IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.11.2022

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

CRP.No.1875 and 3132 of 2019
and CMP No.12334, 20524 of 2019

CRP No.1875 of 2019

1. K.Raja
2. K.Vijayakumar ... Petitioners/Claimants

Vs.

The Special Tahsildar (Land Acquisition),
Tamil Nadu Road Sector Project,
Tiruvannamalai ... Respondent/ Referring Officer

CRP No.3132 of 2019

The Special Tahsildar (Land Acquisition),
Tamil Nadu Road Sector Project,
Tiruvannamalai ... Petitioner /Referring Officer

Vs

1. K.Raja
2. K.Vijayakumar ... Respondents/Claimants

PRAYER in both CRP: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 04.03.2016 made in LAOP No.02/2009 on the file of the Principal Subordinate Judge, Tiruvannamalai.

In both CRP

For Petitioners/Claimants : Mr.R.Revathy

For Respondent/Referring Officer : Mr.T.Chandrasekaran, Special Government Pleader

COMMON ORDER

Challenging the Award passed by the Principal Subordinate Judge, Tiruvannamalai in LAOP No.2/2009 dated 04.03.2016, the claimants filed CRP No.1875 of 2019 seeking enhancement of compensation, whereas, the Referring Officer filed CRP No.3132 of 2019 to scale down the quantum of compensation.

2. Both the revision petitions have been preferred against the same order and hence, this Court passes the common order.

3. The petitioners' land in S.No.78/1 of Kilnathur Village consisting of 62.8 cents out of 1.69 acres was acquired by the Government for formation of Tiruvannamalai Bye-pass Road. The Referring Officer, by fixing a sum of Rs.275/- per cent as market value, passed an Award. Aggrieved by the quantum of compensation, the

petitioners filed a petition in LAOP No.2/2009 before the Referring Court for determination of just compensation.

4. After considering the oral and documentary evidence adduced on both sides, the Trial Court has fixed a sum of Rs.100/- per sq.ft., however, after deducting 1/3 amount towards "further development", has fixed a sum of Rs.67/- per sq.ft., instead of Rs.100/- with other benefits. Hence, the claimants filed CRP No.1875/2019 to enhance the compensation, whereas, praying to scale down the quantum of compensation, the Referring Officer filed CRP No.3132/ 2019.

5. The learned counsel for the claimants submitted that the land in S.No.78/1 of Kilnathur Village, consisting 62.8 cents out of 1.69 acres belonged to the claimants, was acquired by the Government for formation of Tiruvannamalai Bye-pass Road. She further submitted that since the property was acquired for the purpose of formation of Bye-pass Road, the question of further development of the property will not arise. In this regard, reliance has also been placed by the learned counsel for the petitioner ***in C.R.Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and another reported in (2009) 11 Supreme***

Court Cases 75 , wherein, the Apex Court held as follows.

16. In *Nelson Fernandes V. Land Acquisition Officer,* this Court has discussed the question of development charges. That was a case where the acquisition was laying a railway line. This Court found that the land under acquisition was situated in an area which was adjacent to the land already acquired for the same purpose i.e. for laying a railway line. In para 29, the Curt observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for the Railways and that the purpose is a relevant factor to be taken into consideration for fixing the compensation.

17. The Court in Nelson Fernandes relied on Viluben Jhalejar Contractor V. State of Gujarat where it was held that: (Nelson Case, SCC p.459, para 29)

> 29. .... the purpose for which the land is acquired must also be taken into consideration in fixing the market value and the deduction of development charges.
>
> 30. We are not however, oblivious of the fact that normally 1/3 deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. .... in the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise.

The Court made a reference to two other cases viz. Hasanali Khanbhai & Sons V. State of Gujarat and Land Acquisition Officer V. Nookala Rajamallu where the deduction by way of development charges was held permissible.

> 18. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the national highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We therefore, hold that the High Court has erred in directing the deduction on account of the development charges at the rate of Rs.25 per sq.ft. out of the ordered compensation at the rate of Rs.75 per sq.ft. We set aside the judgment to that extent.
>
> 19. The claimant would therefore, be entitled to the compensation at the rate of Rs.75/- per square foot with all the statutory benefits like solatium under Section 23(2), 12% interest under Section 23(1-A) on the enhanced market value and interest at 9% and 15% as provided under Section 34 of the Act for one year and the rest of period from the date of taking possession till the date of payment of the compensation awarded in favour of the claimant."

Relying upon the ratio laid down in the above case, the learned counsel argues that the Reference Court has erred in deducting 1/3 of the market value towards "development charges".

6. The learned counsel for the claimants also submitted that out of 1.69 acres, 62.8 cents of the land was acquired by the government and the acquired property runs in the middle of the property of the claimants,

dividing the other properties into two in irregular shape. Therefore, since the land is cut into two parts by virtue of acquisition, the claimants are entitled to compensation for damage for severance. To support her contention, she also relied upon a decision of the ***Division Bench of this Court in Special Tahsildar (Land Acquisition) Vs. Chinna Ramaswami and others reported in CDJ 2003 MHC 118,*** wherein, it is stated as follows.

> 14. When a part of land is acquired, the remaining extent may be cut down into two parts, say for instance when the acquisition is a strip of land for formation of a (Railway) line or a channel, It may be that only a portion of a land may be acquired and the left over area may not be suitable for the purpose to which it was or might have been used. The intention of the legislature in enacting Section 23(1) is that where a part of a person's land is compulsorily taken from him, the owner should be paid compensation for the injury done to his other properties, apart from the value of the land acquired. The compensation is also payable when the land is cut into two parts by virtue of acquisition as referred above."

7. The learned counsel further submitted that asfar as the compensation towards severance is concerned, the Reverence Court has awarded only a sum of Rs.1,00,000/-, but, the petitioners are entitled to

25% of the market value. Therefore, the Reference Court has not awarded a fair compensation and hence seeks to enhance the compensation as well as statutory benefits.

8. The learned counsel appearing for the respondent/ Referring Officer contended that, asfar as the fixation of market value is concerned, the Referring Officer gathered 301 sale deeds which were registered prior to one year before the notification and based on the sale statistics and guideline value, has rightly fixed at Rs.275/- per cent. But, the Referring Court has taken into account the Ex.C5 sale deed to fix the market value of the acquired land. But, the land with regard to Ex.C5 is smaller extent of developed lay-out property, for which fancy price fixed, whereas, the land acquired from the claimants are larger extent of undeveloped property on the date of 15(2) notification. However, without appreciating the above fact, the Referring Court has fixed the market value at Rs.100/-, as per Ex.C5, and after deducting 1/3 amount towards developing charges, fixed the market value at Rs.67/- per sq.ft. which is exorbitant and in violation of the procedure laid down in the Land Acquisition Act. He further submitted that the other benefits granted by the Referring Court is also on higher side and hence, the quantum of compensation and

other statutory benefits awarded by the Referring Court is liable to be scaled down.

9. Heard the learned counsel for the claimants and the learned counsel for the Referring Officer and I have perused the materials on record.

10. Admittedly, the land in S.No.78/1 of Kilnathur Village, consisting of 62.8 cents out of 1.69 acres belonged to the claimants, was acquired by the Government for formation of Tiruvannamalai Bye-pass Road. The land acquisition officer, by taking into account the 301 sale deeds, which were registered, prior to one year from the date of notification and the guide line value, arrived a value at Rs.275/- per cent for the acquired property. However, while considering the claim of the claimants, the Referring Court has taken the market value of the land situated in Kilnathur Village, Enthal Girama Panchyat in S.No.16/2, as per Ex.C5 sale deed, to fix the market value of the acquired property. The above sale deed Ex.C5 was not disputed by the respondent before the Referring Court. Accordingly, the learned Judge, fixed the market value of the acquired land at Rs.100/- per sq.ft., as per Ex.C5. However,

the learned Judge held that, since the acquired property is a larger extent of 62.89 cents (around 63 cents), ordered to deduct 1/3 of value towards development charges and as such, fixed market value as Rs.67/- per cent. But, as rightly pointed out by the learned counsel for the claimants, when the land was acquired for the purpose of formation of Bye-pass Road, the question of further development of the said land would not arise.

11. Normally, in some cases, 1/3 deduction for development charges are awarded provided the purpose of acquisition is a relevant factor to be taken into consideration. In the instant case, for formation of Tiruvannamalai By-pass Road, around 63 cents of land belonged to the petitioner was acquired. After formation of said highway, there is no further question of development. Further more, no record to show, what is their proposed developments to be done by the authorities concerned. The Court below also not assigned any reason, on what basis he inclined to deduct 1/3 from the market value towards development charges. It is a strip of land acquired for formation of Highway, hence the question of development charges would not arise in the instant case. The reported case relied upon by the petitioner also supports the contention of the petitioner. Therefore, 1/3 deduction from the market value towards

development charges is not acceptable one. Though the learned counsel appearing for the Referring Officer raised objection, as per the ratio laid down by the Apex Court, as stated supra, this Court is inclined to fix the market value of the acquired land at Rs.100/- per sq.ft. without any deduction. As far as the other statutory benefits such as solatium, interest and severance are concerned, this Court is of the view that, the same are just compensation and hence it does not warrant any interference by this Court.

12. Accordingly,

i) the Civil Revision Petition in CRP No.1875 of 2019 is partly allowed and the compensation for the acquired land is enhanced to Rs.100/- sq.ft., As far as the other statutory benefits are concerned, the order passed by the Referring Court is confirmed. Consequently, connected miscellaneous petition is closed. No costs.

ii) the Civil Revision Petition in CRP No.3132 of 2019 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

mst 21.11.2022

To

The Principal Subordinate Judge,
Tiruvannamalai.

T.V.THAMILSELVI, J.
mst

<u>CRP No.1875 and 3132 of of 2019</u>

<u>21.11.2022</u>