IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2023

Coram

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

Appeal Suit Nos.249 & 250 of 2018

S.Kamaraj
S/o.Shanmugam ... Appellant in A.S.No.249 of 2018

Pavai Sinouvassin
W/o.Sinouvassin ... Appellant in A.S.No.250 of 2018

Vs.

1.Union of India represented by
The Secretary to Government (Rev.),
Government of Pondicherry.

2.The Sub Collector (Rev) (North)-cum-
Land Acquisition Officer,
Saram, Puducherry. ... Respondents in both appeals

First Appeals filed under Section 96 r/w Order 41 Rule 1 of the Code of Civil Procedure, 1908, against the award passed in L.A.O.P.No.51 of 2008 and 243 of 2009 on the file of III Additional District Court, Puducherry, dated 29.07.2015.

For Appellants : Ms.B.S.Mitra Neshaa
[in both appeals] for Ms.V.Srimathi

For Respondents : Mr.J.Kumaran
[in both appeals] Additional Government Pleader [Puducherry]

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COMMON JUDGMENT

[Delivered by **R.SUBRAMANIAN, J**]

These two appeals are by the land owners, who are not satisfied with the awards made by the Reference Court u/s.18 of the Land Acquisition Act, 1894 [for brevity 'the Act'].

2. An extent of about 13.96.50 hectares in Kadirkamam Hamlet of Oulgaret Revenue Village in the district of Puducherry was acquired by the Government for the purpose of construction of a cricket stadium and other infrastructure amenities. A notification under Section 4(1) of the said Act was published on 07.06.2005. Declaration u/s.6 of the Act was made on 14.06.2005. The Land Acquisition Officer, by award dated 12.06.2007, granted a sum of Rs.60/- and Rs.75/- per sq.ft. respectively as compensation depending on the location of the land. Not being satisfied with the said award, the land owners sought for reference u/s.18 of the Act. References

were made and they were numbered as LAOP Nos.51 of 2008 and 243 of 2009. The extent of land acquired from the claimant in LAOP No.51 of 2008 was 3,283 sq.ft. and the extent of land that was acquired from the claimant in LAOP No.243 of 2009 was 5,436 sq.ft. The acquired lands were situated in Survey Nos.241/4 and 246/3.

3. At trial, before the learned Additional District Judge, Puducherry, two witnesses were examined on the side of claimant in both the cases while the claimant himself was examined as PW-1 and one Anandaraj was examined as PW-2. On the side of the respondents, one Sakthivel was examined as RW-1. Exs.A1 to A6 were marked on the side of the claimants while Exs.B1 to B5 were marked by the Land Acquisition Officer. Exs.A1 to A4 are various sale deeds relating to the property that are situated near the acquired lands. Ex.B2 is the copy of the award, Ex.B3 is the topo sketch, and Ex.B4 is the copy of the sale deed, which was taken as data sale deed by the Land Acquisition Officer for fixing the value of the lands.

4. Learned Additional District Judge, Puducherry, rejected the sale deeds that were filed by the claimants on the ground that the lands covered

by those sale deeds were situated in different survey numbers though they were in the same village. Learned Additional District Judge, Puducherry, however, took into consideration the guideline value and fixed the market value at Rs.125/- per sq.ft. in LAOP No.243/2009 and at Rs.175/- per sq.ft. in LAOP No.51/2008. The statutory benefits available under the Act were also awarded. Claiming that the compensation awarded is too low, the land owners have come up with these appeals.

5. We have heard Ms.B.S.Mitra Neshaa, learned counsel appearing for the appellants and Mr.J.Kumaran, learned Additional Government Pleader appearing for respondents.

6. Ms.B.S.Mitra Neshaa, learned counsel appearing for the appellants would vehemently contend that the award of the Reference Court is completely illegal and unconscionable. She would submit that the learned Additional District Judge had not comprehended the very method of fixation of compensation by adopting exemplar sale deeds. Faulting the learned Additional District Judge for having rejected Exs.A1 to A4, learned counsel would submit that the exemplar sale deeds will be sale deeds from

the nearby locality and the Court cannot expect the claimants to produce sale deeds relating to the lands under acquisition. The expectation of the learned Additional District Judge that the exemplar sale deeds should also be pertaining to the lands under acquisition, according to the learned counsel, vitiates the entire judgment. Learned counsel would also rely upon the judgment of the Division Bench of this Court in ***The Special Tahsildar v. Palin Reshma Jacob and another [A.S.Nos.574 to 583 of 2011 etc. batch, dated 31.08.2015]*** to contend that when the exemplar sale deed method is adopted to fix compensation for the lands acquired, the sale deed which reflects the highest value should form the basis for determination of compensation. Our attention is drawn to paragraph No.12 of the judgment of the Division Bench, wherein it has been observed as follows:

> *"12. Coming to the manner in which the Land Acquisition Officer arrived at the quantum of compensation, it is seen that he took into account the sale deed which reflected lesser value. But it is needless to point out in* ***Mehrawal Kheaji Trust v. State of Punjab [2012-4-L.W. 109]****, the Supreme Court has categorically held that the highest value among the exemplar sales have to be taken into account. Therefore, the Tribunal was correct in rejecting the reasonings of the Referring Officer."*

7. Learned counsel would also point out that though the total extent

acquired is about nearly 15 hectares, the area of land acquired from each of the land owners is a smaller extent since almost all the lands in that area were converted into residential flats and sold. Learned counsel would justify her claim by relying upon the award which shows that there are several persons interested in the land in each survey number and the extent of land acquired from each person varies from 3000 to 5000 sq.ft. only. Drawing our attention to the judgment of the Honourable Supreme Court in ***Thakarsibhai Devjibhai and others v. Executive Engineer [AIR 2001 SC 2424],*** wherein the Honourable Supreme Court had held that determination of compensation should not be on the basis of the largeness of the area acquired and the Court must take into account the extent of land that was acquired from each land owner and if it is shown that the extent of land acquired from each land owner is a smaller extent, then, deduction on the ground of largeness of area cannot be applied. Learned counsel would draw our attention to the following observations of the Honourable Supreme Court:

> *"11. After accepting this award Ex.16 as the foundation, while fixing the compensation, it fell into error when it reduced the compensation by 25%. The reason for this doing so by the High Court is reproduced below:*
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> *"Therefore, if award Exh.16 is to be taken as basis*

for the purpose of determination of the market value of the acquired lands in the present case, some deduction will have to be made. At the same time, because of distance between the village site and acquired lands of award Exh.16, some deduction shall also have to be made. In our opinion, if the deduction of large area and small area coupled with further deduction for distance is made in the present case, then it would be reasonable to deduct 25% from the market price arrived at in respect of the acquired lands of award Exh.16."

12. As we have said above the High Court fell into error by reducing the quantum of compensation on this basis. The reduction has been made for two reasons, one that the present acquisition is of larger area and the second the distance between the land under acquisition and Ex.16 is about 5 kms. With reference to question of acquisition being of a larger area, the error is, when we scan we find for the acquisition of each land owner, it could not be said that the acquisition is of a large area. Largeness is merely when each land holders land is clubbed together then the area becomes large. Each landowners holdings are of small area."

8. Contending contra, Mr.J.Kumaran, learned Additional Government Pleader appearing for the respondents would submit that the lands covered under the exemplar sale deeds are situated far away from the acquired lands and therefore, they cannot form the basis for determining the value for the lands under acquisition. He would also point out that the extent of the total land acquired is about 15 hectares. Therefore, while the Court relies upon a sale deed of a land of an extent of about 1,800 sq.ft., certain deduction has to be made. He would invoke the settled principle of law that if sale deeds

of smaller extent of land are taken as exemplar sale deeds for larger extent of land that is acquired, a deduction has to be made to bring the value on par with the larger extent of land.

9. We have considered the rival submissions.

10. The details of sale deeds that have been produced by the land owners as contained in Exs.A1 to A4 are as follows:

Ex.	***Date***	***S.No.***	***Extent***	***Cost per Sq.ft.***	***Total Consideration***
A1	26.08.2004	173/1	1800 sq.ft.	Rs.555.5	Rs.10,00,000/-
A2	27.01.2005	209/1	5640 sq.ft.	Rs.115.3	Rs.6,50,000/-
A3	07.01.2005	193/1	798 sq.ft.	Rs.388.5	Rs.3,10,000/-
A4	06.06.2005	161/2	900 sq.ft.	Rs.555.5	Rs.5,00,000/-

11. The entire land under acquisition is situated in Survey Nos.241/4 and 246/3. The land covered by the four sale deeds referred to above are also situated in the very vicinity of the acquired lands. A perusal of the topo sketch which has been marked as Ex.B3 shows that the lands covered by the exemplar sale deeds are a little farther away from Puducherry town than the

acquired lands. The lands covered by the exemplar sale deeds are also nearer to Villupuram-Pondicherry road than the acquired lands. Therefore, we are of the opinion that rejection of these exemplar sale deeds by the Reference Court is unjust and improper. Once it is shown that the lands covered under the exemplar sale deeds are in the vicinity of the acquired lands, while calculating compensation on the basis of the exemplar method, the Reference Court is obliged to take those documents into consideration and it ought not to have rejected the same on a flimsy reason that the said lands are not nearer to the acquired lands. This reasoning of the learned Additional District Judge, in our considered opinion, demonstrates her inability to comprehend the principle of fixation of compensation in land acquisition matters. We, therefore, find that any one of these sale deeds must form the basis for fixation of the value of the lands acquired. As we had already pointed out, a Division Bench of this court in ***The Special Tahsildar v. Palin Reshma Jacob and another [supra]*** had held that the sale deed which reflects the highest value should form the basis for determination of compensation. In doing so, the Division Bench has only reiterated the law laid down by the Honourable Supreme Court in ***Mehrawal Kheaji Trust v. State of Punjab [2012-4-L.W. 109].***

12. In view of the aforesaid categorical pronouncements of the Hon'ble Supreme Court and that of Division Bench, we find that the highest value reflected in Exs.A1 to A4 must be taken into account to fix the value of the lands in question. No doubt, the extent of land covered by Ex.A1 is 1,800 sq.ft. and the extent of land covered by Ex.A4 is 900 sq.ft. and the extent of land that is acquired from the claimants is 3,283 sq.ft. and 5,436 sq.ft respectively. Considering the extent of land acquired and the extent of land covered by the exemplar sale deeds, we are of the opinion that a deduction of 10% would be just and proper. No doubt, the Honourable Supreme Court in ***Thakarsibhai Devjibhai [supra]*** had held that deduction would depend on the extent of land acquired and the extent of land covered by the exemplar sale deeds. In the case on hand, we find that the extent of land covered by Ex.A1 is just about 1/3 of the acquired land. Therefore, a deduction of 10%, in our opinion, would meet the ends of justice. We, therefore, fix the compensation payable for the land at Rs.499.95/- (Rs.555.50- 55.55 = 499.95) which is rounded off to Rs.500/- per sq.ft. Needless to state that the land owners will be entitled to statutory benefits

namely, 30% solatium, 12% additional amount payable under Section 23(1-A) of the Act along with interest at 15% for the first one year from the date of taking possession and 9% thereafter, till date of payment. The amounts remaining in the Court will be paid over to the land owners.

13. The appeals shall stand allowed as indicated above. No costs.

The learned Additional Government Pleader [Puducherry] will be entitled to separate fee in each of these appeals.

[R.S.M., J] [N.S., J]
17.10.2023

Speaking Order

gm

To

The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai - 08.

R.SUBRAMANIAN, J
and
N.SENTHILKUMAR, J

gm

Appeal Suit Nos.249 & 250 of 2018

17.10.2023