



A.S.Nos.597 and 598 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE P.B. BALAJI

A.S.Nos.597 and 598 of 2016

A.Manjini

... Appellant
in A.S.No.597 of 2016

A.Chandirasegaran (died)

2.Ramadevi

3.Premi

4.Praveen Kumar

5.Kaliyammal

... Appellants
in A.S.No.598 of 2016

[A2 to A5 are brought on record as LRs of deceased 1st appellant, viz., A.Chandirasegaran, vide order of Court dated 17.11.2022 made in C.M.P.No.19427, 19537 & 19538 of 2022 in A.S.No.598 of 2016]

Vs.

1.Union of India,

Represented by the Secretary to Government (Revenue),
Government of Puducherry,
Puducherry.



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2. The Deputy Collector (Rev.) South-cum-
Land Acquisition Officer,
Puducherry.

... Respondents
in both appeals

Prayer : Appeal Suits in A.S.Nos.597 and 598 of 2016 filed under Section 54 of Land Acquisition Act read with Section 96 of Code of Civil Procedure against the award dated 28.04.2015 in L.A.O.P.Nos.130 and 131 of 2007 respectively on the file of the Principal District Court, Puducherry.

For Appellants : Mr.T.P.Manoharan
Senior Counsel
in both appeals

For Respondents : Mr.P.S.Kothandaraman
Government Advocate
(Puducherry)
in both appeals

COMMON JUDGMENT

(Judgment was delivered by **S.S. SUNDAR, J.**)

These appeals are directed against the judgment and decree of the Reference Court dated 28.04.2015 in LAOP.Nos.130 and 131 of 2007.



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2.The appellants are the claimants. The Government of Puducherry

acquired large extent of lands namely 23.13.00 Hectares for the purpose of raising India Reserve Battalion invoking urgency clause under section 17 of Land Acquisition Act as an extent of 1.60.50 Hectares of land in Pillaiyarkuppam Village belonged to each of the respective appellants is also acquired for the said purpose. It is admitted that the Notification issued under section 4[1] is dated 22.03.2005. Relying upon a Sale Deed dated 09.06.2004 certified copy of which is marked as Ex.R4 before the Reference Court, the Land Acquisition Officer fixed the market value of the land. Even while fixing the market value on the basis of Ex.R4, the Land Acquisition Officer allowed deduction of 20% towards cost of development. Aggrieved by the quantum of compensation arrived at by the Land Acquisition Officer, a reference was sought for by the claimants under section 18 of the Land Acquisition Act and thereafter, matter was referred to the Reference Court, namely, the Principal District Court, Puducherry, and the learned Judge has entertained the references in LAOP.Nos.130 & 131/2007.



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3.The Reference Court found that the Award passed on the basis of the document Ex.R4 is justified. Though the claimants, namely the appellants herein have marked Ex.P1 – certified copy of the Sale Deed dated 16.05.2003, the Reference Court discarded the said document on the ground that the subject property of the Sale Deed is far away from the land which are acquired from the appellants. Since it is admitted by the appellants that lands which are conveyed under Ex.P1 is situated 50 meters away from the acquired land, the Reference Court held that the claimants/appellants cannot rely upon the sale exemplar. Further, taking into account, the sales statistics showing particulars of the sale transaction one year prior to the notification issued under section 4[1], came to the conclusion that the market value fixed by the Land Acquisition Officer is proper. The Reference Court has gone to the extent of concluding that the market value fixed by the Land Acquisition Officer is Rs.100/- more than guideline value per Are and therefore, the conclusion of the Land Acquisition Officer fixing the compensation at the rate of Rs.3,000/- per Are is just and proper. Aggrieved by the judgment and decree of Reference Court confirming Award of Land Acquisition Officer fixing market value at the rate of Rs.3,000/- per Are, the above appeals are



preferred by the appellants.

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4.It is not in dispute that the appellants are the land owners of the lands each measuring about 1.60.50 Hectares which are acquired for the Indian Reserve Battalion Force. In the course of evidence, it is highlighted that the lands acquired from the holdings of the appellants are located just abutting the main road known as Kirumampakkam-Narambai Main Road. It is admitted that the property acquired from the appellants are in R.S.No.177 in Pillaiyarkuppam Revenue Village. It is admitted that the document Ex.P1 is dated 16.05.2003 and it is the sale deed which is 1 year 8 months prior to the notification under Section 4(1) of the Land Acquisition Act. The property sold under Ex.P1 is in R.S.No.130. Even according to the respondents, the acquired lands are just 50 metres away, as it is observed by the Reference Court.

5.Learned Senior Counsel appearing for the claimants submitted that the sale deed dated 05.04.2004 which is also found in one of the sale exemplars in Ex.R3 shows value of the land dealt with under the document



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at Rs.181.76 per sq.ft. Since the said document dated 05.04.2004 is also one year prior to the notification issued under Section 4(1) of the Land Acquisition Act, the learned Senior Counsel submitted that the Reference Court cannot ignore the document Ex.P1. Learned Senior Counsel then relied upon the oral evidence of P.W.1, who would say that the lands belongs to the appellants are located just abutting the Kirumampakkam-Narambai Main Road and that the sale deed Ex.P1 refers to the land which is away from the Main Road. Therefore, the learned Senior Counsel submitted that market value for the acquired land cannot be less than the value reflected under Ex.P1. Since the document Ex.P1 is dated 16.05.2003, which is 1 year 8 months prior to the notification under Section 4(1) of the Land Acquisition Act, the learned Senior Counsel further submitted that there should be allowance for rise in price, as it has been repeatedly held by Hon'ble Supreme Court permitting 10% to 12% per annum towards rise in price. Learned Senior Counsel submitted that, atleast 30% of value should be added to the value reflected in the document Ex.P1 sale deed dated 16.05.2003 due to the location of land and the fact that the Sale Deed is 1 year 8 months prior to Notification under section 4[1] of Land Acquisition



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6.This Court heard the submissions of learned Senior Counsel appearing for the appellants and the learned Government Advocate appearing for the respondent State.

7.Learned Government Advocate appearing for the respondents relied upon topographical sketch of Pillaiyarkuppam Revenue Village marked as Ex.R2.

8.The sale particulars for the period from 23.03.2004 to 22.03.2005 marked as Ex.R3 cannot be relied upon for the purpose of fixing the market value, as the sale particulars show the market value from Rs.3/- per sq.ft to Rs.181/- per sq.ft. The law settled and reiterated by the Hon'ble Supreme Court in several judgments to the effect that the sale exemplar representing the highest value should be preferred to the rest unless there are strong circumstances for discarding the document. In ***Sri Rani M.Vijayalakshamma Rao Bahadur, Ranee of Vuyyur Vs. Collector of***



Madras reported in **1969 [1] MLJ 45 [SC]**, the Hon'ble Supreme Court has stated the principle in the following lines:-

".....where sale deeds pertaining to different transactions are relied on behalf of the Government, that representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course..."
[emphasis supplied]

8a.Following the judgment of Hon'ble Supreme Court in **M.Vijayalakshamma Rao Bahadur's case [cited supra]**, reported in **1969 [1] MLJ 45 [SC]**, the Hon'ble Supreme Court in **Mehrawal Khewaji Trust, Faridkot and Others Vs. State of Punjab and Others** reported in **AIR 2012 SC 2721 : 2012 [5] SCC 432**, has held as follows:-

"17. It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied that it is a bona fide transaction, has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality



is

shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation."

8b.The above judgment of Hon'ble Supreme Court in the case of ***M.Vijayalakshamma Rao Bahadur's case [cited supra]*** was also followed by the Hon'ble Supreme Court in the case of ***Chindha Fakira Patil (dead) through LRs v. Special Land Acquisition Officer, Jalgaon,*** reported in ***2011 (12) SCALE 321.***

8c.The judgments in the case of ***Mehrawal Khewaji Trust [cited***



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supra] and *Chindha Fakira Patil [cited supra]* were quoted with approval and followed by a Three Member Bench of Hon'ble Supreme Court in the case of *Himmat Singh and others v. State of Madhya Pradesh and Another* reported in *2013 (16) SCC 392*.

8d. Referring to the judgment of Hon'ble Supreme Court in *M. Vijayalakshamma Rao Bahadur's case [cited supra]* reported in *1969 [1] MLJ 45 [SC]*, the Hon'ble Supreme Court in *State of Punjab Vs. Hans Raj* reported in *1994 [5] SCC 734*, has held as follows:-

"4. Having given our anxious consideration to the respective contentions, we are of the considered view that the learned Single Judge of the High Court committed a grave error in working out average price paid under the sale transactions to determine the market value of the acquired land on that basis. As the method of averaging the prices fetched by sales of different lands of different kinds at different times, for fixing the market value of the acquired land, if followed, could bring about a figure of price which may not at all be regarded as the price to be fetched by sale of acquired land. One should not have,



ordinarily recourse to such method. It is well settled that genuine and bona fide sale transactions in respect of the land under acquisition or in its absence the bona fide sale transactions proximate to the point of acquisition of the lands situated in the neighbourhood of the acquired lands possessing similar value or utility taken place between a willing vendee and the willing vendor which could be expected to reflect the true value, as agreed between reasonable prudent persons acting in the normal market conditions are the real basis to determine the market value.”

8e.The judgments in ***M.Vijayalakshamma's case*** [cited supra] reported in **1969 [1] MLJ 45 [SC]** and ***Hans Raj's case*** [cited supra] reported in **1994 [5] SCC 734** were followed by Hon'ble Supreme Court again in the case of ***Anjani Molu Dessai Vs. State of Goa and Another*** reported in **2010 [13] SCC 710** and held that the averaging of prices and different sale exemplers were not justified and that the Sale Deed reflecting higher price should be preferred to determine the market value on comparable sale method.



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9.From the overall evidence, this Court is unable to discard the document Ex.P1, dated 16.05.2003, indicating the market value at Rs.70/- per sq.ft. Considering the evidence of P.W.1 that the acquired lands are abutting Kirumampakkam-Narambai Main Road and having regard to the fact that the sale deed under Ex.P1 is dated 16.05.2003, which is 1 year 8 months prior to the notification under Section 4(1) of the Land Acquisition Act, this Court is inclined to add 20% in addition to the market value shown in Ex.P1. Therefore, this Court is inclined to fix the market value for the acquired lands at the rate of Rs.84/- per sq.ft.

10.Though one of the documents shown in the sales statistics indicates a higher value of more than Rs.180 per sq.ft., this Court is unable to fix the market value on that basis, as there is no direct evidence to indicate that the acquired lands had the same potential. Though the Reference Court discarded the document under Ex.P1 and preferred to follow the market value as per Ex.R4, this Court finds that the Reference Court has failed to



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consider the settled law as well the facts as seen from the various documents. The learned Judge discarded Ex.P1 only on the ground that the land that was conveyed under Ex.P1 is situated 50 metres away from the acquired lands. That cannot be a proper reason to discard a document especially when the evidence reveal that the lands of claimants are located just abutting main road. Whereas the lands conveyed under Ex.P1 is in a survey field behind the neighbouring survey field.

11.We have also considered the document which is referred to as topographical sketch and marked as Ex.R2. S.No.130, which is the subject matter of Ex.P1, is just one survey field away from the acquired lands. It may be true that the land which is the subject matter of Ex.R4 is also very near the acquired lands, however, in view of the fact that the value shown in Ex.R4 is too low, this Court is unable to accept the document having regard to the position of law reiterated by Hon'ble Supreme Court in several precedents above referred to.

12.The Land Acquisition Officer has deducted 20% towards



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development charges, whereas, this Court is unable to find any justification for such deduction. It is admitted that the acquisition is for creation of Indian Reserve Battalion Force in Puducherry. It is also the case of the appellants that the lands are located in higher level and therefore, it was chosen for the public purpose. Since the entire land is going to be used for the purpose and the acquired land is abutting the main road, there need not be any deduction towards development. It is to be noted that the lands were acquired by issuance of notification under Section 4(1) of the Land Acquisition Act, in 2005 by invoking urgency clause. Though it is admitted that possession was taken, the compensation fixed by the Land Acquisition Officer is less than Rs.3/- per sq.ft. which is far below the market value which is now fixed by this Court having regard to the evidence available on record. In view of the fact that there is considerable delay in determining the market value, serious prejudice had already been caused to the appellants. Therefore, this Court is not inclined to allow any deduction and this Court fixes the market value for the acquired lands at the rate of Rs.84/- per sq.ft.

13.As a result, the above appeals are **allowed** and the award of the



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Reference Court in L.A.O.P.Nos.130 and 131 of 2007 are set aside and the appellants are entitled to the market value at the rate of Rs.84/- per sq.ft.

The appellants are entitled to all statutory benefits including solatium @ 30% and additional compensation in terms of Section 23(1A) of the Land Acquisition Act, apart from the interest at the rate of 9% p.a for the first year from the date of taking possession and 15% p.a. thereafter till payment for the enhanced amount. No costs.

(S.S.S.R., J.) (P.B.B., J.)
17.04.2023

mkn/AP

Internet : Yes

Index : Yes / No

To

- 1.The Principal District Judge,
Puducherry.
- 2.The Secretary to Government (Revenue),
Union of India, Government of Puducherry,
Puducherry.
- 3.The Deputy Collector (Rev.) South-cum-
Land Acquisition Officer, Puducherry.

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| 4.The Section Officer,
VR Section, High Court,
Chennai. | | <i>with a direction to return
the records to the Court below,
forthwith</i> |
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and
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