

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No. 704 of 2021 &
C.M.P.No.5902 of 2021

The Land Acquisition Officer and
District Collector,
Kancheepuram District
Kancheepuram.

... Petitioner

Vs.

1.T. Salihu Rafiudeen

2. The Divisional Engineer,
Highways C& M
Chengalpattu

...Respondents

Civil Revision Petition is filed under Article 227 of Constitution Of India to set aside the Judgment and Decree made in L.A.O.P.No.42 of 2016 dated 20.03.2017 on the file of the learned Additional Subordinate Judge, Chengalpattu.

For Petitioner : Mr.J.Balagopal
Special Government Pleader (AS)

For Respondents : Mr.J.Ram for R1

O R D E R

This Civil Revision Petition has been filed by the Land Acquisition Officer and District Collector challenging the Common Order passed in L.A.O.P.No.42 of 2016 by the learned Additional Subordinate Judge, Chengalpattu dated 20.03.2017.

2. The brief facts of the case is that an extent of land measuring 63,787 square meter, situated in Pooncheri village, Thirukalukundram Taluk in the District of Kancheepuram was notified for acquisition for the formation of I.T.Corridor

Expressway, i.e., to widen the existing Old Mahabalipuram Road into a six lane from various survey numbers adjoining the I.T. Corridor Expressway. After completing the acquisition formalities, by way of Award dated 20.11.2013, the District Collector, Kancheepuram, had determined the amount payable to the respective land owners for the acquisition of their lands under Section 19(3) of the Tamilnadu Highways Act, 2001 (Tamilnadu Act 34 of 2002). The determination was made to that effect that the land value for 63,787 square meters was fixed at the rate of Rs.2,669/- per square meter and building along with the trees that severance from their place of acquisition with 30% Solatium was arrived at Rs.9,02,34,044/-. Apart from that, adding additional market value at the rate of 12% to the whole sum, arrived at Rs.31,36,53,234/-, as such, they have calculated the above rate and the amount was fixed by the proceedings of the District Collector, which worked out to Rs.2,669/- per square meter.

3. Aggrieved by the fixation of compensation as arrived by the District Collector, Kancheepuram in Award No.13/2013 dated 20.11.2013, petition in L.A.O.P.No.42 of 2016 was made to the learned Additional Subordinate Judge, Chengalpet, seeking for enhancement of compensation by the respondent / land owner. The learned Additional Subordinate Judge, Chengalpet by Common Order dated 20.03.2017 had enhanced the compensation to Rs.13,500/- per square meter, as against the same, present Civil Revision Petition No.704 of 2021 is filed by the Land Acquisition Officer and District Collector.

4. The contentions raised by the respondent - land owner before the court below was that the land in Survey No.11/1C2 in Pooncheri Village to an extent of 317.5 sq. mtrs belonged to him. He purchased the same under a registered sale deed for a valuable consideration and thereafter, the respondent / landowner had performed several improvements in the said land by levelling it to the height of 2 feet by spending several lakhs and when the Government notified the land for acquisition under notice dated 12.06.2009 for the formation of I.T. Corridor Express Highway, the respondent / land owner made a representation before the Collector stating that the market value of the property is more than Rs.3,50,000/-, as there are several sale deeds, which were registered for more than Rs.3,00,000/- in the same locality. The respondent further

stated that his land is situated in the commercial zone and because of the acquisition, his remaining lands cannot be utilised properly, as it has become a triangular in shape.

5. The respondent / land owner before the court below has also contended that the authority while passing the award, has not considered the highest value registered prior to one year from the date of acquisition and prayed the learned Additional Subordinate Judge, Chengalpattu to enhance the compensation.

6. In contrary to the submissions made by the respondent-land owner before the learned Additional Subordinate Judge, Chengalpattu, the petitioner herein has stated that they followed all the formalities in accordance with Law and the compensation fixed as per the award dated 20.11.2013 is absolutely correct, as the data land taken for arriving or fixing the award was correct and land that the respondent claiming to be as data land is fancyful, that cannot be considered for arriving at the compensation, hence he prayed that the award dated 20.11.2013 to be confirmed.

7. The learned Additional Subordinate Judge, Chengalpattu after hearing both the parties and in reference to the data land submitted by either parties, as documentary evidence, has come to the following conclusion:-

"19. In the result, the claim of the claimants is ordered as follows:-

(i) The compensation fixed by the Referring Officer at the rate of Rs.2,669/- per sq. meter is ordered to be enhanced to Rs.13,500/- per sq.meter with 30% solatium along with interest at the rate of 12% p.a. on solatium.

(ii) Any sum already paid towards the compensation has to be deducted from the total sum if it is already received by the claimants.

(iii) The claimants are entitled to get the additional market value at the rate of 12% p.a. from the date of notification under Section 15(1) of High Ways Act to the date of taking of the possession.

(iv) Further, the claimants are entitled 9% p.a., interest on the excess amount for the 1st year from the date of taking possession and 15% p.a., interest for subsequent years till the date of deposit.

(v) It is also further ordered that the expenses incurred

by this Court for sending notice to the claimants should be deducted at the time of issuance of cheque to the claimants.

(vi) It is further ordered that, the claimants are entitled for the cost of the proceedings.

(vii) It is further ordered that, except the above mentioned claims, with regard to other aspects the determination for the land acquisition officer is confirmed.

(viii) Time for payment of the enhanced claim 2 months."

8. The learned Special Government Pleader, appearing for the petitioner vehemently argued that the Award No.13 of 2013 dated 20.11.2013 ought to have been confirmed, as the award was passed in conformity with the data sale lands that was taken as referral value for fixing the compensation. When the authority has fixed the right value at Rs.248/- per square feet, the question of enhancing the compensation to an exorbitant amount of Rs.13,500/- per square meter or Rs.2,669/- per square feet is totally incorrect.

9. Apart from the above, the learned Special Government Pleader appearing for the petitioner further contended that the Land Acquisition Officer has rightly taken the relevant sale deed from the sale of wet land prior to Section 15(2) Notification dated 07.07.2009 and only after analysing all the transactions, as per the data sale collected by him, had rightly fixed the market value at Rs.248/- per Square feet. The learned counsel further contended that the Subordinate Court has failed to consider the data sale deed taken by the Land Acquisition Office for fixing market value, which is abutting the acquired land, whereas, the Subordinate Court, without even considering all the above facts and without any proper reasoning, had fixed Rs. 1,255/- per square feet as against Rs.248/- per square feet fixed by the Land acquisition Officer, which is highly exorbitant and it has to be set aside.

10. Per contra, the learned counsel appearing for the respondent - land owner, had contended that the acquisition officer had fixed the common value in his award for both approved lands and unapproved lands, as such, the approved land that falls within the acquisition, will have to be considered separately as against the unapproved plots or lands that were acquired.

11. It is represented on behalf of the respondent - land owner that the value fixed cannot be the same for larger extent of land and for smaller extent of land. Each land should have been decided separately considering the proximity of the highway road from the acquired land and the development that has taken place in the adjoining land to the acquired land. However, when a reference was made to this Court seeking enhancement of compensation, the learned counsel for the respondent submitted that if this Court is not willing to enhance the compensation from Rs.13,500/- to a higher rate, it would be appropriate for this Court to confirm atleast Rs.13,500/- per square meter, as enhanced by the Subordinate Court.

12. Considering the rival submissions and documents relied on by the learned counsel on either side, this Court proceeds to determine whether the compensation enhanced by the learned Additional Subordinate Judge, Chengalpet in L.A.O.P.No.42 of 2016 is just or excessive or insufficient.

13. The acquisition that relates to the present Revision Petitioner is for the formation of I.T. Corridor Express Highway, i.e, to widen the existing old Mahabalipuram road. No doubt, the value of the land in and around old mahabalipuram road has increased manifold. On perusing the Common Award No. 13/ 2013 dated 20.11.2013, it is noticed that for arriving and fixing the compensation at Rs.248/- per square feet or 2,669/- per square meter for the land which were acquired, the authorities had conducted survey of the land involved in acquisition and inspected the field sketch. As there was variation in the extent between the Public Notice issued under Section 15(2) of the Highways Act and the Draft Notice under Section 15(1) of the Highways Act, Notice under Section 16(2) was issued, which was prior to the notification published in Part II Section 2 of the Extra Ordinary issue of Tamilnadu Government Gazette dated 04.03.2005 by bringing into the trees and other structures in the lands that represented at the time of acquisition in the acquired lands.

14. That apart, the authority, for determining the compensation, had gathered sales statistics from 08.07.2008 to 07.07.2009, i.e., one year prior to the date of publication of 15(2) Notification from the Sub-Registrar Office, Thiruporur and found that almost 349 sales have taken place during the said

period in the wet land of Poonjeri Village and out of the said 349 sales, Sl.No.101, which is to an extent of 1.06.50 cents, i.e., 46,434 square feet in Survey Nos.222/1, 2A, 2B, 3, 4, 5, 6, 7, 7B & 7C were sold for Rs.1,15,00,000/- vide sale deed dated 05.03.2007, registered as document no.1818/ 2007 and the same was taken as 'data land', which were worth Rs.248/- per square feet approximately.

15. Further, the authority had concluded that as far as the other sales carried out in the subject land are concerned, the same were either sold as house sites, land with building or otherwise, the sale deed pertaining to Sl.No.101, reflected the correct value of the said land and hence, the same was taken and confirmed to be the data land for arriving at the compensation. Thus, the authority, in Award No.13/2013 dated 20.11.2013 had fixed the compensation to be paid for the acquired lands to an extent of 63,787 square meters at Rs.2,669/- per square meter or Rs.248/- per square feet.

16. When the learned Additional Subordinate Judge, Chengalpet, made a reference with respect to the Award passed by the authority, the claimants, viz., the respective land owners, have filed and marked Exhibits, viz., Ex.C.1, which is the sale deed dated 21.11.2007; Ex.C.2, is the sale deed dated 24.11.2008, which is the property situated at Paiyanoor Village; Ex.C.3, sale deed dated 15.07.2008, which is a document to show that the land registered abutting the main road at Pooncheri village; Ex.C.4, is the certified copy of the order in E.P.No.56 of 2009 in O.S.No.15 of 2007 and Ex.C.5 is the certified copy of the sale deed dated 05.03.2007.

17. On evaluation of quantum of award passed by the Authority, it is observed that there is no reason stated as to how the particular sale deed registered in Sl.No.101 alone was taken as data land for fixing the compensation among the 349 Sale deeds that were registered between 08.07.2008 to 07.07.2009. The award does not contain any such reason for the arrival of quantum of compensation, which certainly warrants interference.

18. On scrutinizing the Common order rendered by the learned Additional Subordinate Judge, Chengalpattu, this Court finds that among the comparative sale deeds produced by the

claimants, viz., land owners and the sale statistics referred by the Authority, the attachment order, which is marked as Ex.C.4, [Certified copy of the order in E.P.No.56 of 2009 in O.S.No.15 of 2007] pertaining to the property located in Mahabalipuram village, was considered to be the 'data land' for the enhanced compensation. It is no doubt true that the amount fixed by the Authority at Rs.248/- per square feet for the acquired land is absolutely incorrect and too low for the commercial land that is situated in the old mahabalipuram road. The land owners should be justly compensated for their loss of land. Ex.C.4, pertains to the attachment order passed by the learned Principal District Judge, Chengalpet, which is to an extent of 1,184 square feet [One and a Half kms., from the data land] and the property worth as mentioned in the E.P.No.56 of 2009 in O.S.No.15 of 2007 is Rs.15,00,000/-., i.e., Rs.13,638/- per square meter, hence, the learned Additional Subordinate Judge, Chengalpattu has arrived at Rs.13,500/- per square meter, as against Rs.2,669/- per square meter in the award.

19. The learned Additional Subordinate Judge, Chengalpattu has fixed the compensation by taking into consideration Ex.C.4, i.e., Certified copy of the attachment order in E.P.No.56 of 2009 in O.S.No.15 of 2007 in Mahabalipuram Village to an extent of 1,184 Square feet for Rs.15,00,000/- hence, 1 Square feet is, Rs.15,00,000/-, / 1184 sq.ft., = Rs.1,266 per square feet, as on the year 2017.

20. On perusing the reasons rendered in the Common Order passed by the learned Additional Subordinate Judge, Chengalpattu, it is seen that though the data land taken by the said learned Judge is lesser in extent, in comparison to the land acquired, or, in comparison with each and every land owners, the proximity of the acquired land is closure to Ex.C.4, than the data land in Sl.No.101. In this regard, the learned Judge has appreciated the reasons to consider the value of land mentioned in Ex.C.4, [Attachment order in E.P.No.56 of 2009 in O.S.No.15 of 2007 passed by the learned Principal District Judge, Chengalpat] to be fixed as just compensation to the land owners for the land acquired by the petitioner. Ex.C.4 is the valuation determined in the execution proceedings by the Executing Court in E.P.No.56 of 2009 in O.S.No.15 of 2007, which cannot be brushed aside, merely because the extent is very small. When the court below, viz., learned Principal District

Judge, Chengalpat has considered the same and passed an order in an execution proceedings, this Court is completely in agreement with the same and confirms confirms the Common Order passed by the learned Additional Subordinate Judge, Chengalpattu in L.A.O.P.No.42 of 2016 dated 20.03.2017. All the other terms and conditions and the interest granted by the learned Additional Subordinate Judge, Chengalpattu also remains unaltered.

In the result, the Civil Revision Petition cannot be entertained and the same fails. Accordingly, the present Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

ssd

To

1. The Divisional Engineer,
Highways C& M
Chengalpattu
2. The Additional Subordinate Judge,
Chengalpattu.
3. The Section Officer,
V.R.Section, High Court, Madras.
4. The Land Acquisition Officer and
District Revenue Officer,
Kancheepuram District,
Kancheepuram.

+3CCs to Mr.J.Ram, Advocate, SR.No.38419

C.R.P.No. 704 of 2021 &
C.M.P.No.5902 of 2021

JP(CO)
B.VC (05/10/2021)