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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

A.S.No.342 of 2011

M/s.Oil and Natural Gas Corporation,
Rep. by its Deputy General Manager,
Neravy Complex,
Karaikkal,
Pondicherry State.

...Appellant/Third Party

Vs

1. Ms.O.Shameen @ Umahanima
Rep. by Power Agent
Mr.M.S.Kadar Hassan

...Respondent/Petitioner/Claimant

2. The Union of India,
Rep. by Secretary to Government
Department of Revenue,
Pondicherry.

3. The Land Acquisition Officer-cum-
Deputy Collector (Revenue),
Karaikal.

...Respondents/Respondents/Respondents

PRAYER Appeal Suit filed under Section 54 of the Land Acquisition Act to set aside the Award passed by the learned District Judge, Karaikkal made in LAOP No.41 of 2000 dated 26.11.2010.

For appellant : Mr.Abdul Saleem
for M/s.Anand Abdul & Vinoth

For respondents: Ms.Amirtha Sarayoo
for M/s.TVJ Associates for R1.

R3 - Served - No appearance



JUDGMENT

The requisitioning body has filed the appeal before this Court, challenging the award passed by the learned District Judge, Karaikal in LAOP No.41 of 2000.

2.The facts in brief which have propelled the requisitioning body to file this appeal are herein below narrated:-

The appellant herein had requested the Government to acquire an extent of 4.86.63 hectares of land at Akkaratavattam Revenue Village of Karaikal Taluk for the purpose of setting up a Store Yard for the drilling and other operational groups at Akkaravattam. Pursuant to this request, a Notification under Section 4(1) was approved by the Government vide G.O.Ms.No.60, dated 14.11.1997 of the Revenue Department, Pondicherry and the same was published in the Official State Gazette on 16.12.1997. An enquiry under Section 5-A of the Land Acquisition Act was scheduled on 24.02.1998, wherein all the land owners appeared and gave their consent for this acquisition except one Rajeswary, wife of Krishnasamy and Kader Hasan Maricar son of Mohamed Salih Maricar. The appeal relates to the lands of Kader Hasan Maricar who had objected to the said acquisition, as ONGC had proposed to acquire only a portion of the Survey numbers. He had contended that if a portion of the Lands are acquired he would not have any access to the remaining unacquired portion and the same would be of no use to him thereafter. He therefore sought to have a acquisition proceedings dropped, in case ONGC is not ready to take the entire extent of lands. However, overruling this objection, the lands were acquired and a declaration under Section 6 of the Land Acquisition Act was published in the Official State Gazette on 15.09.1998 and thereafter, the Land Acquisition Officer had passed his Award fixing Rs.2,245 /-per are together with 30% Solatium and an additional Market value 12% Per annum from the last date of the Section 4(1) notification till the date of passing of award i.e., on 31.12.1999.

3.Not satisfied with the amount awarded, the wife of the said Kader Hasan Maricar requested that the matter be referred under Section 18(1) of the Land Acquisition Act. The same was accordingly referred to Additional District Judge, Karaikal and taken on file as LAOP.No.41 of 2000 on the file of the learned Additional District Judge, Karaikal. In the claim Statement, she would submit that the lands that were acquired abutted the inner main road and the remaining unacquired extent of 79 Acres 50 Ca had no access to the main road as a result of which the



agricultural activities had come to stop. Further, the appellant herein had blocked the inner distributing water channels. As a result her lands had no value. She would further contend that even prior to the acquisition, ONGC was a lessee under them and had been using the lands as a Store Yard, the very same purpose for which the lands were acquired. She would further contend that the land in question if not acquired, was fit for being used as housing plots, as no agricultural activities were being carried out in these lands. The Claimant had set out the locational advantages of the lands that had been acquired and had also stated how the award passed by the Land Acquisition Officer was not commensurate to the Market value of the land in question. She therefore sought for an enhancement to the compensation to a sum of Rs.37,500/- per are In support of her claim, she had submitted the Sale Deed of the adjoining areas between the periods August '1997 to December '1998.

4.The Land Acquisition Officer who was arrayed as the 2nd respondent had filed a counter statement which was adopted by the 1st respondent. The claim statement was objected on the following grounds:-

(1)The compensation arrived by the Land Acquisition Officer was in tune with the market value of the land acquired and reflected the real market value.

(2)The property acquired was neither immediately abutting the main the road nor was it aligned to the road. Therefore the market value arrived at, was a fair market value.

(3)The lands were not fit for conversion into the housing plots and therefore, seeking compensation on the ground that the property was suited for housing plots, is totally uncalled for.

(4)The documents filed by the respondents/claimants relates to land which were in no way similar to the land acquired and therefore should be discarded.

(5)The Land Acquisition Officer had used the method of just assessment while arriving at a compensation amount.

5.The learned District Judge on considering the pleadings on either side, had framed a single point for consideration:-

"What is the just and reasonable compensation which could be awarded to the claimants/respondents herein."

On analysing the documents produced on the side of the appellant and respondent, particularly, the Sale Deeds and the copy of the Award, the learned District Judge came to the conclusion that the compensation has to be enhanced to a sum of Rs.10,000/- per are as against compensation of Rs.2,245/-. Challenging the said Award, the appellant herein who is the



third party and the requisitioning authority has filed the above appeal.

6. Mr. Abdul Saleem, learned counsel appearing on behalf of the appellant would primarily base his arguments on the contention that the learned District Judge has without any basis/evidence arrived at a market value of Rs.10,000/- which was totally unsustainable. He would contend that a reading of the Award would demonstrate the above. He would further argue that the property in question is way beyond the main road and had no direct access to the main road and further the appellant had to incur expenditure for developing the said land. Considering these factors, the learned District Judge has totally erred in awarding an enhanced compensation. He would therefore seek to set aside the Award passed by the learned District Judge, Pondicherry.

7. Per contra Ms. Amirtha Sarayoo, learned Counsel appearing for the 1st respondent would submit that these lands were already in the possession of the appellant for over two decades prior to the acquisition proceedings and the claimants had been occupying the same as a lessee and using it as a Store Yard. She would further submit that the lands which are acquired is situated abutting the Main road whereas the lands belonging to the 1st respondent which were not acquired is on the rear of the lands acquired having no access. Despite the objections made by the respondents/claimants, the appellant had not acquired the entire lands. As a result 79 Acres 50Ca of land remain unutilized and has depreciated in value. She would submit that the appellant did not require to develop the acquired land, as the land has already been developed and given to them on lease for the very same purpose for which the lands have been acquired. She would further argue that in fact, the enhanced amount of Rs.10,000/- itself was very low and did not reflect the market value as on the date of the acquisition. She would submit that the learned District Judge has followed the dicta laid down by the Hon'ble Supreme Court in 2005 (4) SCC 789 [Viluben Jhalejar contractor Vs. State of Gujarat] while determining the market value. As held by the Learned Judges, the lands in question conforms to the principles set out under Section 23 of the Land Acquisition Act for determining the market value.

8. The learned counsel would further argue that the learned District Judge has also taken note of the potentiality of the land in question and therefore, the Award passed cannot be called in question though the value awarded is much below the actual value of the land.



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9.The learned counsel had also relied on the following judgements:-

(i)1996(11) SCC 159 [Gujarat Industrial Development Corporation Vs. Narottambhai Morarbhai and Another]

(ii)2001(1) LW 1001 [Karnataka Urban Water Supply and Drainage Board Vs. K.S.Gangadharappa & Another]

(iii)2011 (8) SCC 91 [Valliyammal & another Vs. Special Tahsildar (Land Acquisition) & Another]

10.Heard the learned Counsels appearing on either side and perused the papers.

11.The Land Acquisition Officer has awarded a sum of Rs.2,245 per are for the lands acquired . Admittedly, only a portion of the land had been acquired and the remaining extent of land which was to the rear of the land acquired is now cut off without access to the road and has become worthless. While acquiring the lands, the appellant had not considered providing an access to the rear portion. No amounts have been given under the head of "Severance Compensation" to the respondents/claimants for the unacquired extent. Further, the argument of the appellant that the learned District Judge has awarded a sum of Rs.10,000/- without any basis is perforce erroneous since a very reading of the Award clearly indicates the application of mind of the learned District Judge to all the documents filed before her before arriving at the market value. The learned Judge has analysed each of the values set out in the Sales Statistics marked as Exhibit R3 to arrive at the compensation.

12.Admittedly the lands to the rear of the lands acquired has been rendered unworthy as the access to the Main Road has been totally cut off. The lands that have been acquired has been in the possession of the appellant as the 1st respondent's lessee and they have been using the lands as a Store Yard which is the purpose for which it is now acquired. Therefore the appellant does not have to infuse any funds for its development as it is already put to the very same use as for which it is acquired.

13.In the judgement reported in 2011 (8) SCC 91[Valliyammal & another Vs. Special Tahsildar (Land Acquisition) & Another], the Learned Judges had considered the ratio for deducting



amounts towards development charge after referring to the earlier judgement reported in 2010 (12) SCC 707 [A.P.Housing Board Vs. K.Manohar Reddy] held as follows:-

"The percentage of deduction (development cost factor) will be applied fully where the acquired land has no development. But where the acquired land can be considered to be partly developed (say for example, having good road access or having the amenity of electricity, water etc.) then the development cost (that is, percentage of deduction) will be modulated with reference to the extent of development of the acquired land as on the date of acquisition. But under no circumstances, will the future use or purpose acquisition play role in determining the percentage of deduction towards development cost"

14.In the instant case no development charges need to be deducted as the lands that have been acquired are already being used for the very same purpose for which it is being acquired. Therefore the fact that no development charges have been deducted is immaterial and has rightly not been granted. Further, in the instant case no amounts towards "Severance Compensation" has been awarded despite the respondent proving that the unacquired lands has become worthless by reason of the acquisition of the lands subject matter of this appeal.

15.I do not therefore find any reason to disagree with the finding and judgement of the Court below.

In fine, the appeal is dismissed however there shall be no Order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

gd/mps
To
1.The District Judge,
Karaikal.

2.The Secretary to Government,
Union of India,
Department of Revenue,
Pondicherry.



3. The Land Acquisition Officer-cum-
Deputy Collector (Revenue),
Karaikal.

+1 CC to M/s. TVS Associates sr 48759

+1 CC to Mr. Anand, Abdul & Vinod, Advocate sr 49169.

A.S.No.342 of 2011

BS (CO)
SP(25/11/2021)