



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) .Nos.172 and 179 of 2017

A.S. (MD) .No.172 of 2017:

R.Balasubramanian : Appellant/Claimant
vs.

The Special Tahsildar (Land Acquisition),
Salem - Karur Broad Gauge Scheme,
Karur. : Respondent /Respondent

PRAYER :-

Appeal Suit is filed under Section 54 of the Land Acquisition Act and Section 96 r/w Order 41 of the Code of Civil Procedure, praying to modify the judgment and decree dated 28.04.2016 in L.A.O.P.No.12 of 2013 on the file of the Land Acquisition Tribunal/Additional Sub Court, Karur, and enhance the compensation as claimed by the appellant.

A.S. (MD) .No.179 of 2017:

Chinnasamy : Appellant/Claimant
vs.

The Special Tahsildar (Land Acquisition),
Karur - Vengamedu Railway Flyover,
Karur. : Respondent /Respondent

PRAYER :-

Appeal Suit is filed under Order 41 r/w Section 96 of the Code of Civil Procedure and Section 54 of the Land Acquisition Act, praying to modify the judgment and decree dated 28.04.2016 in L.A.O.P.No.37 of 2010 on the file of the Land Acquisition Tribunal/Additional Sub Court, Karur, and enhance the compensation as claimed by the appellant.

For Appellant : Mr.P.Athimoolapandian
in both appeals

For Respondent : Mr.J.Gunaseelan Muthiah,
in both appeals Additional Government Pleader



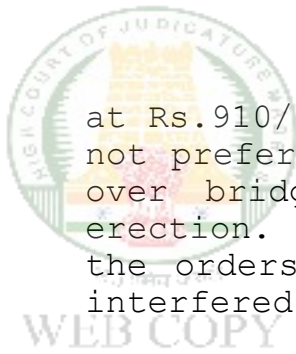
COMMON JUDGMENT

Not satisfied with the enhancement granted by the Land Acquisition Tribunal/Additional Sub Court, Karur, the appellants/claimants have preferred the present Appeal Suits.

2. In the year 2000-2001, the Government has given approval for acquiring lands for the purpose of constructing railway over bridge vide G.O.Ms.No.176, Highways Department, dated 05.10.2000. 4 (1) Notification was published on 27.02.2002. The claimant's property was also acquired in Survey No.256/6 to an extent of 958 square foot in A.S.(MD)No.172 of 2017 and an extent of 753 square foot in Survey Nos.10/1 and 10/2 was acquired in A.S.(MD)No.179 of 2017. The Land Acquisition Officer fixed the market value at Rs.311/- per square foot. The claimants have filed their objections and, therefore, the matter was referred under Section 18 of the Land Acquisition Act, to the Land Acquisition Tribunal/Additional Sub Court, Karur. Before the Additional Sub Court, Karur, in both the cases, on the side of the claimants, C.W.1 and C.W.2 were examined and Exs.C.1 to C.4 were marked and on the side of the respondent, R.W.1 was examined and Exs.R.1 to R.6 were marked respectively. After considering the materials, the Court below had fixed the market value of the land at Rs.910/- per square foot and Rs.350/- towards construction costs of the building. Seeking enhancement, the claimants are before this Court with the present appeals.

3. The learned counsel appearing for the appellants would contend that Exs.C.1 and C.2 were the sale deeds registered on 08.09.1999 and 12.08.2002 respectively. Ex.C.1 relates to the sale for a sum of Rs.4,97,000/- for 360 square foot and Ex.C.2 relates to sale consideration of Rs.32,00,000/- for 1440 square foot with building. The claimants have also marked the Engineer's report to show that the construction cost for ground floor is Rs.400/-, first floor is Rs.450/- and second floor is Rs.460/- per square foot during the year 2002. The learned counsel would also contend that the Valuation Certificate filed by the claimants vide Ex.C.3 shows that the market value of the property is Rs.12,500/- per square foot. Therefore, the value arrived at by the Court below at Rs.910/-, without following the documents, is erroneous and the market value should be enhanced to Rs.12,500/- per square foot.

4. Per contra, the learned Additional Government Pleader appearing for the respondents would contend that the property sold vide Ex.C.2 situate in Jawahar Bazaar, which is a commercial area, cannot be compared with the acquired land. Ex.R.3, the document marked on the side of the respondents, pertains to the same area, wherein 887-1/2 square foot was sold for Rs.2,76,000/- and it works out to Rs.311/- per square foot. Therefore, the rate fixed by the Land Acquisition Officer is correct. Even though the value was fixed



at Rs.910/- per square foot by the Court below, the respondents have not preferred any appeal. Furthermore, the construction of Railway over bridge would incur development charges for demolition and erection. Therefore, the enhancement itself is excessive and hence, the orders passed by the Additional Sub Court, Karur, need not be interfered with.

5. I have considered the submissions of both sides and also perused the records meticulously.

6. As per the evidence of R.W.1, it is clear that for arriving at the market value of the property, the properties situate within 1.6 Kilometres radius from the acquired land will be taken as data documents and the highest value will be taken for fixation of market value. Admittedly, the acquired land is situate half a Kilometre away from Jawahar Bazaar and half a Kilometre from Railway Station and one Kilometre from Karur Municipal Office. From this, it is very clear that the acquired land is situate within the Municipal limits of Karur Town. The documents relied on by the claimants vide Exs.C.1 and C.2 relate to the property situated in Jawahar Bazaar, which is within 1.6 Kilometres radius as per the norms. Property sold vide Ex.C.2 shows the value of the land as Rs.18,40,320/- at Rs.1,278/- per square foot. The value of the land shown in Ex.C.2 is only the guideline value and it does not reflect the market value. The market value of the property must be more than guideline value. However, the sale deed nearer to the acquired land has not been produced. Therefore, I prefer to take the guideline value for calculation. Since the property sold vide Ex.C.2 falls within 1.6 Kilometres radius, the value as per the document marked as Ex.C.2 can be adopted. Therefore, I deem it fit to fix the market value on the basis of Ex.C.2 at Rs.1,278/- per square foot to the acquired land.

7. As contended by the learned Additional Government Pleader appearing for the respondents, the construction of Railway over bridge would incur development charges for demolition and erection. For building Railway over bridge, naturally it requires expenses towards development. Admittedly, the building was demolished. Therefore, I deem it fit to deduct a sum of Rs.100/- per square foot towards development charges. Thus, the cost of the land is Rs.1,278/- per square foot and after deducting Rs.100/-per square foot towards development charges, the modified market value comes to Rs.1,178/- per square foot to the acquired land.

8. The construction cost of the building during 2002 as per Exs.C.3 and C.4. marked before the Court below shows Rs.400/- per square foot for ground floor in respect of commercial building, Rs.450/- per square foot for residential building. Even though it is given as Rs.450/- per square foot, the construction cost during that period was on the higher side only. Therefore, the respondents, cross-examination of C.W.2, have not disputed the



construction cost indicated in Ex.C.3 marked by the appellants/claimants. Therefore, I deem it fit to enhance the construction cost from Rs.350/- per square foot, as awarded by the Additional Sub Court, Karur, to Rs.450/- per square foot.

9. In view of the above finding, the order passed by the Additional Sub Court, Karur, is modified to the extent by enhancing the market value of the land at Rs.1,178/- per square foot and the construction cost of the building is at Rs.450/- per square foot. In respect of all other aspects, the award of the Additional Sub Court, Karur, is hereby confirmed. The respondent in both the appeals is directed to deposit the entire compensation as awarded above in both the cases, after deducting the amount already deposited, with interest, within a period of eight weeks from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SML

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

- 1.The Additional Subordinate Judge,
Land Acquisition Tribunal,
Karur.
- 2.The Special Tahsildar
(Land Acquisition),
Salem - Karur Broad Gauge Scheme,
Karur.
- 3.The Special Tahsildar (Land Acquisition),
Karur - Vengamedu Railway Flyover,
Karur.



4.The Section Officer-2 copies
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

WEB COPY

+1 cc to The Special Government Pleader Sr.No.22345&22346

**Common Judgment made in
A.S. (MD) .Nos.172 and 179 of 2017**

**Dated:
19.11.2020**

KM (08.02.2021) 5P 7C