IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

A.S. No.879 of 2018

[heard through Video Conferencing]

T.Deepa .. Appellant/Claimant

Vs.

1.The Special Tahsildar (L.A.)
Unit-IV Outer Ring Road Project,
Phase – II, CMDA, Koyambedu,
Chennai – 92. ...1st Respondent/Referring officer

2.The Member Secretary
CMDA, Egmore,
Chennai – 600 008. .. 2nd Respondent/Requisition Body

Appeal Suit filed under Section 54 of Land Acquisition Act, to modify the decree and judgment passed in L.A.O.P. No.177/2011 dated 26.07.2018 on the file of the learned Subordinate Judge at Poonamallee by enhancing the compensation fixed at Rs.18,000/- per cent to Rs.52,000/- per cent along with statutory benefits.

For Appellant :Mr. A.S.Vijay Anand

For R1 :Mr. Edwin Prabakar

For R2 :Mrs.P.Veena Suresh

J U D G M E N T

This Appeal is preferred as against the judgment and decree passed by the learned Subordinate Judge at Poonamallee (Reference Court) in L.A.O.P. No.177/2011 dated 26.07.2018, fixing the compensation for the land acquired from the appellant.

2. Brief facts that are necessary for the disposal of this appeal are as follows:

The land belonged to the appellant in Survey No.87/1A2, measuring an extent of about 2,800 sq.ft at Vellanur Village, Ambattur Taluk, Tiruvallur District, was sought to be acquired for the purpose of formation of Outer Ring Road between new Mahabalipuram Road and Tiruvottiyur - Ponneri - Panjetty Road. An extent of about 4.87.5 Hectare at Vellanur Village, Tiruvallur District, was acquired pursuant to a notification dated 21.03.2006, issued under Section 4(1) of Land Acquisition Act. The Land Acquisition Officer passed an award on 12.03.2009, fixing the market value @ Rs.1,000/- per cent. Aggrieved by the quantum of compensation, the appellant sought for reference under Section 18 of the Land Acquisition Act and the Reference Court took the matter on file in L.A.O.P. No.177/2011. Before the Reference Court the claimant filed documents under Exs.C1 to C4. The claimant has examined herself as P.W.1. Except examining R.W.1., no documents was filed on behalf of the respondents. The Reference Court, while fixing compensation, found that the documents filed by the appellant under Exs. C1 and C2 are prior to the notification under Section 4(1) of the Land Acquisition Act. It is further found that both the documents reflect the market value above Rs.50,000/- per cent. Though, it was argued on behalf of the appellant that the documents under Exs.C1 and C2 relates to house sites, as in the case of appellant 's land, the Reference Court, based on the value reflected in some of the documents which were relied upon by the Land Acquisition Officer in the Award passed by him, came to a conclusion that the market value for the acquired lands has to be fixed at Rs.18,000/- per cent. Though the Reference Court has enhanced the market value from Rs.1,000/- per cent to Rs.18,000/- per cent, the land owner has preferred the above appeal challenging the quantum.

3. The appellant has raised several grounds in the memorandum of appeal for enhancement of compensation. Learned counsel appearing for the appellant submitted that the documents under Exs. C1 and C2 ought to have been taken into consideration by the Reference Court. He pointed out that the learned Judge has relied upon a few documents which were just referred to by the Land Acquisition Officer in the award. The Reference Court cannot consider the documents which were not mentioned in the award, but not marked as evidence. By this process, the land owner will be completely misled while letting in evidence showing that the documents relied upon by the Land Acquisition Officer does not reflect the market value. Though under Section 51 (A) of the Land Acquisition Act, a certified copy of a document registered under the Registration Act, 1908 can be accepted as evidence of the

transaction recorded in such document, the documents referred to in the award cannot be considered without making the documents as evidence.

4. The following facts as borne out from records are not in dispute: Ex.C1 is the Sale Deed dated 05.01.2006, which is in respect of Plot in a layout comprised in Survey No.395 in the same village. The market value mentioned in the document is Rs.52,682/- per cent. Similarly, Ex.C2 is another Sale Deed dated 27.06.2005, which is in respect of the plot in a layout called Sri Bharathi Nagar. The property comprised in Survey No.395 is again sold for a sum of Rs.50,866/- per cent. The Reference Court has accepted the potentiality of the land with reference to Survey Nos. 395 and 87. The appellant's land is located in S.No.87/182 which is also a developed land in an approved layout called Bala Subramaniya Nagar.

5. The document filed by the appellant before the lower Court would show that a huge extent of land was converted into housing plots. The evidence of appellant would indicate that the land has more advantages than the land comprised in Survey No.395. The evidence of R.W.1 indicate that surrounding the acquired land, several properties have been developed as house sites. Since the appellant's land which is acquired for the formation of Outer Ring Road, forms part of developed layout, this Court is of the view that the value, potentiality and commercial advantages of the land of appellant should be assessed at least on par with the lands which were the subject matter of Exs.C1 and C2. The respondent did not mark any document of sale. The reference Court, instead of considering the documents Ex.C1 and C2, relied upon the contents of award relying upon certain documents and determined the market value by taking the average sale price of a few documents which are relied upon by the Land Acquisition Officer while passing the award.

6. Learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of M.Vijayalakshmamma Rao Bahadur Ranee of Vuyyur v. Collector of Madras reported in 1968(2) SCJ 869 : 1969(1) MLJ 45 : 1969(1) An.WR 45 wherein, the Hon'ble Supreme Court has held that where the Sale deeds pertain to different transaction are relied upon by the Government, it would be fair to rely upon the document which represents the highest value unless then are strong circumstances justifying a different course. The relevant portion of the judgment is extracted hereunder:

"It seems to us that there is substance in the first contention of Mr.Ram Reddy. After all when land is being compulsorily taken away from a person he is entitled to say that he should be given the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. It is not disputed that the transaction represented by Ex. Rule 19 was a few months prior to the notification under Section 4, that it was a bona fide transaction and that it was entered into between a willing purchaser and a willing seller. The land comprised in the Sale Deed is 11 grounds and was sold at Rs.1951 per ground. The land covered by Rule 27 was also sold before the notification but after the land comprised in Ex.Rule 19 was sold. It is true that this land was sold at Rs.1096 per ground. This, however, is apparently because of two circumstances. One is that betterment levy at Rs.500 per ground had to be paid by the vendee and the other that the land comprised in it is very much more extensive, that is about 93 grounds or so. Whatever that may be, it seems to us to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. In any case we see no reason why an average of two sale deeds should have been taken in this case."

6(a) In the present case no other sale exemplar except Ex C1 and C2 is filed. Therefore, the Reference Court is not justified in discarding Ex C1 and C2 on the basis of the value reflected in few other documents referred to in award. The documents Ex C1 and C2 cannot be discarded merely because they reflect higher value than the documents relied upon by the Land Acquisition Officer in the Award. It is to be noted that the documents taken note of from the award are also located in S.No.395 and 355 respectively. Hence, the Reference Court is not justified in ignoring Ex C1 and C2.

7. Learned counsel appearing for the appellant also relied upon the judgment of the Hon'ble Supreme Court in the case of Thakarsibhai Devjibhai And Ors. Vs Executive Engineer, Gujarat reported in AIR 2001 SC 2424 wherein, it the Hon'ble Supreme Court considered the issue whether sales statistics can be discarded based on the distance alone between the land covered under the sales statistics and the acquired land, when there is

evidence available to indicate that the land acquired has the same advantages compared to the land covered by the sales statistics. In paragraph 12 of the said judgment, the Hon'ble Supreme Court has held as under:

> “As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex.16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, It could not be said that the acquisition is of a larger area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landownes holdings are of small area. Even otherwise visioning in the line with submission for the State we find Ex.16 is about two hectares of land which cannot be said to be of small piece of land. So far the other question of distance between the two classes of lands, that by itself cannot derogate the claim of the claimant unless there are some such other materials to show that quality and potentiality of such land is inferior. However, distance between the land under Ex.16 and the present land even if they are 5 kms. apart would not be relevant, the relevancy could be, their distances from the Viramgam town. We find, as per map produced by the State the present acquired land is about 3 kms. away from it, while the land under Ex.16 is about two kilometers away from it. This difference is not such to lead to reduce the rate of compensation, specially on the facts of this case. In the present case, as we have recorded above, it has been found that the quality including potentiality of land between Exh.16 and the present one are similar. No evidence has been led on behalf of the State to find difference between the two. In view of this, the interference drawn by the High Court for reducing the compensation by Rs.10/- per sq.mtr. cannot be sustained.

7(a) The appellant in her statement referred to varieties of educational institution, commercial establishments and other facilities around the acquired land. Reference Court has recorded a finding that RW1 did not deny several locational advantages pointed out by appellant. Hence this Court has no justifiable reasons to discard or ignore the documents Ex C1 or C2 which are relied upon by the appellant.

8. As regards deduction, this Court is unable to find any reason to justify any deduction. The appellant's land is a plot in a layout called Arch Anthoniyaar Nagar. The layout comprising the plot owned by the appellant is marked as document Ex.C3. The layout plan indicate that several parcels of land are reserved for common purpose and several roads have been provided for free access to the plot owners. It is not the case of the respondent that compensation is paid to the portions in the layout reserved for roads. The acquisition is for formation of ring road which contemplates utilisation of the entire land acquired for that purpose. The land acquired from the petitioner is a small extent of 2800 sq. ft. Hence this Court is unable to consider any deduction.

9. Following the judgment of the Hon'ble Supreme Court in M.Vijayalakshmamma Rao Bahadur Ranee of Vuyyur v. Collector of Madras reported in 1968(2) SCJ 869 : 1969(1) MLJ 45 : 1969(1) An.WR 45, this Court is of the view that the market value should be assessed based on the document under Exs. C1 and C2 which reflects the fair market value. Taking into account the market value as reflected in Exs.C1 and C2, the average market value per cent comes to Rs.51,744/-. The market value cannot be less than Rs.50,000/- on any account. Therefore, this Court is inclined to set aside the award of reference Court in L.A.O.P. No.177 of 2011.

10. Accordingly, the decree and judgment dated 26.07.2008, passed by the learned Subordinate Judge at Poonamallee, in L.A.O.P. No.177 of 2011 dated 26.07.2018, is hereby modified and the market value is enhanced from Rs.18,000/- per cent to Rs.50,000/- per cent. The appellants are entitled to other statutory benefits. Thus, the Appeal Suit is allowed as directed above. No costs.

Sd/-
Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

cda / bkn

To

The Subordinate Judge,
Poonamallee.

+3cc to Mr.A.S.Vijay Anand, Advocate SR.No.62491
+1cc to M/s.P.Veena Suresh, Advocate SR.No.62067

A.S.No.879 of 2018

PPA(CO)
CB(10/01/2022)