**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**ORDERS RESERVED ON : 19.09.2022**

**ORDERS PRONOUNCED ON : 14.10.2022**

**CORAM:**

**THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR**

**AND**

**THE HON'BLE MRS.JUSTICE.N.MALA**

**A.S.No.1003 of 2009**

The Land Acquisition Officer,
The Deputy Collector (Revenue),
Yanam. … Appellants

/Vs./

1.Kotha Venkata Narayana
2.Kotha Venkata Ramarao
3.Kotha nageswara Rao
4.Kotha Subhashini
5.Kotha Surya Lakshmi Shalini minor rep. by
Kotha Subashini
6.Kotha Badrinath
7.Polisetty Jagapathi Rao
8.Nookala Janakidevi
9.Gali Subbarao … Respondents

Prayer: Appeal Suit is filed under Section 54 of the Land Acquisition Act, to set aside the order dated 11.03.2008 in LAOP No.2 of 2000 on the file of the Sub Judge at Yanam by allowing the above appeal.

For Appellant : Mrs.G.D.Jearany
Government Advocate (Pondy)

For Respondents : Mr.Kumaravel for
Mr.M.Ravi

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**JUDGMENT**

[Order of the Court was made by N.MALA,J.]

This appeal is preferred against the Judgment and decree dated 11.03.2008 passed under Section 18 reference by the Subordinate Judge at Yanam in L.A.O.P.No.2 of 2000.

2.The Government of Pondicherry has preferred the above said appeal. For convenience sake parties are referred to as per their ranking in the reference Court.

3.According to the claimants the Government of Pondicherry acquired 3.27.90 hectares of land at Mettacur Village in Sub Taluk of Yanam in the Union Territory of Pondicherry for the public purpose of setting up of a mini farm-cum-coconut nursery in Mettacur Village at Yanam. The Land Acquisition Officer after enquiry awarded a sum of Rs.2,300/- per Are and ordered a total compensation of Rs.11,11,653/- along with the statutory interest. The claimants not satisfied with the award passed by the Land Acquisition Officer sought for a reference Under Section 18 of the Land Acquisition Act, 1894 seeking enhanced compensation. According to the claimants the compensation awarded by the Land Acquisition Officer was too low and dis-proportionate to the potential value of the land.

4.The claimants case was that the acquired land was situated in the Yanam Municipal limits and was adjacent to the housing colonies, bus stand, banks, markets and industries etc. It was the claimants further case that the Land Acquisition Officer without considering the fact that there was high demand for house sites awarded compensation treating the lands as agricultural lands. The claimants relied on Ex.A1 to Ex.A8 in support of their claim for Rs.1000 per sq.mt. for the acquired lands.

5.On the side of the Government the Land Acquisition Officer contested the case and submitted that the sale transaction under Ex.A1 to Ex.A8 could not be considered for determining the correct market value as the lands under acquisition were of larger extent, whereas the extent covered by the said sale deeds were very meager. The Land Acquisition Officer further contended that the sale deed under Ex.A1 to Ex.A8 were not within 1 year from the date of 4(1) Notification. According to the Land Acquisition Officer the Government had issued guidelines stipulating that the transactions that took place within 1 year of 4(1) Notification alone could be considered and hence the said sale deeds were not considered.

6.The Land Acquisition Officer further submitted that the lands covered under Ex.A1 to Ex.A8 were acquired for setting up industries where as in the present case the purpose of acquisition was for setting up of mini farm-cum-coconut nursery and therefore Ex's.A1 to A8 could not be relied on. Thus the Land Acquisition Officer justified the award passed by him.

7.The short point for consideration in this appeal is whether the enhancement of compensation awarded by the reference Court is justified or not.

8.The learned Government Advocate appearing for the appellants submitted that the reference Court erred in enhancing the compensation on the basis of Ex.A8, as the lands covered by Ex.A8 were not similar to the lands under acquisition. The learned Government Advocate further submitted that enhancement of market value of the land from Rs.255/- per Sq.mt. to Rs.593.70/- per Sq.mt. is unsustainable for the reason that the extent of lands covered under the said documents were very small when compared to the vast extent of lands acquired by the Government under the 4(1) Notification. The learned Government Advocate therefore submitted that the appeal may be allowed and the value fixed by the Land Acquisition Officer may be restored by setting aside the Judgment and Decree of the reference Court.

9.The learned counsel for the claimants on the other hand contended that the lands under acquisition had high potential value as they were within the municipal limits of Yanam Municipality. The learned counsel further submitted that there was great demand for housing sites in the area and so the rate claimed by the claimants of Rs.1000 per Sq.mt. is reasonable and justified. The learned counsel for the claimants submitted that the reference Court has balanced the market value by not granting 10% annual increase in market value for the period between the date of the sale transaction under Ex.A8 and 4(1) Notification. The learned counsel therefore prayed that the

Judgment and Decree of the reference Court may be confirmed and the appeal be dismissed.

10.We have considered the submissions of both the learned counsel and we have also perused the records.

11.The Government of Pondicherry acquired the lands of the respondents vide 4(1) Notification dated 27.05.1997 in G.O.Ms.No.19 to an extent of 3.27.90 hectares in T.S.Nos.A/9/18/3, A/9/18/4 pt, A/9/19/6, A/9/19/7 and A/9/25/1 at Mettacur Village, for the purpose of setting up of a mini farm-cum-coconut nursery. The lands were acquired by invoking the urgency provisions under the Land Acquisition Act. Section 6 declaration was issued on 13.03.1999 vide G.O.Ms.No.13 and 80% of the compensation was paid on 30.11.1999 and the same was received by the respondents/claimants. The Land Acquisition Officer conducted the award enquiry and passed the award on 26.03.1999 fixing the market value of the lands at Rs.255/- per sq.mt. The respondents/claimants not satisfied with the market value fixed by the Land Acquisition Officer sought for reference under Section 18 of the Land Acquisition Act. The reference Court vide Judgment and Decree dated 11.03.2008 enhanced the market value of the lands from Rs.255/- per Sq.mt. fixed by the Land Acquisition Officer to Rs.593.70/- per Sq.mt. The reference Court relied on Ex.A8 to enhance the market value.

12.It is seen from the evidence of the Land Acquisition Officer, who was examined as RW1 that the lands were situated in the Yanam Municipal limits and surrounded by housing colonies, bus stands, banks, markets and several industries. It is also seen from the evidence of RW1 that Draksharam Main Road and few residential houses were just two furlong away from the acquired lands. RW1 further deposed that few industries were located very near to the acquired lands and some housing colonies by name Gandhi Nagar Housing Colony, Yanam Polytechnic were also very close to the acquired lands. Therefore on the basis of the evidence of RW1 it is clear that the acquired lands had great potential value. As rightly pointed by the reference Court RW1 admitted in his cross-examination that number of sale proceedings took place in the 9$^{th}$ block during the relevant period and that the lands in 9$^{th}$ block were very near to the acquired lands when compared to the lands in block Nos.2 and 3 in Mettacur Village and inspite of that RW1 fixed the market value for the acquired lands on the basis of transactions that took place in block No.3, which was admittedly 5 kilometers away from acquired lands. Therefore we agree with the reference Court that RW1's own evidence shows that the data-land selected by the LAO for determining the market value had no similarity to the acquired land and did not reflect the correct market value of the acquired lands.

13.It is to be examined if the claimant's document Ex.A8 reflects the true market value of the acquired lands. According to the learned Government Advocate as the extent of lands covered under Ex.A8 are very meager, the said document cannot be relied on. We are not inclined to accept the said contention, for the simple reason that the data sales relied on by the Land Acquisition Officer for the purpose of determining the compensation at Rs.255/- per sq.mt covers small extent of land of A12-CA40 (S.No.23 in Ex.B22), A10-CA-10 & A02-CA14.3 in S.No.37. Therefore there is nothing wrong in adopting the value stated in Ex.A8, as the LAO himself determined the compensation on the basis of meager extent of land.

14.The learned Government Advocate further submitted that the lands under Ex.A8 were used for industrial purposes but the purpose of acquisition is to set up mini farm-cum-coconut nursery. The purpose of acquisition as a determining factor may not apply in all situations for the simple reason that the land owner has to be compensated for what he has lost and not with reference to the purpose of acquisition. We are fortified in this view of ours by the judgment of the Hon'ble Supreme Court of India in the case of *Ramrao Shankar Tapsee Vs. Maharashtra Industrial Development Corporation & Others* decided on April 19, 2022. The Hon'ble Supreme Court in the said judgment relied on the earlier judgments in *Hookiyar Singh Vs. Special Land Acquisition,Tarlochan Singh Vs. State of Punjab and Subh Ram Vs. State of Haryana.* The Hon'ble Supreme Court in para 11, 12 and 12.1 held as follows

> *"11.Now, so far as the submission on behalf of the claimants that the lands in question were acquired for the industrial corporation and were to be used for the industries/commercial purpose and accordingly the compensation should have been paid is concerned, what is required to be considered is that the lands in question were agricultural lands. Even for the purpose of industrial use and/or industries, the corporation is required to incur the expenditure towards its development and therefore the development charges*

*would have to be deducted while determining the compensation. However, in the present case, the development charges are not deducted. Even otherwise, the future use of the acquired land cannot be the main criteria to determine the compensation for the lands acquired.*

*12.In the case of Hookiyar Singh (supra), it is observed and held that while determining the compensation, the future use of the land is not the relevant consideration.*

*12.1.In the case of Subh Ram (supra), it is observed and held that the purpose of acquisition is also a relevant factor. However, the said observation may not apply in all cases and all circumstances as the general rule is that the landowner is being compensated for what he has lost and not with reference to the purpose of acquisition. It is further observed and held that the purpose of acquisition can never be a factor to increase the market value of the acquired land.*

15.The reference Court has factually found that the lands under Ex.A8 are in the vicinity of the acquired lands, similarly placed, possess similar advantages and same potentiality and also the sale under Ex.A8 was a genuine and bonafide transaction within a reasonable period of the 4(1)

Notification and between two Government Corporations. The reference Court based on the evidence on record and also on the basis of the evidence of RW.1 (LAO) has clearly found that the lands under acquisition have high potential value. In regard to the potentiality of lands as a criteria for determining market value, we refer to the judgment of the Hon'ble Supreme Court in the case of *U.P. Awas Evam Vikash Parishad Vs. Asha Ram (D) Thr. Lrs & Ors.* The Hon'ble Supreme Court in para 29 of the judgment held as follows

> *29. The potentiality of the acquired land is one of the primary factors to be taken into consideration to determine the market value of the land. Potentiality refers to the capacity or possibility for changing or developing into the state of actuality. The market value of a property has to be determined while having due regard to its existing conditions with all the existing advantages and its potential possibility when led out in its most advantageous manner. The question whether a land has potential value or not primarily depends upon its condition, situation, use to which it is put or its reasonable capability of being put and also its proximity to residential, commercial or industrial areas/institutions. The existing amenities like water, electricity as well as the possibility of their further extension, for instance whether near about town is developing or has prospects of development have to be taken into consideration. It also depends upon the connectivity and the overall development of the area.*

We are therefore of the view that the factual finding of the reference Court on the potentiality of the acquired lands does not call for any interference.

16.The reference Court has found that there was an escalation of price of lands covered by Ex.A8 by 61% per annum, but the reference Court did not make any provision for 10% - 15% annual increase for three years period as it felt that the lands were acquired by the Government for public purpose. Therefore the reference Court restricted the market value to Rs.593.70/- per Sq.mt., though the claimants prayed for Rs.1000/- per Sq.mt. We find that the reference Court has balanced the equities fairly by refusing to award 10% – 15% annual increase for lands covered under Ex.A8 eventhough it found that there was a price escalation of 61% per annum for the lands covered under Ex.A8. We concur with the reference Court on this aspect and we do not find any justifiable reason to deviate from the same. In any event the claimants have not filed any appeal or cross appeal against the Award passed by the reference Court.

17.Under the facts and circumstances of the case, we are of the considered view that the enhanced Award passed by the reference Court is reasonable and does not call for any interference.

18.We therefore find no merits in the appeal and therefore the appeal is dismissed. The order dated 11.03.2008 passed in LAOP No.2 of 2000 passed by the Subordinate Judge at Yanam is hereby confirmed. There shall be no order as to costs.

(D.K.K.,J.) (N.M.,J.)
**14.10.2022**

Index : Yes / No
Internet : Yes / No
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To

1.The Subordinate Judge,
Court of Subordinate Judge at Yanam.

2.The Land Acquisition Officer,
The Deputy Collector (Revenue),
Yanam.

**D.KRISHNAKUMAR, J.**

**and**

**N.MALA, J.**

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**PRE-DELIVERY JUDGMENT IN A.S.NO.1003 OF 2009**

**14.10.2022**