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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

A.S.No.54 of 2019
and
C.M.P.No.2653 of 2019

The Special Tahsildar, (LA)
North Madras Thermal Power Project,
Kathivakkam,
Chennai – 57. ..Appellant

Vs.

P.Jayaraman (Died)

1.J.Sivaraj

2.Tmt.Suguna

3.Anandan

4.J.Gajendran

5.J.Prabhu

6.Vijili

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7.The Superintending Engineer,
Civil, Tamilnadu Electricity Board,
North Madras Thermal Power Project,
Chennai – 120. ..Respondents

Appeal filed under Section 54 of the Land Acquisition Act, praying to set aside the decree and judgment passed in LAOP.No.2387 of 1998 dated 19.03.2015 on the file of the Subordinate Judge, Ponneri.

For Appellant	:	Mr.T.Chandrasekaran Special Government Pleader (AS)
For R1 to R6	:	Mr.E.Booshanam
For R7	:	Mrs.J.Hemalatha Standing Counsel For TANGEDCO

JUDGMENT

The Appeal Suit has been instituted, questioning the validity of the compensation awarded in L.A.O.P.No.2387 of 1998 dated 19.03.2015.

2. An extent of land measuring 16.31.5 Hectares or 40.35 acres in the village of 143.Athipattu, in Thiruvottiyur, in the District of Chengalpattu

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(presently Thiruvallur District) was needed for public purpose to establish North Madras Thermal Power Project. The land to an extent of 5.17 acres were acquired by the Special Tahsildar (Land Acquisition) and they have fixed Rs.181/- per cent. The claimants demanded higher market value and requested the Special Tahsildar (Land Acquisition) to make a reference to the Court.

3. The claimants have stated that the Land Acquisition Officer had not followed the provisions of the Land Acquisition Act under Section 23 in fixing the compensation. The compensation amount of Rs.181/- per cent fixed is far lesser than that of the market value prevailing in that locality. The Land Acquisition Officer had considered certain sale deeds and failed to consider the other vital factors, while fixing the compensation to be paid to the claimants. The acquired land is very near to Minjur Railway Station and well connected to Chennai city. Lot of industries and companies are functioning nearby the acquired lands. Electric Train facilities and Road facilities are available and approved residential layouts were formulated.

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The Land Acquisition Officer on the date of publication of 4 (1) notification, had taken the lowest guideline value available one year prior to the date of notification and fixed a sum of Rs.181/- per cent, which is arbitrary and far below the market value prevailing in that locality during the relevant point of time.

4. The claimants have stated that the value was more than Rs.4,000/- per cent during that point of time. Thus, they prayed for enhancement of compensation, Solatium and interest.

5. The point for consideration was, whether the claimants are entitled for enhanced compensation and if so, what would be the quantum to be enhanced.

6. To prove the case of the claimants, they have examined one Mr.J.Anandhan as C.W.1 and through him, Ex.C1 and C2 were marked. On the side of the respondents, the Special Tahsildar (Land Acquisition) was

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examined as R.W.1. There is no dispute regarding the ownership of the claimants and there was no dispute with reference to the procedures adopted by the Land Acquisition Officer in the process of acquiring the lands for public purposes and to develop North Madras Thermal Power Project. It is further not in dispute that the acquired lands are situated nearby to Athipattu Railway Station and the same is connected by Electric train and Chennai Corporation Buses. EID Parry Company, Kothari, Asok Leyland and Ennore foundries are situated. Next to Vallur Village, Thiruvottiyur Municipality and Kathivakkam Municipality are situated. The shorter distance to the township approved by CMDA by name Manali New Town is available near Ennore Port and the same is very nearby to the acquired land. The Tamil Nadu Housing Board had acquired about 400 acres of land for the purpose of developing the New township by name Manali New Town and constructed residential apartments in the said lands.

7. The Land Acquisition Officer had collected nearly 478 sale deeds within the period from 23.04.1989 to 22.04.1990. The Land Acquisition

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Officer had discarded most of those documents on the ground that they were sold as house sites and the Acquisition Officer has selected the data sale deed in Serial No.43, wherein 0.53 acres of land was sold for Rs.9,600/- in Document No.2511/89 dated 31.05.1989 with the Sub-Registrar, Thiruvottiyur. Accordingly, the Acquisition Officer increased the market value per cent as Rs.181/-.

8. The claimants have marked Ex.C1 sale deed in Document No.2062/89 dated 24.05.1989, wherein one cent of land was sold for Rs.3,344/- per cent. Ex.C2 land to an extent of 2,430 sq.ft was sold for Rs.31,387/-. Thus, 1 sq.ft of land is Rs.12.92/-. One cent of land would be Rs.5,640/-. The claimants contended that the Acquisition Officer had not considered the said document.

9. The Sub-Court considered the principles to be adopted for fixation of just compensation to the land losers. In this regard, the Sub-Court relied on the judgment of the Hon'ble Supreme Court of India in the case of

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Commissioner of Income Tax, Faridabad Vs. Ghanshyam (HUF), reported in ***(2009) 8 SCC 412*** and in yet another judgment reported in ***1998 (2) SCC 150***, wherein the Hon'ble Supreme Court held that "Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances, where it is shown that the market value was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value.

10. In the case reported in ***AIR 1967 SC 465***, the Apex Court held that "Where in this Court has held that the market value, on the basis of which compensation is payable under Section 23 of the Act, means the price that a willing purchaser would pay to a willing seller for a property having due regard to its existing condition with all its existing advantages and its

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potential possibilities when laid out in its most advantageous manner, excluding any advantages due to the carrying out of the scheme for which the property is compulsorily acquired.

11. In yet another judgment, the Hon'ble Apex Court in ***P.Ram Reddy and others Vs. Land Acquisition Officer, Hydrabad Urban Development Authority and others***, reported in ***(1995) 2 SCC 305***, in which the Hon'ble Supreme Court held that “Market value of land acquired under the Land Acquisition Act is the main component of the amount of compensation award able for such land under Section 23(1) of the Land Acquisition Act. The market value of such land must relate to the last of the dates of publication of notification or giving of public notice of substance of such notification according to Section 4 (1) of the Land Acquisition Act”, This Court went on to further hold that: “Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4 (1) of the L.A., Act, but ought to be its value with reference to the better use to which it is

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reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain use on the date envisaged under Section 4(1) of the L.A. Act, of becoming available for better use in the immediate or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under Section 4 (1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on the possibility of it becoming available in the immediate or near future for better use, i.e., on its potentiality.

12. In the case reported in ***2001 (7) Supreme 25***, where the Apex Court held "Once it is held as it inevitably must be that the solatium provided for under Section 23 (2) of the Act forms an integral and statutory part of the compensation awarded to a land owner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of 28 does not even remotely refer to market value

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alone and in terms of compensation or the sum equivalent thereto. The interest award able under Section 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorize the grant of interest on solatium as well.

13. The learned Government Pleader, who appeared before the Sub Court raised an objection by stating that the document considered by the Land Acquisition Officer was with reference to the 4 (1) Notification issued and the document marked as Ex.C2 was just before the issuance of 4(1) Notification. Therefore, the reliance of Ex.C2 by the Sub Court is improper.

14. The learned Special Government Pleader appearing on behalf of the appellant further contended that the compensation fixed as Rs.181/- during the relevant point of time was based on the sale deed, which was registered to an extent of 0.53 acres and in respect of the present appeal, the land acquired was to the extent of 5.11 acres, which belonged to the

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claimant. Therefore, the Sub-Court has fixed exorbitant compensation, which was no way compared with reference to the documents registered and referred by the Land Acquisition Officer, while fixing the compensation.

15. This Court is of the considered opinion that 4(1) Notification was published in the Government Gazette on 18.04.1990 and Ex.C2 sale deed was registered on 24.12.1989, much before the publication of 4(1) Notification and Ex.C2 is the highest sale exemplar. That being the factum established, the Sub-Court relied on Ex.C2 sale deed for the purpose of determining the market value. The market value prevalent on the date of 4 (1) Notification has to be taken into consideration.

16. It is not in dispute that Ex.C2 document was registered prior to the 4 (1) Notification and therefore, there is no infirmity in respect of the Ex.C2 document relied upon by the Sub-Court for enhancing the compensation. Accordingly, the trial Court considered the fact that the Ex.C2 sale deed pertains to smaller extent of land sold as house sites. Hence, 25% deduction

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was made. Ex.C2 document reveals that one cent of land was sold for Rs.5,640/-. After deducting 25% (i.e., Rs.1,410/-), a sum of Rs.4,230/- per cent was fixed by the Sub-Court as fair compensation for the total measurement of 5.11 acres. Thus, the Sub-Court granted 30% solatium along with the enhanced compensation of Rs.4,230/- per cent. The claimant is entitled to get additional market value at the rate of 12% per annum from the date of 4 (1) notification to date of passing award. Further, the claimants are entitled to 9% of interest for the amount mentioned in award Serial.Nos.1 and 3 for the first year from the date of taking possession and 15% interest for the subsequent years till date of deposit as per the provisions of the Land Acquisition Act.

17. It is not in dispute between the parties that the land acquired situated in Thiruvallur District, having close proximity with Chennai City. As rightly considered by the Sub-Court, infrastructures were developed in that locality. Many companies were functioning even at the time of acquiring the property, which belonged to the claimants.

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18. This being the factum, this Court do not find any infirmity or perversity in respect of the enhancement of compensation granted in favour of the claimants and thus, no interference is required.

19. Accordingly, the decree and judgment passed in LAOP.No.2387 of 1998 dated 19.03.2015 on the file of the Subordinate Judge, Ponneri stands confirmed for the total extent of 5.11 acres and the Appeal Suit in A.S.No.54 of 2019 is dismissed. The appellant / Special Tahsildar and the 7th respondent / The Superintending Engineer, Civil, Tamil Nadu Electricity Board, North Madras Thermal Power Project, Chennai – 120 are directed to settle the enhanced compensation as awarded in this judgment within a period of three months from the date of receipt of a copy of this judgment. No costs. Connected miscellaneous petition is closed.

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Index : Yes
Speaking order:Yes
Neutral Citation:Yes
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To

The Subordinate Judge,
Ponneri.

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S.M.SUBRAMANIAM, J.

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