



IN THE HIGH COURT OF JUDICATURE AT MADRAS

02.09.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.395 of 2014 &
M.P. No.1 of 2014

Land Acquisition Officer and
District Backward Classes
Welfare Officer,
Kancheepuram

...Appellant

Vs.

- 1.Hameedudin [deceased]
- 2.Malliga Begum
- 3.Mugabeer Bhanu

(Respondents 2 & 3 were brought on record as
Lrs of the deceased sole respondent vide order
dated 23.10.2013 made in CMP No.3911/2006 and
CMP Nos.930 to 932 of 2016 in ASSR
No.99060/2005 R2 recognised as a power
agent of the second respondent vide
order of Court dated 22.09.2014
made in M.P.No.2 of 2014

- 4.Hafsa Ali
- 5.Minor A.Imaanudeen
- 6.Minor A.Amaanudeen

[Minors rep. By their mother and natural
guardian

Hafsa Ali. R4 to R6 brought on record as Lrs
of the deceased 1st respondent vide order of
the Court dated 22.09.2014 made in M.P.No.3/2014]

...Respondents

PRAYER: This Appeal Suit is filed under Section 54 of the Land
Acquisition Act against the Judgment and Decree of the
Additional Sub-Court, Chengalput in L.A.O.P.No.3 of 1986 dated
31.01.2003.

For Appellant : Mr.Edwin Prabhakar

For Respondents: Mr.P.S.Kothandaraman for R2 to R4
R5,6 Minor Rep by R4



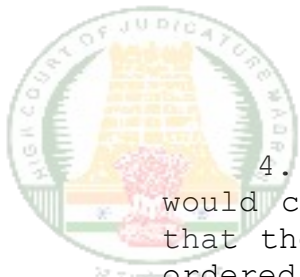
J U D G M E N T

The defendant, Land Acquisition Officer and District Backward Welfare Officer is the appellant before this Court. The first appeal arises against the judgment and decree passed by the learned Additional Subordinate Judge, Chenglelepet in L.A.O.P.No.3 of 1986.

2. The facts of the case are as follows:

The lands belonging to the original claimant/deceased first respondent was proposed to be acquired by the appellant herein for providing house sites to Dhobies /Barbers. The Section 4(1) Notification came to be issued on 03.03.1982 in and by which an extent of 4.04 acres was sought to be acquired. The Land Acquisition Officer fixed, the market value at Rs.160 per cent and arrived at an award amount of Rs.1,20,495.75. The lands that were acquired was comprised in S.No.1263/1 of Maduranthagam Village. The deceased first respondent had received the compensation amount under protest and requested the matter to be referred to the appropriate Court under Section 18 of the Land Acquisition Act. Accordingly, the matter was referred to the learned Subordinate Judge, Madurantagam under Section 18(1) of the Land Acquisition Act. The form of reference to the Court would indicate that the extent of 4.04 acres in S.No.1263/1 had been acquired and possession had also been taken on 23.09.1985. The reference was made on 20.10.2000. The Land Acquisition Officer would submit that the sale deeds referred by the claimant had been rejected since the sale had taken place in Madurantagam village and was not identical in any aspect to the lands acquired. Further, the sales referred to by the land owner relates to housing plots lying in well developed areas whereas the land that has been acquired is an arable land lying in the southern boundary of the village. Therefore, the Land Acquisition Officer would submit that the compensation that has been arrived at is reasonable.

3. The form of reference had also enclosed the copy of the award. A reading of the award will also show that the first respondent / claimant had raised an objection that he has not been provided with severance compensation, since by reason of the acquisition the remaining extent of his land i.e. an extent of acre 2.02 cents becomes uneconomical. The contentions of the claimant had been rejected and the Land Acquisition Officer had arrived at an award at Rs.1,20,495.75.



4. The claimant had filed a written statement in which he would contend that this Court in its writ jurisdiction had held that the proceedings of the respondent was not correct and hence ordered a re-enquiry. After the order, the Land Acquisition Officer had delayed the proceedings of more than 1 ½ years and had commenced the enquiry only in the year 1984. Therefore, the price fixed was also paltry since the price of the lands had escalated. It is the case of the claimant that he had effected the following improvements on the entire extent of 6.16 acres: land

- (a) levelling the same by using Bulldozers
- (b) digging a Well in the adjacent land viz., S.No.1264/1 for supply ing water.
- © improving the soil of the land.
- (d)Constructing a compound wall as well as motor shed, etc.,

5. The claimant would submit that he had purchased the lands to converted into an agricultural farm along with the lands in S.No.1264/1. The lands in S.No.1263/1 measured an extent of 5 acres 8 cents and the land in S.No.1264/1 measured an extent of 1 acre 4 cents. The acquisition was in respect of an extent of 4 acres 4 cents from out of 5 acres 8 cents compromised in S.No.1263/1. Since a large portion of the lands had been acquired, the remaining extent was of no use to the claimant and the value of the land had also reduced drastically. The claimant would also submit that the acquired lands had several locational advantages like:

1.Proximity to the GST road.

2.Adjacent lands were also sold as housing sites at very high prices. The area fell within the municipal limits and had electricity as well as protective water supply; in and around the acquired lands, there was were modern rice mills, ordinary rice mill and rolling mill.

6. The Residential Quarters of Government Officers as well as the Telephone department was abutting the acquired land on the northern side and beyond these lands, there was the veterinary hospital. The area in and around the acquired lands had all the locational advantages and the value of the land was not less than Rs.4,500/- per cent. In the survey number adjacent to the lands, the properties have sold for a sum of Rs.2,500/- and more per cent. The Land Acquisition Officer had brushed



aside these factors while arriving at the compensation. Further, the data land which is relied upon by the Land Acquisition Officer was situate in a different village which has an undeveloped land. The lands which have now been acquired are developed lands coming within the Madurantagam Municipality and having several locational advantages. Therefore, he sought for the enhanced compensation

7. The learned Subordinate Judge, Chenglepet, had framed the following issues:

“9. இந்த மனுவில் தீர்மானிக்க வேண்டிய எழுவினாக்களாவன

1. இந்த ஆர்ஜிதம் செய்யப்பட்ட நிலத்திற்கு பிரிவு 4(1) அறிவிப்பு தேதியிலிருந்து சரியான கால விலை என்ன?
2. கோருநருக்கு கிடைக்கத்தக்க இழப்பீட்டுத் தொகை எவ்வளவு? ”

8. On the side of the claimant/respondent herein, the claimant had examined himself as CW1, besides examining five other witnesses. In support of his contention, he had marked Exs.A1 to A7 all of which are sale deeds in respect of the lands in and around the acquired lands. On the side of the respondent, two witnesses were examined as RW1 and RW2 and Exs.B1 to B4 were marked.

9. The learned Subordinate Judge, took into consideration the sale deeds filed by the respondent herein since they were sale deeds showing the prevailing market price of the lands around the lands acquired. The learned Judge took cognizance of the fact that the properties have been selling as housing plots and even in the year 1979, the price of the lands where about a sum of Rs.1,500/- and has been on a steady increase within months of the possession being taken the price had gone upto a sum of Rs.4,260/-. The learned Judge had relied on Exs.C1 to C7 fixed the market value at a sum of Rs.3,200/- by adopting the average value. 30% was deducted towards solatium and the value was arrived at a sum of Rs.2,240/-. This judgment and decree is the subject matter of the present appeal.

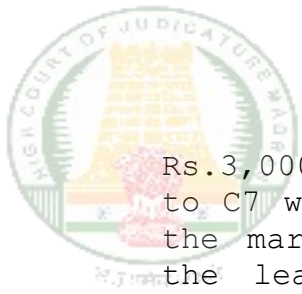
10. Mr.Edwin Prabhakar the learned Government Advocate had made his submissions that the procedure adopted by the learned Appellate Judge is erroneous. He would contend that the learned Judge ought not to have taken into account the value of the property where the extent was negligible to arrive at a market value of Rs.2,240/-. He would further submit that the learned Judge has not taken into account the deduction towards development charges. He would also submit that there cannot be a comparison of market value of a very small extent with that of a large extent of land as in the instant case, viz., acre 4.40



cents. He further submit that the Court below has lost sight of the fact that the lands acquired were agricultural lands. Therefore, huge amounts have to be spent for its development and for providing for roads, drainage system, etc., and the learned Judge ought to have calculated the deduction on this. He would rely on the judgment of the Hon'ble Supreme Court reported in 2008 (14) SCC page 745 in case of ONGC LTD. V. RAMAESHBHAI JIVANBHAI PATEL, wherein the Hon'ble Judges of the Supreme Court had articulated on the recent trend to determine the market value of the acquired lands with reference to future sale transaction or acquisition. The learned Judges had provided illustrations and held that the appreciation in market price differs from one town to the other. Therefore, the Bench had come to a workable solution whereby if the annual increase of market value was at a rate of 10% p.a. before the acquisition, the annual increase of market value of the areas adjoining the acquired lands would become more valuable. The Bench held that the deductions should not be 10% per annum, but much more.

11. Thereafter, he relied upon the judgment of the Hon'ble Supreme Court reported in 2010 (1) CTC 527 in the case of THE LAND ACQUISITION OFFICER V. RADHAKRISHNAN CHETTY. He would submit that as per this judgment, 53% deduction has to be given for development charges and since the valuation is to be arrived at on the basis of the market value of the smaller extent a further deduction of 25% should be given and in all, a deduction of 78% should be given. He would also rely upon the judgment of this Court reported in 1996 (2) SCC page 62 in the case of K.S.SHIVADEVAMMA AND OTHERS V. ASSISTANT COMMISSIONER & LAND ACQUISITION OFFICER, where the learned Judges have held that 53% of the land under the building rules is the extent deducted towards development charges. For the laying of roads and other amenities 33-1/3% is required to be deducted. If appropriate developments have already taken place, then accordingly deduction has to be made. The learned counsel would therefore submit that in the instant case, the properties that were acquired lands were agricultural land and had to be improved. Therefore, he would submit that the compensation arrived at by the learned Subordinate Judge is on the higher side. The learned Judge has not considered the nature of the property that has been acquired and its potential. Therefore, the judgment and decree requires to be reconsidered.

12. Per contra, Mr.P.S.Kothandaraman, learned counsel would submit that he has produced documents particularly Ex.C3, which is a sale deed executed on 10.08.1980 two years prior to the acquisition where one cent of land has been sold at the rate of

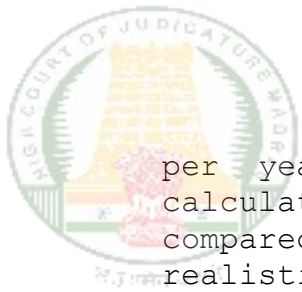


Rs.3,000/-. He would further submit that mere perusal of Ex.C1 to C7 would clearly show that how the price of the lands around the market had been increasing steadily. He would submit that the learned Subordinate Judge has erroneously held that the market value as per Ex.C3 was a sum of Rs.2,000/- whereas it is a sum of Rs.3,000/- per cent. He would state that in view of the steady increase in the price, the learned Judge ought to have calculated price escalation at the rate of 10% per year and ought to have applied a deduction of 20% as against 30% taken by the trial Court since the lands were already developed. In fact, his arguments would be that no development charges need be deducted since the property acquired had already been developed by levelling the same using a Bulldozer, securing the lands by putting up a compound wall etc., He would therefore submit that the deduction under the head of solatium was totally unwarranted.

13. Heard the learned counsels and perused the evidence of oral and documentary. The point for consideration in the above appeal is:

“Whether the trial Court has taken into account all factors required for arriving at the value of land in the case of the suit lands?”.

14.A perusal of Exs.C1 to C7 would show that the price of the property around the area was steadily increasing. It is also admitted that the property when it was acquired, was being sold as housing plots. He would contend that the said properties are agricultural may not be relevant, in view of the change in user of the lands by the owners. The development done to the lands has not been disputed by the appellant herein. The learned Subordinate Judge has taken the value over a period of seven years and arrived at market value of the land. In the judgment relied upon by the appellant viz., 2008 (14) SCC 745 cited supra, the learned Judges were considering the fundamental principles to be followed with reference to fixing the market value of the acquired lands. The learned Judges had held that the Court should avoid determining the market value on the basis of future transactions. The learned Judges were dealing with the lands which were agricultural and situate in a rural area. They have also dealt with the calculation of market value on the basis of transactions which have taken place some years prior to the acquisition. In these cases, the Bench had held that the method to be adopted was to calculate the year to year increase without applying a flat rate and to calculate the increase cumulatively. The Bench had held so, since they were of the view that if the flat rate is adopted, the market value



per year may be much more and if the price increase is calculated on a flat rate the increase would be minimal when compared to the cumulative rate method which affords a more realistic resolution.

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15. In a case on hand, the learned Judge had adopted a similar method. In the judgment reported in 1996 (2) SCC page 62 stated supra, the Court had held that the general rule of deduction for laying roads and other amenities was 33-1/3%. However where development had already taken place appropriate deduction needs to be made. The learned Judges had also held that 53% should not be automatically deducted but should also relate to the nature of the development and the stage of development.

16. In the case on hand, the lands that are acquired has been developed as calculated in the written statement filed by the claimant and their evidence which has not been refuted /rebutted by the appellant. Therefore, the deduction of 30% by the learned Judge appears to be reasonable and fair. In the judgment reported in 2010 (1) CTC 526 stated supra, the lands in question were undeveloped agricultural lands which is not the case with regard to the lands in question. In these circumstances, I hold that the market value arrived at by the learned Subordinate Judge is as per recognized principles and the learned Judge has also taken note of the development and accordingly ordered a deduction of 30%. The award is just and fair and does not require reconsideration by this Court. Accordingly, the appeal stands dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

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To

1. The Additional Sub-Court,
Chengalput

+1 CC to Mr.P.S.Kothandaraman, Advocate sr 44335.

A.S.No.395 of 2014 &
M.P. No.1 of 2014

SS (CO)
SP (24/11/2021)