IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.07.2023**

CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**

A.S.No.133 of 2013

1.Revenue Divisional Officer,
(Land Acquisition)
Tirupattur ... Referring Officer/Appellant

2.Divisional Engineer
National Highways,
Vellore. … Beneficiary

Vs.

1.K.R.Kairunissa
2.K.R.Khaleelur Rehman
3.K.R.Humayun Ahmed
4.K.R.Iqbal Ahmed
5.K.R.Abdul Wahid
6.K.R.Feroze Ahmed
7.K.R.Siraj Ahmed
8.K.R.Bushra Banu
9.K.R.Irshad Banu
10.K.R.Mehar Banu … Respondents

PRAYER: Appeal filed under Section 54 of the Land Acquisition Act against the judgment and decree dated 29.11.2005, in L.A.O.P.No.2 of 2002 on the file of the Sub-Court, Tirupattur.

For Appellant : Mr.T.Chandrasekaran Spl G.P (AS)

For Respondents : Ms.V.Srimathi for RR1,2,4,7,8 & 9
RR3,5,6, & 10 are dismissed vide order

dated 10.02.2023

JUDGMENT

This Appeal had been preferred by the first Appellant herein, who is the Land Acquisition Officer as against the judgment and decree made in L.A.O.P.No.2 of 2002, dated 29.11.2005, on the file of the Sub- Court, Tirupattur.

2. A brief facts of the case is as follows:-

The respondents herein are the owners of the lands comprised in survey No.5/1, 5/2B & 5/3B measuring an extent of 0.75 cents, acre 1.19 cents and acre 4.21 cents respectively of the lands in Amburpet Village. The entire lands in survey No.5.5/1 measuring an extent of 0.75 cents, a portion of land in survey No.5/2B measuring an extent of 0.01 cents and the land measuring an extent of acre 1.58 cents in survey No.5/3B was sought to be acquired by the first appellant in favour of the second appellant for forming a bypass road at Vaniyampadi.

3. Notification under Section 4(1) of the Land Acquisition Act, 1894, was issued on 17.12.1977 and an enquiry under Section 5A of the said Act had also been conducted on 24.02.1978 and thereafter Section 6 notification

had been issued on 03.01.1981. An award enquiry was conducted by the first appellant on 23.10.1982 and 9.11.1982 and an award dated 29.11.1982 had come to be passed. In respect of the aforesaid survey numbers, the first appellant had held that the lands that had been sought to be acquired, are agricultural lands and had valued the land at Rs.9302/- per acre; in respect of survey No.5/1, he had fixed the land value at Rs.6976.50 and the value of the round well at Rs.100/- and he had further awarded 15% as solatium and a total for survey No.5/1, he had awarded a compensation for a sum of Rs.8,137.94/-.

4. In respect of survey No.5/2-B, he had fixed the land value at Rs.93.02/- and together with solatium, he had fixed the total compensation of Rs.106.95/-. As regards to survey No.5/3B, he had awarded a compensation of Rs.14,697.16/- for the land and Rs.22901/- for tannery building and added 15% solatium and had awarded a sum of Rs.43236.86/-. In total for the aforesaid 3 lands, the first Appellant herein had awarded a sum of Rs.51,481.75/-, which was deposited before the Reference Court. Being dissatisfied with the award, the land owners had sought for a reference to the Reference Court.

5.The trial Court had framed two issues which are as follows:-

i)whether the amount of compensation determined by the land acquisition officer for the lands acquired from the claimants is very low & reasonable?

ii)If yes, how much is the enhanced compensation to be paid to the claimants?

6. The land owners/claimants had marked seven documents and had relied upon heavily Exs.C5-C7 to substantiate their claim for enhanced compensation. They had examined the fifth claimant in support of their case. The appellants herein had examined one Mr.Baskaran on their behalf and had marked four documents. It is also to be noted that the Land Acquisition Officer had relied upon Ex.R.2, dated 14.07.1975 to substantiate the correctness of the award.

7. After considering the various aspects, the Reference Court by its judgment and decree dated 29.11.2005, had enhanced the award by holding that the lands acquired are not agricultural lands, as they have already been put to industrial purpose and had fixed the market value of the land at

Rs.12.09/- per sq.ft., and had deducted 33.3% i.e., Rs.4.02/- towards developmental charge and had fixed the compensation for the value of the land at Rs.8.07 per sq.ft., apart from enhancing the compensation towards the structures that were available in the land and had finally awarded a sum of Rs.14,68,487.55/- as compensation for the lands acquired from the respondents. Being aggrieved against the said award, the Land Acquisition Officer and Beneficiary are before this Court challenging the judgment and decree made by the Reference Court.

8.Heard Mr.T.Chandrasekaran learned Special Government Pleader for the appellants and Ms.V.Srimathi learned counsel appearing for the respondents 2,4,7,8 & 9. It is also pertinent to note that the Appeal Suit had already been dismissed as against the respondents 3,5,6, & 10, vide order of this Court, dated 10.02.2023.

9.Mr.T.Chandrasekaran learned Special Government Pleader at the outset would contend that the Court below wholly erred in relying upon the Ex.C-5 to arrive at the market value of the land. He would submit that document marked as Ex.C-5, is a document, which is post Section 4(1) notification and on that ground alone, he would submit that the impugned judgment and decree is liable to be interfered with. Further he would submit that even as per Ex.C-5, the Court had found that the value of the land would be Rs.4.03 per sq.ft., and that without any evidence whatsoever had fixed the value of the land at Rs.12.09/- per sq.ft., by giving a reason that the land under Ex.C-5 is an agricultural land and that the land acquired is capable of being used for an industrial purpose. He would submit that such a finding is neither supported by any oral or documentary evidence and the Court cannot assume and presume in fixing the market value of the land. He would further submit that the Court below had also erroneously fixed the value of the structures standing in the land without any evidence, which would truncate the findings given by the first Appellant fixing the value for such structures. He would further submit that the award was passed in the year 1982, the solatium as provided under Section 23(2) of the Land Acquisition Act, 1894 was only 15% and the amendment to the said provision by increasing the solatium to 30% was introduced only in the year 1984 and therefore, the Reference Court ought not to have enhanced the percentage of the solatium to be awarded in the award. On these grounds, he would seek to set aside the judgment and decree of the Reference Court and restore the award made by the first appellant.

10. Countering his arguments, Ms.V.Srimathi, the learned counsel appearing for the respondents would submit that what the data land that had been relied under Ex.R.2 by the first appellant in passing the award is a land i.e., situated in more than 3 kms. She would further submit that the nature of the data land is such that it could not be put into use for any purpose much less even for the agricultural purposes. She would further submit that the lands that have been acquired are very close to various amenities. She would submit that the land is situated just 50 feet away from the Vaniyambadi Railway station and Bus stand and 1000 feet away from Municipality office, Public Works Department and the Inspection Bangalow and 2000 feet away from the Islamic College Vaniyambadi. That apart, she would submit that the lands that have been sought to be acquired were contiguous lands measuring a total extent of about acre 6.14 cents, out of which, they had acquired an extent of about acres 2.34 cents. She also relied upon the award wherein the Land Acquisition Officer had described the land in survey No.5/3B to be a land in which the tannery unit was situated and she would also submit that part of the shed of the tannery unit was also acquired. On that ground alone, she would submit that the award of the Land Acquisition Officer, dealing with the lands acquired as 'agricultural lands', is wholly erroneous. She would further submit that since there was

no sale deeds available prior to Section 4(1) notification, the subsequent documents therefore was sought to be relied upon. She would submit that under Ex.C-6, which is much earlier documents than Ex.C.7, the value of the land ought to have been fixed at Rs.56.98/- per sq.ft. Even Ex.C.6 would show that the value of the land that had been subject matter of the land of the said document was valued at Rs.17.56 per sq.ft. However, the Court below had only relied upon the lowest value under Ex.C.5 and that the land was also classified as an agricultural land, but however, considering the fact that the lands, which were acquired are part of a tannery unit, had held that the lands are industrial land and had fixed the value of the land at a higher rate, which cannot be found fault with. She would further submit that even though the respondents have pleaded severance compensation, the Court below had not awarded any compensation on that head. Due to mis-communication, the respondents did not file a cross appeal against the judgment and decree impugned in this Appeal Suit. She would further submit that a reading of the evidence of RW-1 itself would disclose that he had accepted various aspects particularly including the two wells in the acquired land whereas the Land Acquisition Officer had valued only one well that too at a meagre amount of Rs.100/-. Therefore, according to her the entire award proceedings is vitiated by legal malafides only with a view to deny the rightful claim of the land owners. Therefore, she would seek this Court to dismiss the appeal.

11. I have heard the rival submissions made by the learned counsel appearing for the respective parties and perused the materials placed on record.

12. The following issues arise for considerations in the present appeal:-

a) whether the Court below was right in arriving at the nature of lands acquired?

b)whether the compensation fixed is just and fair?

c)whether the Court below was right in awarding a solatium of 30%?

Issue No.1:-

13. From the award proceedings, it is clear that the Land Acquisition Officer had classified the land and valued the same as an "agricultural land". Even under the award, it could be seen that the Land Acquisition Officer had in respect of survey No.5/B, had noted that the rear portion of the tannery

building with cement wool drying yard is involved in the portion under acquisition and for the value of the tannery building, he had awarded a sum of Rs.22,901/- to the structures. It is also not disputed that the land acquired from the respondents are contiguous in nature. In such circumstances, the appellants now cannot be heard to say that the land acquired from the respondents are in the nature of the agricultural land and therefore, should be only valued as an agricultural land.

14.Having found that the lands are classified as “industrial land”, and given a finding that there was no error on the part of the Court below to come to a conclusion that the lands are industrial land, what has to be now examined is whether the Court below was right in fixing the market value of the land.

Issue No.2:-

15.It had been argued by the learned Special Government Pleader that the document was relied upon by the Reference Court was post Section 4(1) notification document and should have been out-rightly rejected. He also vehemently contended that the data land under Ex.R.2 is the only proper document to value the lands. It is true that Ex.C.5 was a document which was subsequent to the 4(1) notification. It is also to be noted whether the Court below had rejected Ex.C.6 & C.7 on the ground that those documents are post acquisition documents. Under the award, the Land Acquisition Officer, namely, the first Appellant herein had classified the lands into three grounds namely, Group-1 are building site land for which he had fixed the compensation for a sum of Rs.0.95/- paise per sq.ft; in respect of Group-2, thoppu lands had fixed a sum of Rs.9302/- per acre; and in respect of Group-3, which are classified as agricultural lands and the Court below had relied upon the Ex.C.5, which was nearest post 4(1) notification document, which was valued as Rs.4.03 per sq.ft., and the nature of land was an agricultural land by considering the fact that the land in question was used for an industrial purpose, it had given a value of Rs.12.09/- per sq.ft., and deducted 33.3% for departmental charges and arrived at for a sum of Rs.8/- per sq.ft to be awarded to the land owners.

16.It is a trite law that when the lands have been acquired by the Government a fair compensation should be paid to the land owners. In the present case, a reading of the award particularly in respect of the lands in issue would show that there has been a tannery unit in the said land for which also compensation has been awarded, but however, the Land

Acquisition Officer had valued the lands as an dry irrigated land, which itself would show that the Land Acquisition Officer in the present case had not acted fairly and had acted against the nature of the land owners. That apart, the Land Acquisition Officer himself had fixed a value of Rs.0.95/- per sq.ft., for the land which he had arrived at to be a building site.

17.It is also surprising to note that the tannery building in which tiles were removed, were valued at Rs.22,000/- but however, the land on which the building was standing and the surrounding lands, which were valued only at Rs.14,000/-. This itself would show that there has been a clear under valuation of the lands in question.

18.It is also relevant to note that the Court below had taken into consideration Ex.C.5, which is a document dated 12.07.1978, but however, had rejected Ex.C.6, which is dated 22.09.1977 and as per Ex.C.6, the value of the lands is shown as Rs.17.56/- per sq.ft. The Court below had not relied upon Ex.C.6, which is an earlier document, but had relied upon Ex.C.5, which is a subsequent document and taking the value of the agricultural land sold in the vicinity to be at Rs.4.03/- per sq.ft. It is also axiomatic that the land is being used for agricultural purposes, would have a lesser value and the same land when used has a house site would fetch a better value and when the same is used for industrial or commercial purpose, it would have much higher value. It is also to be noted that the lands that had been sought to be acquired in the instant case are very close to various amenities, which has also been admitted too by RW.1.

19.In the present case, considering the aforesaid factors, the Court below had arrived at for a sum of Rs.12.09/-, as market value of the lands and after deducting the developmental charges, had fixed the value of the land at Rs.8/- per sq.ft. It is to be noted that the lands have been acquired for laying of road. Therefore, the question of developmental charges, which is available for developing the acquired lands into a housing site or industrial site, is not available. Further, even though there was a claim made by the land owners for severance of the lands belonging to them, the Court below had not given any findings or reasoning as to the entitlement of such severance compensation. The compensation for the land acquired must be a fair compensation.

20.In the present case, I have given a finding that the Land Acquisition Officer had not arrived at a fair compensation only for which the land owners had approached the Reference Court for enhancement of the award.

21.Even the Reference Court during the said process had failed to grant severance compensation and had also deducted 1/3rd amount towards developmental charges. In such circumstances, I am of the view that what had been arrived at by the Court below for the acquisition of the lands belonging to the respondents is a fair compensation.

Issue No.3

22.The further contention of the learned Special Government Pleader is that when the award was passed, the solatium that was available to the land owners was only 15% and only in the year 1984, by way of an amendment, grant of solatium is increased to 30% and therefore, he had contended that the award of 30% of the solatium is erroneous.

23.The proceedings under Section 18 is a continuation of the proceedings under Section 11, when a beneficial legislation had been enacted that too in a case of land acquisition, the benefit should always be extended to the land owners concerned. It had been repeated herein that the Land Acquisition Act is a draconian law, which takes away the constitutional rights of an individual. There can be no justification by discriminating between an acquisition under one Act and the acquisition under another Act. Inso far as the payment of solatium is concerned, this view has been reiterated by the Hon'ble Apex Court in the case of ***P.C.Goswami vs. Collector of Darrang*** reported in ***AIR 1982 SC 1214*** , which had been followed by the Hon'ble Apex Court in the case of ***Kanak (smt) and Anr., vs. U.P.Avas Evam Vikas Parishad & Ors.,*** reported in ***AIR 2003 SC 3894*** and ***Ghazibad Development Authority vs. Anoop Singh & Ors.,*** reported in ***AIR 2003 SC 1004.*** In the present case, the compensation is payable under the Central Act 1894. Before the conclusion of the proceedings, a beneficial amendment had been made to the said Act. Therefore, such a benefit would have to be extended to such land owners. Therefore, I reject the claim made by the learned Special Government Pleader appearing for the appellants.

24.In fine, the Appeal Suit fails and it is dismissed and the judgment and decree made by the Court below is sustained. However, there shall be no order as to costs.

26.07.2023

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Index :Yes/No
Internet: Yes/ No

K.KUMARESH BABU,J.

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A.S.No.133 of 2013

26.07.2023