



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.S.(MD)No.183 of 2020

and

C.M.P.(MD)No.6583 of 2020

The Special District Revenue Officer(LA),
Tamil Nadu Road Sector Project - II,
Tiruchirappalli.

Appellant/Referring Officer

Vs.

S.Rajaram

Respondent/Claimant

PRAYER: Appeal Suit is filed under Section 96 of the Civil Procedure Code to set aside the judgment and decree, dated 25.09.2020 made in L.A.O.P.No.2 of 2018, on the file of the Principal District Judge, Tirunelveli.

For Appellant: Mr.D.Gandhirajan

Special Government Pleader

Assisted By

Mr.C.Satheesh, Government Advocate

For Respondent: Mr.H.Arumugam

J U D G M E N T

The Appeal has been preferred by the appellant/Referring Officer, challenging the award passed by the learned Principal District Judge, Tirunelveli, in L.A.O.P.No.2 of 2018, on 25.09.2020.

2.The reference was made under Section 64 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. By Notification issued under Section 15 (2) of Tamil Nadu Highways Act 2001, a total extent of 0.8229 Sq.m of Dry & Natham land in Thiruppanikarisalkulam Village was acquired for widening the State Highways Road (SH 39) - Tirunelveli - Sengottai - Kollam Road. The notification under Section 15(1) of Land Acquisition Act was approved in G.O.(D) No.111 Highways and Minor Ports (HN2), Department, dated 18.05.2017. The draft notification was published in Tamil Nadu Government Gazette No.141, dated 18.05.2017. Then, the Land Acquisition Officer (Special District Revenue Officer) has passed the award number 101/2017, dated 15.05.2018. The subject matter in this reference is with an extent of 0.0072 Sq.m in survey number 109/1A1B. The Land Acquisition Officer has fixed the market value of the land at Rs.1,362/- per Sq.m. Aggrieved against the above award, the claimant



has filed the writ petition in W.P.No.17697 of 2018, before this Court and as per the order of this Court, the claimant sought reference under Section 64 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Hence, the Land Acquisition Officer referred the matter to the Court.

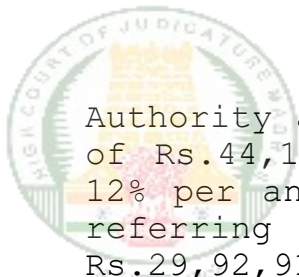
3.The respondent/claimant has filed a Claim Statement by stating that he had purchased 3.65 cents of vacant land in Survey No.109/1A of Tirunelveli Taluk, Tirunpanikarisalkulam Village as Plot Nos.63,64,65 and 66. The claimant constructed a building and was conducting a hotel therein in the name and style "Sri Gowry Nivas". An amount of Rs.1,20,00,000/- was spent by the claimant towards construction expenses and an annual turn over of Rs.30,00,000/- per year was gained by the claimant. For the purpose of widening the road, 0.72 square meter of land was acquired by the Government. The acquired property situated near to Tirunelveli to Tenkasi main road. The cost of one cent in that area at the time of acquisition was Rs.3,00,000/- and the value of the building was Rs.70,66,205/-. The land Acquisition Officer undervalued the building and calculated the loss of income at Rs.60,00,000/-. The claimant paid upto Rs.10,00,000/- to his 20 employees for their provident fund and Employees State Insurance. Hence, he claimed Rs.15,00,000/- towards mental agony. The land Acquisition Officer failed to calculate the above factors and hence the compensation should be enhanced.

4.The learned Presiding Officer of Resettlement Authority has framed the following points for determination:-

- 1) Whether the market value of the property fixed by the land Acquisition Officer is correct?
- 2) Whether the claimant is entitled for more compensation than the award passed by the Referring Officer?
- 3) What is the compensation amount for the acquired properties?

5.During the enquiry proceedings, on the side of the claimant, two witnesses were examined as PW 1 and PW 2. On the side of the respondent, the Tahsildar concerned was examined as R.W.1. Exs.P1 to 15 were marked on the side of the claimant and Ex.R1 to R7 were marked on the side of the respondent.

6.At the conclusion of the proceedings, the learned the Presiding Officer of Resettlement Authority has framed the following points for determination:-

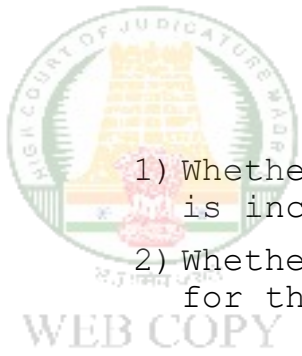


Authority allowed the petition and fixed the compensation for a sum of Rs.44,16,278/-, along with an additional amount at the rate of 12% per annum on Rs.1,22,580/-, from 04.01.2015 to 15.05.2018. The referring officer has already deposited Rs.29,92,915/- and the balance amount was ordered to be deposited within a period of two months, failing which, the petitioner is entitled to interest at the rate of 9%. Aggrieved over the same, the referring officer has preferred this appeal.

7.The learned Special Government Pleader has submitted that in case of urban areas, while fixing the land value, the market value should be multiplied by the multiplier 1.00. But the Presiding Officer of the Re-settlement Authority has multiplied the market value by adopting 1.25. Hence, the building value was also fixed at Rs.41,71,118/-, by adopting the multiplier wrongly. The Divisional Engineer himself has inspected the property and had given his valuation statement at Rs.13,78,614/-, by adding 100% solatium and thus the building value would come to Rs.27,57,228/-only. When the World Bank visited the building, the claimant expressed that the remaining part of the building would be of no use. Hence, it was recommended by the World Bank Team to consider the impact of severity, livelihood loss and to provide severance compensation. Hence, a sum of Rs.27,06,348/- was also paid by the Government as severance compensation. So, the respondent was paid with the total compensation of Rs.54,63,576/- towards compensation for the building. But, the Learned Presiding Officer of the Re-settlement Authority has fixed the building value at Rs.41,71,118/- only. Hence, the claimant has already been paid with the excess sum of Rs.12,92,458/-. Apart from that, he was paid with an ex-gratia allowance of Rs.3,48,551/-, under rehabilitation and resettlement. Severance compensation paid by the Government was not taken into account, by the learned Presiding Officer of the Resettlement Authority. So, the claimant was paid with the total sum of Rs.60,47,814/- as compensation amount for an extent of 72 sq. meters of land acquired. Further, he is conducting hotel business in the remaining portion of the building. Hence, the amount awarded by the Resettlement Authority is erroneous and it has to be set aside.

8.The learned counsel for the respondent submits that since he has not raised any dispute with regard to the severance compensation, the learned Presiding Officer of the Re-settlement Authority has not recorded any findings about the same. Since he disputed the compensation given for land and building, the Re-settlement Authority has considered the same and had enhanced the compensation.

9. On the basis of the above submissions, I feel that the following points for consideration should be framed in this appeal.



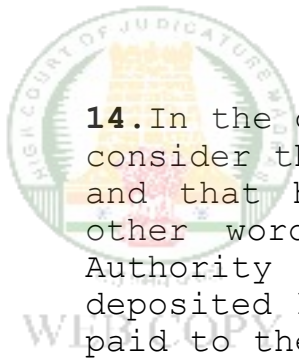
- 1) Whether the compensation determined by the authority is inclusive or exclusive of severance compensation?
- 2) Whether the authority has enhanced the compensation for the land and building on any wrong basis?

10. It is seen from the records that the Land Acquisition Officer has fixed the compensation towards severance, because the front portion of the petitioner's building was demolished and acquired for the purpose of the extension of road. Severance compensation of Rs. 27,06,348/- has been paid. While determining the compensation, the referring authority passed a consolidated award, and that would include the compensation awarded under different heads. Such determination was exercised by the Collector, by invoking his power under Section 64 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

11. In the case on hand, the claimant has challenged the award by preferring a writ petition before the High Court. The writ petition was disposed of and the land Acquisition Officer was directed to refer the matter to the 'Authority'. The determination by the Authority is done by invoking his power under Section 69 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

12. While awarding compensation under Section 69 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the authority has got a duty to take into consideration, whether the concerned Collector has followed the parameters set out under Sections 26 to 30 of the Act. The parameters which have to be considered by the Collector are set out under Section 28 of the Act. And the other factors which have to be considered, while awarding the compensation has been incorporated under Sections 26, 27, 29 and 30 of the Act as well. The whole reading of the provisions of sections 26 to 30 of the Act would show that the award of compensation would be inclusive of all the elements of compensation.

13. Hence the Authority while determining the award as per Section 69 of the Act, should also take into consideration of all the above provisions and render findings as to whether the Collector has followed all the parameters, while awarding the compensation. So, the Scheme of the Act and the provisions would show that the compensation determined by the Authority should be inclusive of all the elements of compensation.



14.In the case on hand, it is seen that the Authority had omitted to consider the severance compensation granted by the referring officer and that has caused ambiguity in the quantum of final award. In other words, non-consideration of severance compensation by the Authority causes doubt as to whether the amount ordered to be deposited by the Authority should be in excess of the compensation paid to the petitioner, which included the severance compensation or whether the Authority had disallowed the severance compensation and fixed the total compensation only at Rs.44,16,278/-. Hence point No.1 can not be answered now.

15.In view of the above, I deem it fit to remand the matter to the Authority for the purpose of revisiting the determination of award, by considering all the elements of compensation fixed by the Collector, including the severance compensation.

16.In the result, the Appeal Suit is disposed and the award of the learned Presiding Officer/Resettlement Authority in L.A.O.P.No.2 of 2018, made on 25.09.2020 is hereby set aside and the matter is remanded to the Authority for re-determination of the award, by taking into consideration of all the elements of compensation fixed by the Collector, including severance compensation and dispose the same as expeditiously as possible. In view of remanding the matter to the Authority for re-determination of award, point No.2 is left open for the re-appreciation of the Authority. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

1.The Principal District Judge, Tirunelveli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-9575[F] dated 02/03/2022)



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+1 CC to M/s.SPL GP (SR-9225[F] , SR-9171[F]dated 01/03/2022)

A.S. (MD) No.183 of 2020

and

C.M.P. (MD) No.6583 of 2020

28.02.2022

KS (CO)

KB (23.03.2022) 6P 6C