IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

SA No.807 of 2007
and
MP No.1 of 2007
and
Cross Objection No.97 of 2009

The Land Acquisition Officer - cum-
Special Tahsildar (ADW),
Villupuram ... Appellant in S.A. No.807 of 2007 and Respondent in Cross Appeal No.97 of 2009 in SA.807/2007

Muthu Sivaraman ... Respondent in S.A. No.807 of 2007 and Cross Objector in Cross Appeal No.97 of 2009 in SA.807/2007

Prayer in S.A. No.807 of 2007 : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.02.2006 made in C.M.A. No.38/1996 on the file of 1st Additional Subordinate Judge, Villupuram modifying the award dated 19.01.1996 made in Award No.A1/1645/92 passed by the Land Acquisition Officer-cum-Special Tahsildar, (Adi Dravidar Welfare), Villupuram.

Prayer in Cross Objection No.97 of 2009 : Cross Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in C.M.A. No.38 of 1996 dated 28.02.2006 on the file of the I Additional Subordinate Judge, Villupuram.

For Appellant in S.A. No.807 of 2007

and for respondent in
Cross Objection No.97 of 2009 : Dr.S.Suriya
Government Advocate

For Respondent in S.A. No.807 of 2007

and for Cross Objector in
Cross Objection No.97 of 2009 : Mr.T.R.Rajaraman

COMMON JUDGMENT

(Heard Video Conference)

This Second Appeal has been filed by the Land Acquisition Officer, Villupuram, challenging the enhancement of compensation awarded by the learned I Additional Subordinate Judge, Villupuram by its judgment and decree dated 28.02.2006 in CMA No.38 of 1996.

2. The learned I Additional Subordinate Judge, Villupuram by its judgment and decree has enhanced the compensation awarded to the respondent for the lands acquired from the respondent in Survey No.121/1F2, 121/1G, 121/1H1 measuring 1.66 acres to Rs.6,55,386/- instead of Rs.56,314.50 fixed by the Land Acquisition Officer under his award dated 19.01.1996.

3. This Court while admitting the Second Appeal on 09.08.2007 formulated the following substantial questions of law :

i) Whether the Court below had erred in placing reliance on the document, dated 22.3.1993, marked as Ex.A6 through which only a small extent of house site was sold when the extent of the land acquired is more than one acre?

ii) Whether the Court below had erred in awarding interest at the rate of 6% per annum from the earlier date of 4(1) notification viz., 17.8.1994 which was subsequently quashed by the Supreme Court?

iii) Whether the Court below had erred in not appreciating the fact that the appeal not having been properly stamped under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act, 1955 was not maintainable?

iv) Whether the Court below had erred in not appreciating the provision of Section 8 of the Act 31/78 wherein it is made clear that in the fixation of determining the amount of compensation, the purpose for which the land acquired shall not be a criteria and nature of land on the date of 4(1) notification shall be a criteria for determining the compensation?

v) Whether the Court below had erred in not deducting 1/3rd amount of the market value towards developmental charges as held by the Apex Court reported in 1990 S.C. 1028, 1998(2) S.C.C.150 and 1995(3) S.C.C.426 and 2003 (12) S.C.C. 334?

4. Heard Dr.S.Suriya, learned Government Advocate appearing for the appellant in S.A. No.807 of 2007 as well as for the respondent in Cross Objection No.97 of 2009 and Mr.T.R.Rajaraman, learned counsel for the respondent in S.A. No.807 of 2007 as well as for the Cross Objector in Cross Objection No.97 of 2009.

5. The learned counsel for the appellant drew the attention of this Court to Ex.A6, which is the sale deed dated 22.03.1993 filed on the side of the respondent / claimant and would submit that the learned Subordinate Judge has erroneously taken into consideration the said sale deed despite the fact that the said sale deed pertains only to a small extent of land, whereas the lands acquired from the respondent /claimant is a large area. According to her, when the appellant has produced a data sale deed for a large extent of land, which is dated 30.06.1994, the learned Subordinate Judge ought to have taken that sale deed into consideration as it is for a larger extent of land and not the sale deed, dated 22.03.1993, which was marked as Ex.A6, which is for a smaller extent of land. Further, she would submit that under the impugned judgment and decree, developmental charges were also erroneously not deducted, as per settled law.

6. The learned counsel for the appellant drew the attention of this Court to the impugned judgment and in particular, she drew the attention of this Court to paragraph No.17 which gives the calculation details and she would point out that the learned Subordinate Judge has erroneously calculated the interest from 17.08.1994, whereas, he ought to have calculated interest only from 15.09.1995 which is the actual date of the 4

(1) Notification.

7. Per contra, Mr.T.R.Rajaraman, learned counsel for the respondent / claimant would submit that the sale deed filed on the side of the respondent / claimant which has been marked as Ex.A6 is dated 22.03.1993, whereas the 4(1) Notification was issued only on 15.05.1995 and therefore, it cannot be said that the value fixed by the Court below for the acquired lands under the impugned judgment and decree is high. According to him by lapse of more than two years from the date of the sale deed dated 22.03.1993 and the date of 4(1) Notification, the value of the lands would have increased rapidly.

8. He also drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of Ali Mohammad Beigh and others versus State of Jammu and Kashmir reported in (2017) 4 SCC 717 and he would submit that even in that judgment, the sale deed in respect of a smaller extent of land was taken into consideration and the Hon'ble Supreme Court directed 15% enhancement in the value for each year from the date of the data sale deed. He would point out after referring to the said judgment that in that case 4(1) Notification was issued in the year 1973 but the sale deed relied upon was of the year 1971. According to him, since Ex.A6, Sale deed is of the year 1993, if 15% enhancement was granted, the value fixed by the learned Subordinate Judge under the impugned judgment and decree would have been much higher and therefore, even if developmental charges were not deducted under the impugned judgment and decree, the overall compensation awarded to the respondent / claimant cannot be considered to be excessive as alleged by the appellant.

9. He also drew the attention of this Court to the deposition of PW1 as well as the deposition of RW1 and would submit that RW1 has himself admitted during his cross examination that adjoining the acquired lands, there are several house sites and it is a developed area. He would also submit that the data sale deed produced by the appellant before the Court below is admittedly 1.6 kms away from the acquired lands as seen from the admission made by RW1 in his deposition. Hence, according to him, there is no merit in the contention of the appellant.

10. He would also submit that the respondent has also filed a cross appeal on the ground that the learned Subordinate Judge has erred in fixing the compensation at Rs.3,333/- per cent which is too low and the learned Subordinate Judge has also failed to value the coconut trees and PVC pipes in the lands

acquired from the respondent / claimant without assigning any proper reasons.

Discussion :

11. Admittedly, Ex.A6, Sale deed dated 22.03.1993, marked on the side of the respondent / claimant is an adjoining land to the acquired lands. Though it may be for a smaller extent, no contra evidence has been produced by the appellant to prove that the said value given under the sale deed(Ex.A6) is an incorrect value though they may say that it is for a smaller extent. No evidence has been placed by the appellant to show that the value for a smaller extent of land will be more than the value for a larger extent of land. Admittedly, the sale deed dated 30.06.1994 produced by the appellant, which has been marked as Ex.R1 is 1.6 kms away from the acquired lands. The same has also been admitted by the witness (RW1) on the side of the appellant as seen from the evidence available on record. RW1 has also admitted in his deposition as seen from his cross examination that the lands adjoining the acquired lands are house sites and there is lot of development activity. The sale deed dated 22.03.1993(Ex.A6) is two years prior to the 4(1)Notification issued by the Land Acquisition Officer, which is on 15.09.1995.

12. The learned counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in the case of Ali Mohammad Beigh and others, referred to supra, wherein also, the Hon'ble Supreme Court had taken into consideration a sale deed in respect of a smaller extent of land for the purpose of valuation of the acquired lands, which is a larger extent of land. In that case, the 4(1) Notification was issued in the year 1973, whereas the sale deed relied upon was of the year 1971 for a smaller extent of land.

13. In the said decision, the Hon'ble Supreme Court directed 15% of the value to be added every year from the date of the sale deed, till the date of 4(1) Notification. However, in the case on hand, admittedly, developmental charges have not been deducted under the impugned judgment and decree. As per the settled law as laid down in the decision relied upon by the learned counsel for the appellant reported in 1990 SC 1028, 1998(2) SCC 150 and 1995(3) SCC 426 and 2003(12) SCC 334, developmental charges will have to be deducted but in the case on hand, the same has not been deducted. However, in view of the fact that the sale deed relied upon by the claimant is of the year 1993, whereas, the 4(1) Notification was issued only on 15.09.1995 and by the passage of time, the value of the lands would have certainly increased manifold and following the

decision of the Hon'ble Supreme Court referred to supra, which had directed in that case, enhancement by 15% every year, this Court is of the considered view that the overall compensation awarded under the impugned judgment and decree cannot be considered to be excessive as alleged by the appellant. Further, the lands which are the subject matter of Ex.A6, sale deed dated 22.03.1993 are adjoining lands, whereas, the lands which is the subject matter of the sale deed, dated 30.06.1994(Ex.R1) are lands situated 1.6 kms away from the acquired lands and therefore, they cannot be taken into consideration for the purpose of correct valuation of the acquired lands. The learned Subordinate Judge under the impugned judgment and decree has correctly fixed the valuation based on the sale deed (Ex.A6), which is an adjoining land though it may be for a smaller extent. The learned Subordinate Judge under the impugned judgment and decree has also rightly followed the decision of this Court in the case of A.M.Abdul Kareem versus The Special Tahsildar, Adi Dravidar Welfare Maduranthagam Town & Taluk, Kancheepuram District reported in 2003 SCC Online Mad 790, which has laid down the guidelines for determining the land acquisition compensation.

14. There are no debatable issues of law or facts involved in this Second Appeal as the issues raised by the appellant before this Court have been adequately and correctly considered by the learned Subordinate Judge under the impugned judgment and decree. There is absolutely no substantial question of law involved in this Second Appeal.

15. However, as rightly pointed out by the learned counsel for the appellant, the learned Subordinate Judge under the impugned judgment and decree has erroneously calculated interest from 17.08.1994, though the actual date of 4(1) Notification was only on 15.09.95. The learned Subordinate judge ought to have calculated interest only from 15.09.1995 and not from 17.08.1994. Accordingly, the interest from the date of 4(1) Notification from 15.09.1995 till the date of the award dated 19.01.1996 is re-assessed at Rs.10,362/- (Rs.500296 x 6x 126 /365 x 100) instead of Rs.80,050/- erroneously fixed by the learned Subordinate Judge under the impugned judgment and decree.

16. Excepting for the calculation mistake committed by the learned Subordinate Judge under the impugned judgment and decree, this Court does not find any other infirmity in the said judgment. Accordingly, this Second Appeal is dismissed with the aforesaid observations with regard to the calculation mistake committed by the Court below with regard to the date from which

the interest will have to be calculated as stated supra.

17. With regard to the cross objection filed by the respondent, no evidence has been placed on record before the Court below to prove that there were coconut trees and PVC pipes in the acquired lands at the time of acquisition and therefore, this Court is of the considered view that the learned Subordinate Judge under the impugned judgment and decree has rightly rejected the contention raised by the respondent in this cross appeal and therefore, there is no scope for any further enhancement of compensation by this Court. Accordingly, the Cross Appeal is also dismissed. No costs. Consequently, connected miscellaneous petition is closed.

18. There seems to be some calculation mistake with regard to the calculation of interest on the balance amount payable by the appellant to the respondent. If any of the parties are aggrieved by the same, they may approach the learned I Additional Subordinate Judge, who has passed the impugned judgment and decree for the said corrections and the learned I Additional Subordinate Judge shall consider the same on merits and in accordance with law as and when such an application has been filed by either of the parties.

19. The learned counsel for the appellant submits that a portion of the award alone has been paid and the balance amount together with interest at 6%p.a. from the date of Award i.e., taking possession of the acquired lands i.e. 19.01.1996 till the date of realisation needs to be paid and the appellant is directed to deposit the balance amount, within a period of four months from the date of receipt of a copy of this judgment.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

vsi2

To

1.The 1st Additional Subordinate Judge, Villupuram.

2.The Land Acquisition Officer-cum-Special Tahsildar,
(Adi Dravidar Welfare), Villupuram.

Copy to: The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.T.R.Rajaraman, Advocate SR.No.39634
+1cc to the Special Government Pleader, SR.No.39835

SA No.807 of 2007
and
MP No.1 of 2007
and
Cross Objection No.97 of 2009

SRA(CO)
CB(10/12/2021)