IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **11.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

SA.Nos.729 & 785 of 2018

[Physical Mode]

1. The Special Tahsildar,
Adi Dravidar Welfare,
Varnatheertham Extension,
Harur Town & Taluk,
Dharmapuri District.

2.The Collector of Dharmapuri District,
Collectorate Post,
Avvai Nagar,
Dharmapuri-5. .. Appellants/Respondents/Land Acquisition Officers in both appeals

Vs.

T.Paneerselvam ..respondent/appellant/claimant in SA.No.729/2018

Duraisamy ..respondent/appellant/claimant in SA.No.785/2018

Common Prayer:- Second Appeals filed under Section 13 of Tamil Nadu Acquisition of Land for ADW Schemes Act, 31/78 r/w section 100 of the Civil Procedure Code, to set aside the judgements and Decrees dated 12.4.2013 made in CMA(LA).Nos.21 & 19 of 2008 on the file of the Sub Ordinate Judge, Harur, (CMA(LA)2/2006 and CMA(LA)4/2005 on the file of Sub Court Dharmapuri) modifying the Award No.3/(ADW)/1989-90 in

Na.Ka.No.3177/86 (A), dated 17.02.1990 on the file of the Special Tahsildar (ADW) and Land Acquisition Officer, Harur.

In both appeals

For Appellants : M/S.Edwin Prabakar, SGP, assisted by Mr.J.Harish GA(CS)

For Respondents : Mr.V.R.Annagandhi

COMMON JUDGEMENT

(1) These Second Appeals have been filed by the Special Thasildar, Harur and the Collector of Dharmapuri District as against the judgements and decrees of the learned Subordinate Judge, Harur made in CMA (LA) Nos.19 and 21 of 2008.

(2) The respondents in these appeals are the claimants who owned lands in Sekkampatty village, Harur Taluk in Dharmapuri District. The lands belonged to the respective respondents and others were acquired for the purpose of providing house sites to Adi-Dravidars.

(3) It is admitted that an extent of 0.64 hectares i.e. 1 acre 58 cents comprised in survey numbers 192/4 and 192/5A, belonged to the respondents and others was acquired by issuing a Notification under Sec.4(1), dated 18.04.1988, under the Land Acquisition Act,

1894. It is interesting to note that the acquisition proceedings through were initiated under Central Act, and on a petition under Section 18 of Land Acquisition Act, reference was made. The reference Court dismissed the LAOPs on a wrong notion and held that only an appeal would lie. Thereafter, appeals had been filed in C.M.A as seen from the memo of grounds raised before the Sub Court, Harur.

(4) By a common award in Award Nos.3 of 1989 - 90 dated 17.02.1990, the compensation of the land was fixed by the Land Acquisition Officer at the rate of Rs.5000/- per acre. Accordingly, the compensation for the individual land owners were fixed by giving 30 % of solatium on the market land and additional interest at the rate of 12% as provided under Sec.23 1 A of Land Acquisitions Central Act. It is to be noted that the solatium payable under the State Act is only 15% and similarly no additional interest under Sec.23 (1) (A) of the Land Acquisitions Central Act is payable for the land acquired under the State Act. Therefore, the award was passed as per Land Acquisition (Central) Act, 1894.

(5) It appears that as against the Award, the respective land owners

filed objections and protested to receive the compensation. Thereafter, the Land Acquisition Officer referred the matter under Sec.18 of the Land Acquisition Central Act and the Reference Court entertained the proceedings in LAOP's. It was some time after, the reference Court held that the acquisition ought to have been proceeded under Act 31 of 1978 as the same was upheld by Hon'ble Supreme Court and therefore, the remedy is only to file an Appeal as against the Award of the Land Acquisition Officer. It was thereafter, Appeals were preferred as against the Award before the learned Sessions Judge, Dharmapuri. Though the decision of reference Court is wrong and by mistake claimants were forced to file appeals, this Court in order to avoid further delay, proceed to dispose of this appeal on merits.

(6) The Sub Court, Karur, allowed both the Appeals, by enhancing compensation from Rs.5,000/- per acre to Rs.2,75,000/- per acre relying upon the document which was marked as Ex.C.2. Aggrieved by the judgement of the Appellate Court enhancing compensation from Rs. 5,000/- per acre to Rs.2,75,000/- per acre, the above appeals have been preferred by the appellants / the Land

Acquisition Officer and the District Collector, Dharmapuri District.

(7) The Second appeals were admitted on the following substantial questions of law:-

> *" a)Whether the learned Judge justified to enhance the award passed by the appellant based on the document relied upon by the respondent when those documents are for smaller extent?*
>
> *b)Whether the learned Judge justified in holding that the enhancement of award can be made based on the sale deed document which is house site and small extent when the acquired land is agriculture land and larger extent?*
>
> *c) Whether the learned Judge erred by rejecting the document based on the appellant fixed the value of the acquired land without any valid reasons?*
>
> *d)Whether the potentiality, classification of the acquired land and the sample documents is one and the same?"*

(8) In the present cases, this Court finds that the claimants/respondents have examined four witnesses apart from marking the documents Ex.C.1 and Ex.C.2. Both the documents marked as Ex.C1 and C2 are well before the Notification issued under Sec. 4(1) of the Land

Acquisition Act. The notification under Section 4(1) is dated 18.04.1988. Both the documents were proved by examining witnesses. However, the learned Subordinate Judge, though found that the document Ex.C1 is in respect of the land, which is located in the neighbouring village, refused to rely upon the same for fixing just compensation for lands.

(9) It is to be noted that the document Ex.C1 shows the value of the land conveyed under the document as Rs.8,72,000/- per acre. The Land Acquisition Officer found that the document Ex.C2 is in respect of the land in Survey Number 207/1 in Sekkampatti Village, which is considered to be part of developed area in Harur Taluk. Under the said Document, the extent of 2400 sq ft of house sites was sold for a sum of Rs.28,800/-. Since the document show the market value of Rs.12 per square feet, the learned Subordinate Judge, considering the document refixed the market value for a house site at the rate of Rs.5,23,200/- per acre. CW3, who was examined on behalf of claimant is a vendor in Ex.C.2 and he has spoken in his evidence to corroborate the value reflected in Ex.C2.

(10) After relying upon the document Ex.C2, the lower Court considered

the evidence of RW.1, who admitted the relevance of document Ex.C2. Apart from the fact that the lands neighbouring the acquired lands are being sold as house sites and the value should be fixed for the land on square foot basis, it was also noticed by the lower Court that the acquisition in the present case is also for providing house sites to Adi Daravidars. The purpose of acquisition is to allot the lands as house site to Adi Daravidars. Therefore, this Court also agrees with the lower Court that the acquired lands are located in a developed area and it is most suitable and the lands in around the acquired lands are developed as house sites.

(11) The Lower Court has deducted 40% towards development charges. Therefore, though the value reflected in the document under Ex.C2 shows the market value at the the rate of Rs.5,23,200/-, the lower court has fixed the market value at the rate of Rs.2,75,000/- per acre. Despite a deduction of 40% towards the development charges, the main ground on which the learned Special Government Pleader argued the appeal is that a further deduction of at least 20% is necessary as the data sale deed is in respect of small piece of land whereas large extent of land has been acquired. It is further stated

that a deduction for lump-sum payment also should be considered. Further, the learned Special Government Pleader also made his submission on the questions raised in the memorandum of grounds.

(12) This Court consciously considered the materials available and the grounds raised by the learned Special Government Pleader.

(13) First of all, the acquisition was in the year 1988 and the claimants were given compensation at the rate of Rs.5000/- per acre. Both the market value reflected as per the sale exemplar relied upon by the lower Court shows that the value of the property is more than Rs.5,25,000/- per acre. The long delay in disbursement of the compensation has caused serious prejudice to the land owners. This Court, while considering the documents and the evidence of plaintiffs witnesses, is convinced that the acquired lands are surrounded by housing plots and developed lay outs. The potentiality of the land is fully evident from the admission of RW1 and the evidence of witnesses examined by the claimants.

(14) Merely because the value the compensation has been enhanced from Rs.5000/- per acre to Rs.2,75,000/- per acre, this Court is not convinced with the arguments of the learned Special Government

Pleader, that the appeal has to be allowed. The lower court has considered the market value on the basis of documents. The enhancement is supported by the evidence of witnesses of the claimants apart from the admission of RW1. When the property is in the midst of developed residential area, the Lower Court is right in relying upon the document Ex.C2 as a sale exemplar to fix the compensation.

(15) The deduction can not be more than 40 % as it is submitted by the learned Special Government Pleader having regard the various circumstances. The acquisition is for the purpose of providing house sites to Adi-dravidars. Since the property is surrounded by lay outs and the entire area is developed as residential colony, the Land Acquisition Officer is prompted to acquire the lands for providing house sites to Adi Dravidars. It is admitted that the acquired lands are surrounded by residential plots with commercial facilities.

(16) Having acquired the lands in a developed area, the Court should consider the development that had taken place before acquiring the lands. In the present case, already the appellate Court reduced the

market value from Rs.5,23,200/- to Rs.4,00,000/- per Acre and then added 20% to arrive at a figure Rs.4,80,000/-. Thereafter 40% deduction is allowed. Thereafter, further reduction from Rs.2,88,000/- to Rs.2,75,000/- per Acre is arrived. This Court finds no strong evidence or principle in support of the appellants' request for more deduction. As pointed out earlier,

further deduction in respect of the lands which are developed cannot be allowed to reduce the compensation.

(17) It is well settled that in a semi urban area, the deduction cannot exceed 30% towards development charges. In this case the deduction works out to 45% which is excessive and no further deduction will be reasonable. Since the data sale deed relied upon by the Land Acquisition Officer was long prior to the acquisition, the Lower Court is also right in relying upon the document Ex.C2 and this Court is unable to appreciate any substance or any merit in the submissions of the learned Special Government Pleader.

(18) Having regard to the facts admitted and proved by documents, this Court is unable to find any merit in the substantial questions of law raised in these Appeals. Hence these Appeals are dismissed. It is to

be noted that the acquisition was under the Central Act. After passing Award as per the Central Act, there is no question of treating the acquisition and proceeding with the same under State Act. If the State Act applies, the whole acquisition proceeding under the Central Act are liable to be quashed. Only a fresh acquisition proceedings has to be initiated. Hence, the claimants are entitled to 30% of the market value as Solatium and Additional interest under Section 23(1)A of Central Act. The appellants are also entitled to interest at 9% on the entire amount of compensation(ie., market value + 30% solatium + Additional interest) for 1 year from the date of taking possession and thereafter, interest at 15% p.a., for the entire amount till the payment. Since the claimants are entitled to statutory benefits, the modification does not attract additional stamp duty. The appeals are dismissed and the judgment and decree of the learned Subordinate Judge in C.M.A(LA)No.19 and C.M.A(LA)No.21 of 2008 are modified as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

11.04.2022

jrs
Internet : Yes

S.S.SUNDAR, J.,

jrs

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