



A.S.No.111 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :24.02.2022

Pronounced on :09.03.2022

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Appeal Suit No.111 of 2005

Special Tahsildar
(Land Acquisition)
BHEL Unit
Ranipet.

.. Appellant

/versus/

1.Ms.Alpin Pio,
Chemicals Limited,
Madras its Managing Director,

2.Appavu Udayar

3.A.Mani

4.A.Srinivasan

5.T.Vilvam

6.T.Mani

7.Muniyammal



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8.Kasthuri

9.Selvam

.. Respondents

Prayer: Appeal Suit has been filed under Section 54 of the Land Acquisition Act, against the judgment and decree of the learned Subordinate Judge of Vellore dated 03.08.1989 and made in L.A.O.P.No.461 of 1984.

For Appellant :Mr.Tamil Nithi,
Additional Government Pleader
For Respondents :Mr.M.Vaidhiyanathan for R1
No appearance for R2 to R9

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J U D G M E N T

The appeal by the Special Thasildar(Land Acquisition) BHEL Unit, Ranipet is against the award passed by the Reference Court fixing enhanced compensation of Rs.1,200/- per cent as against the compensation of Rs.32/- per cent fixed by the Acquisition Authority.

2.The land, which is the subject matter of this appeal, is part of vast extend of land acquired for establishing BHEL at Ranipet. The Section 4(1) Notification for acquisition of the 10.13 acres of land was issued on



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20/05/1981. Award No.25/1982 was passed on 22/11/1981. Against the said award of granting Rs.32/- per cent, the respondents herein, who held 10.08 acres sought reference for higher compensation of Rs.1,500/- per cent land and in addition Rs.2,73,000/- towards the cost of construction and Rs.2 crores for the loss of presumptive income. Later, the compensation claimed for land amended to Rs.3,600/- per cent.

3.The Reference Court, considering the fact that prior to Section 4(1) Notification, an extent of 24.89 acres of land was pooled together by the first respondent company from various land holders and got consolidated to start a distillery. It has obtained license to commence the industries and quota for molasses which is one of the main raw material. It has also commenced construction in the land. In view of the notification, the claimant/first respondent lost part of the land and also forced to relocate its industry. The Acquisition Authority failed to consider the fact that the land acquired is an industrial land. The market value of the land ascertained on the presumption that it is 'manavari punja land' based on the classification made few decades



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ago unmindful of the fact that the land held by the claimant for industry purpose. Further, the fixation of value based on data sale which took place on 16/03/1979, for the acquisition Notification under Section 4(1) dated 20/05/1981 is not a proper data, since it fail to reflect the market value on the date of Notification.

4.The Reference Court, therefore, taking note of the title deed of the claimants and the data sales produced by the claimants, took the mean average and fixed the value of the land at Rs.1,200/- per cent for 10.08 acres of land held by the claimant/first respondent.

5.The said fixation of market value is under challenge in this appeal. The reading of the grounds of appeal filed in cyclostyle form contains several grounds totally irrelevant to the facts of the case, which in view of this Court deserves the appeal to be dismissed with exemplary costs for preferring appeal recklessly adverting to facts totally unconnected and irrelevant to the case in hand. However, this Court inclined to hear the



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appeal, since the learned Additional Government Pleader apologies for the error and pleaded to place his submission primarily on the legal aspect namely the omission to deduct development charges from the market value fixed, which is mandatory and approved by catena of judgements of this Court and the Hon'ble Supreme Court and on the other supplementary grounds that, the data sale considered by the authority reflects the true market value of the land in that area. The land acquired is land surrounded by cultivable land and far from residential and industrial area. No amenities like railway station, Highways etc. are nearby this land. There is no prospect of raise in price of the land.

6.The learned counsel for the first respondent/ claimant submitted that, deduction of development charges between 33.3% to 53% is not mandatory. The deduction for development will arise only if the land acquired is barren, uneven and unfit and the data value of developed land is relied for fixation of market value. Then only the requirement to deduct development charges will arise. In the instant case, the land acquired is a



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well developed industrial land and it was acquired to establish some another industry. When on fact, no further development is required, development charge need not be deducted. The data value relied by the Reference Court is the land which were sold nearby recent to the date of Notification and the value paid by the land owner for purchasing the land from different land owners and got it consolidated. The land acquired admittedly near the SIPCOT and held for running a distillery. All statutory requirements like, industry permission, permit for raw material and building was obtained and ready. The claimants also had commenced construction and raised basement and pillars. Therefore, the award need no interference and to be confirmed.

7.The point for consideration is whether, the omission to deduct development charge is legally and factually sustainable and whether the value fixed by the Reference Court is the reasonable market value of the land acquired?



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8.In *Land Acquisition Officer and Revenue Divisional Officer, Coimbatore vs. Palaniappan and others dated 23.02.2010*, The Divisional Bench of this Court had held in para 13 which reads as below:-

“13.For determining the amount of compensation payable in respect of the lands acquired by the State market value therefor is to be ascertained. The expression 'market value' has been the subject of consideration by the Supreme Court in several cases. Market value is the price that the willing purchaser would pay to the willing seller for the property having due regard to its existing condition with all its existing advantages and its potential possibilities. In considering the 'market value' the guiding factor would be the conduct of hypothetical human conduct would be willing to buy as a prudent in normal market conditions. For ascertaining the market value of the land, the area of the land, nature thereof and advantages and disadvantages occurring therein amongst others would be relevant factor for determining the actual market value of the property. That apart, potentiality of the acquired land should also be taken into consideration.”

9.From the records, this Court finds that the claimants/land owners had purchased the property for its industry purpose and Ex.C-10 to Ex.C-20



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are the title deeds for the land. Having consolidated 24.89 acres of land, the land has been made fit for the distillery industry and building construction has to commence. Therefore, nothing left for further development of the land.

10.To ascertain the market value on the date of notification, where ever possible the comparison must be with the land nearby and of same classification. The transactions must be within 3 years before Notification. If it is not possible, then the presumptive value has to be arrived taking note of the other relevant facts. In any case, one cannot loss sight of the fact that the value fixed must be near or about the value what a willing purchaser will pay for a willing seller.

11.In *The Special Tahsildar, Neighbourhood Scheme v. Jaganathan gounder and others reported in (2009) SMLJ 2*, the Division Bench of this Court had observed as below:

21. In a recent decision of a three Judge Bench of the Honourable Supreme Court in REVENUE DIVISIONAL



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OFFICER cum- [L.A.O. v. SHAIK AZAM SAHEB ETC.](#) (2009(1) SCALE 545), the positive as well as negative factors indicated in [VILUBEN JHALEJAR CONTRACTOR v. STATE OF GUJARAT](#) (2005) 4 SCC 789) as factors germane for consideration for the purpose of determining the market value was re-iterated thus:-

"11. Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors, the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefor are also required to be considered, namely, as to whether they are irrigated or non-irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road or highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land.

12. The mode and manner in which determination of such valuation are to be carried out would also depend upon the facts and circumstances of each case, namely, whether any deed of sale executed in respect of similarly situated land near about the date of issuance of notification under [Section 4\(1\)](#) of the Act is available, or in absence of any such exemplars whether the claim can be determined on yield basis or in case of an orchard on the basis of the number of fruit bearing trees and the yield therefrom.

13. One other important factor which also should be borne in mind is that it may not be safe to rely only on an award involving a neighbouring area irrespective of the nature and quality of the land. For determination of market value again, the positive and negative factors germane therefor should be taken into



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consideration, as laid down by this Court in [VILUBEN JHALEJAR CONTRACTOR v. STATE OF GUJARAT](#) (2005) 4 SCC 789)."

22. The principles governing determination of market value with reference to the earlier decisions of the Supreme Court was considered recently by a two Judge Bench of the Honourable Supreme Court in [FARIDABAD GAS POWER PROJECT, NTPC LTD. ETC. v. OM PRAKASH & ORS., ETC.](#) reported in 2009(2)SCALE 219).

30. The Hon'ble Supreme Court in [Atma Singh v. State of Haryana](#), (2008) 2 SCC 568, (cited supra) referred to an earlier decision relating to deduction towards development charges, in [Bhagwathula Samanna v. Special Tehsildar & Land Acquisition Officer](#), 1991 (4) SCC 506, wherein it was held thus :-

In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. However, in applying this principle of deduction it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. If smaller area within the large tract is already developed and situated in an advantageous position suitable for building purposes and have all amenities such as roads, drainage, electricity, communications, etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified.

In the present cases the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the Town Planning Trust Road on the north. The neighbouring areas are already developed ones and houses have been



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constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and having stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Therefore, the High Court erred in making a deduction of one-third of the value of the comparable sale and thus reducing the fair market value of land from Rs.10 per sq yd to Rs.6.50 per sq. yd.

12. Therefore, in view of this Court, on applying the above dictum of the Hon'ble Supreme Court to the facts of the case in hand, the omission to deduct development charges is a conscious omission. Land kept development for an industry, if acquired for some other industry, developing the land does not arise. At the most, the Requisition Body has to modify the land suitable to their requirement.

13. As far as the fixation of market value of the land acquired, it is noted that the appellant has fixed Rs.32/- per cent, based on the data values of manavari punja land. Comparing the value of the manavari punja land for



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developed industry land is an apparent error. The classification of the land fixed several decades ago and not updated by the revenue authorities in their record, cannot be taken undue advantage to knock away the property under acquisition, from an unwilling seller. The value of Rs.1,200/- per cent fixed by the Court below based on the title deeds of the property acquired few years ago and about more than 200 data sales produced by the claimant before the reference proceedings were rightly taken into consideration reasonable market value has been fixed by the Court below. The proximity of the land acquired to railway station and highways are proved beyond any pale of doubt and thus, the future prospect for appreciation of value is also well found from evidence.

14.In the light of these proven fact, fixation of Rs.1,200/- per cent without deducting development charges cannot be faulted as excessive or unreasonable. Therefore,the appeal deserved to be dismissed with costs payable to the first respondent.



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15. Accordingly, A.S.No.111 of 2005 is dismissed with costs.

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Index:yes
speaking order/non speaking order

To:
The Subordinate Judge,
Vellore



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DR.G.JAYACHANDRAN,J.

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Pre-delivery judgment made in
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