IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.Nos.423 to 425 and 429 to 434 of 2021

A.S.No.423 of 2021

The Special Tahsildar (LA) Unit – IV,
Outer Ring Road Project,
CMDA, Koyambedu,
Chennai – 107. .. Appellant

Versus

1.J.Jayaraman

2.The Member Secretar,
CMDA, Egmore,
Chennai – 8. .. Respondents

Prayer in A.S.No.423 of 2021: Appeal Suit has been filed under Section 54 of the Land Acquisition Act, 1894, against the judgment and decree dated 16.04.2021 passed in L.A.O.P.No.38 of 2018, on the file of the Subordinate Judge, Poonamallee.

For Appellant in all the appeals	: Mr.T.Chandrasekaran, Spl.GP. (AS)
For CMDA in all the appeals	: Mr.P.Kumaresan, AAG Assisted by Ms.Veena Suresh
For R1 in AS.Nos.423, 429,430, and 431 of 2021	: Mr.R.Amizhdhu for Mr.V.Premkumar

For R1 in A.S.Nos.424, 425, 433
and 434 of 2021 : Mr.V.Stalin for M/s.Row & Reddy

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The State, aggrieved by the awards made in references under Section 18 of the Land Acquisition Act, 1894, is on appeal.

2. The lands in question were acquired by the Government for the purpose of formation of Outer Ring Road (ORR). A notification under Section 4(1) was issued on 30.03.2007. An award came to be passed granting a sum of Rs.32/- per sq.ft. on 21.05.2010 in Award No.8/2010. The said award was challenged in W.P.Nos.10987 of 2015 etc. (batch), which came to be dismissed on 24.11.2015. The said dismissal was challenged in various writ appeals in W.A.Nos.36 to 42 and 249 of 2016. The said writ appeals came to be disposed of on 27.04.2017 by the Division Bench of this Court and finally, on 12.06.2017, a Division Bench of this Court gave the following directions in respect of the fixation of compensation:-

> *"11. In the peculiar facts and circumstances of the case, and taking a humanitarian approach, keeping in mind the predicament to which the appellants have been put in their advanced age, while this Court is not inclined to touch upon the merits of the issue, the matter being resintegra, however, this Court, in exercise of its extraordinary powers*

under the writ jurisdiction, is inclined to issue the following directions:-

i) The appellants are hereby permitted to withdraw the amounts that have been deposited to their credit insofar as acquisition relating to their lands is concerned in the award passed by the Land Acquisition officer, without prejudice to their rights to file appeal before the Reference Court for enhancement of compensation in accordance with law.

ii) The appellants are further granted liberty to file appeal before the Reference Court within thirty days from today claiming enhancement of compensation, if so advised. On such appeals being filed, any delay in filing the said appeals shall not be put against the appellants by the Reference Court, since the matter was subjudice before the higher forum.

iii) While considering the appeals for enhancement of compensation, the Reference Court is directed to take the guideline value as on 1st January, 2014, for the purpose of fixing the market value of the land and for arriving at a just and fair compensation.*(emphasis supplied)*

iv) On filing of appeals for enhancement of compensation, the Reference Court shall deal with the same and pass orders thereon as expeditiously as possible in accordance with law.

v) As a last chance, the appellants are granted time till 31st July, 2017 to vacate the premises and hand over vacant possession to the respondents, who shall take physical possession of the lands in accordance with law."

3. Thereafter, the references in question were made and they were numbered as L.A.O.P.Nos.30 to 38 of 2018. The Reference Court concluded that the land owners would be entitled to a compensation of Rs.1,842/- per sq.ft. In arriving at the said compensation, the Reference Court relined upon a sale deed dated 09.12.2013, which was marked as Ex.C1, and fixed the market value of the land at Rs.2,300/- per sq.ft. and upon deduction of 20% towards developmental charges, fixed the market value of the land at Rs.1,842/- per sq.ft. It is this fixation which is questioned by the appellants in these appeals.

4. Mr.T.Chandrasekar, learned Special Government Pleader appearing for the appellant, would vehemently contend that the 4(1) notification is of the year 2007 and therefore, the Reference Court was not justified in taking the value of a document which was executed in the year 2013. He would further argue that even assuming that the directions of the Division Bench are binding, then it should be the guideline value as on 01.01.2014 and not the value reflected by a document, which has been registered prior to that date. Drawing our attention to Ex.R2, which is a copy of the

guideline register, Mr.T.Chandrasekar, learned Special Government Pleader, would contend that the valuation was only at Rs.1,300/- per sq.ft. and not Rs.1,842/- per sq.ft. He would also contend that no reasons have been assigned by the Division Bench for shifting the date of the 4(1) notification to 01.01.2014 for the purpose of arriving at the compensation.

5. Per contra, learned counsel appearing for the land owners would submit that the judgment of the Division Bench being inter-parties would be binding on the Government as well as the land owners. They would also point out that an attempted appeals filed against the judgment of the Division Bench before the Hon'ble Supreme Court in S.L.P.(Civil) Nos.18089 to 18095 of 2019 have been dismissed on 29.07.2019 with out granting leave. Therefore, according to the learned counsel for the land owners, the judgment of the Reference Court cannot be faulted, since it has only followed the directions of the Division Bench.

6. Mr.P.Kumaresan, learned Additional Advocate General for the CMDA/second respondent, would contend that since the Special Leave Petitions were dismissed at the stage of admission and not on merits, the Government would be entitled to canvass the correctness of the judgment of the Division Bench before us. He would also rely upon judgments of the Hon'ble Apex Court in ***Kunhayammed***

and others Vs. State of Kerala and another [(2000) 6 SCC 359] and ***Khoday Distilleries Limited and others Vs. Sri Mahadeshwara Sahakara Sakkare Karkhane Limited, Kollegal [(2019) 4 SCC 376].*** We are afraid we cannot accept the said submissions of the learned Additional Advocate General. Both *Kunhayammed* and *Khoday Distilleries* recognised the power of the High Court to review its own judgment when a Special Leave Petition against the judgment of the High Court has been dismissed without assigning any reason. Neither of the judgments give a right to a party to the judgment of the High Court to assail it in collateral proceedings.

7. Admittedly, the judgment of the Division Bench is of the year 2017 and the special leave petition came to be dismissed by the Supreme Court in the year 2019. Though 4 years have been lapsed, no attempt has been made by the State to seek review of the judgment of the Division Bench. We reject the request of the learned Additional Advocate General for an adjournment to enable the State to file a review. We do not think we will be justified in granting such adjournment.

8. Turning to the merits of the case on hand, the direction issued by the Division Bench extracted above is very clear and categorical to the effect that the Reference Court should fix the compensation on the basis of the guideline value as on

01.01.2014. Ex.R2, guideline value register, shows that the guideline value in the area in question was Rs.1,300/- per sq.ft. for the period from 01.04.2012 to 08.06.2017. Learned Trial Judge had overstepped the directions of the Division Bench and had taken note of a document that was executed on 09.12.2013 to fix the market value at Rs.2,300/- and after deducting 20% towards developmental charges, learned Trial Judge has fixed the value at Rs.1,842/- per sq.ft.

9. We do not think the Reference Court was right in taking the document dated 09.12.2013 as the basis for fixation the market value. A positive direction issued by the Division Bench is binding both on the Government and land owners equally. Therefore, the Reference Court ought to have fixed the compensation at Rs.1,300/- per sq.ft. Adverting the deductions, we do not think that the Reference Court was justified in making a deduction towards developmental charges. When the land is acquired for laying a road, no developmental charge is required to be deducted. Deductions are made when the vast lands are acquired for housing purposes.

10. In ***Nelson Fernandes and others Vs. Special Land Acquisition Officer, South Goa and others [2007 (9) SCC 447],*** the Hon'ble Supreme Court held that no developmental charges need be deducted in a project where laying of railways and roads are undertaken. In this very ORR project, a Division Bench of this Court in

The Special Thasildhar, Land Acquisition, Outer Ring Road Project,Chennai Metropoliton Development Authority, Egmore, Chennai -8 -Vs- Palin Reshma Jacob & others Dated31-08-2015 made in A.S.Nos:574 to 583 of 2011 (Batch) had held that no deduction should be made, since the purpose of acquisition is for laying a road and in all these cases, only smaller extents have been acquired from all the land owners. The Hon'ble Supreme Court in ***Civil Appeal 269 and 270 of 2023 by order dated 10-01-2023*** had confirmed the view of the Division Bench of this court referred to supra. Therefore, the deduction of 20% made by the Reference Court cannot be sustained.

11. In fine, all these appeals are allowed in part and the compensation is fixed at Rs.1,300/- per sq.ft. Needless to say that the claimants would be entitled to all the statutory benefits as per the provisions of the Land Acquisition Act, 1894. No Costs. Consequently, connected miscellaneous petitions are closed. The Special Government Pleader and the Additional Advocate General will be entitled to separate fee for each appeal.

(R.S.M., J.) (R.K.M., J.)
11.07.2023

rkm
Index:yes/no
Speaking/Non-speaking

Neutral citation: yes/no

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