.W.,
Sankarankovil, Sankarankovil Taluk,
Tirunelveli District

COPY TO
The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.A.SIVAJI, Advocate (SR-5509[F] dated 10/02/2020)

ORDER MADE IN
CRP (NPD) (MD) No.2670 of 2010
DATED : 06.02.2020

MA (CO)
TR(13.03.2020) 5P 6C