IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2023

Pronounced on : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

A.S.No.147 of 2019
and
Cross Objection No.25 of 2019

A.S.No.147 of 2019

The Special Tahsildar,
Land Acquisition Unit-I,
Outer Ring Road Project Phase-I,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8. ... Appellant / Respondent No.1

Versus

1.S.Vinayagam ... Respondent No.1 / Claimant

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-600 008. ... Respondent No.2 / Respondent No.2

PRAYER in A.S.No.147 of 2019 : Appeal is filed under Section 54 of The Land Acquisition Act, 1894, against the Judgment and Degree of the Subordinate Court, Kancheepuram in L.A.O.P.No.11 of 2015 dated 16.02.2018.

For Appellant : Mr.R.Shanmugasundaram,
Advocate General Assisted by
Mr.T.Chandrasekaran
Special Government Pleader

For Respondents : Mr.J.Ram [R1]
Mr.C.Manoharan
Standing Counsel for CMDA [R2]

Cross Obj.No.25 of 2019

S.Vinayagam ... Cross Objector / Claimant

Versus

1. The Special Tahsildar, L.A.,) Unit-I,
Outer Ring Road Project,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008, is now having office at
K.M.M.C.Building, Koyambedu Market,
Koyambedu, Chennai-600 092.

2.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai-600 008. ... Respondents

PRAYER in Cross Obj.No.25 of 2019 : Cross Objection is filed under Order 41 Rule 22 of CPC to set aside the findings rendered in the judgment passed in L.A.O.P.No.11 of 2015 dated 16.02.2018 on the file of the Subordinate Judge, Kancheepuram, in so far as it is against the Cross objector concerned to enhance and fix the value of the land at Rs.45,000/- per cent with interest on solatium at 12% per annum from the date of Section 4(1) Notification with other benefits.

For Cross Objector : Mr.J.Ram

For Respondents : Mr.R.Shanmugasundaram,
Advocate General assisted by
Mr.T.Chandrasekaran [R1]
Special Government Pleader

Mr.C.Manoharan
Standing Counsel for CMDA
[R2]

COMMON JUDGMENT

(Judgment was delivered by **R.KALAIMATHI, J.,**)

The Special Tahsildar, Land Acquisition Unit-I, Outer Ring Road Project, Phase-I, Chennai Metropolitan Development Authority, Egmore, Chennai has preferred the appeal against the judgment and decree passed in L.A.O.P.No.11 of 2015, dated 16.12.2018 on the file of the Subordinate Judge, Kancheepuram.

2. The claimant has also filed Cros.Objection No.25 of 2019 against the said judgment and decree for enhancement.

3. As both the Appeal Suit and Cross Objection have been filed based on the above said judgment, by way of common judgment, the aforesaid matters are disposed of.

4. succintly stated the facts of the case are as follows:

Land measuring 0.32.0 ares [land in S.No.163/1A2 about 0.25.5 ares, and in S.No.163/1A3 about 0.07.5 ares totally 0.32.0 ares] situate in No.92, Thirumudivakkam Village in the Taluk of Sriperumbudur in the District of Kanchipuram, was acquired by the Chennai Metropolitan Development Authority (hereinafter referred to as C.M.D.A.,) for the purpose of formation of Outer Ring Road under Outer Ring Road Project. Notification under Section 4(1) of the Land Acquisition Act was issued on 01.06.2005. Enquiry under Section 5(A) was conducted in Kunnathur Revenue Inspector's Office on 29.07.2005 by observing due formalities. The draft declaration which was made under Section 6 of the Land Acquisition Act appears to have been approved by the Commissioner of Land Administration, Chepauk, Chennai in Proceedings No.D.Dis.M2/41650/2005 dated 04.01.2006 and published in Tamil Nadu Government Gazette issue No.4 Part VI, Section I, dated 25.01.2006 at page 48 and in Tamil Dailies - Dinathanthi and Makkal

Kural on 29.01.2006. It is also relevant to note that the substance of the Declaration was also caused to be published in the locality on 10.02.2006. Thereafter, as per Section 7 of the Land Acquisition Act, draft declaration was approved by the District Collector, Kancheepuram in Proceedings Rc.No.37362/2004 dated 31.03.2006. Award came to be passed in R.C.No.1 of 2004, A1/ORR/Unit-I on 17.08.2006 by the Special Tahsildar, Land Acquisition Unit-I, Outer Ring Road Project, CMDA, Chennai-8.

5. The Land Acquisition Officer arrived at the market value at Rs.2,964/- per Are. Being not satisfied with the aforesaid market value, the land owner namely father of the minor, sought for Reference under Section 18 of the Land Acquisition Act.

6. Accordingly, reference was made under Section 18(1) of the Act, by the Land Valuer and the said Reference was taken on file by the Sub-Court, Kancheepuram as L.A.O.P.No.11 of 2015.

7. The Trial Court, after hearing the arguments of both sides and upon considering the oral and documentary evidence, fixed the market

value of the acquired lands at Rs.39,113/- per cent with all statutory benefits.

8. Shri.T.Chandrasekaran, learned Special Government Pleader appearing for the appellant would submit that the Land Acquisition Officer has fixed the market value of the land in question at Rs.1,200/- per cent or Rs.2,964/- per are, by taking into consideration of the sale exempler concerned with Sl.No.165, after discarding 236 sales, as the sales pertain to house sites, dry lands for higher value, wet lands for lower value, combined sales and sale in respect of poramboke lands. In the said sale transaction, an extent of 0.81 acres of wet land in Survey No.432/2B and 432/3 was sold for consideration of Rs.97,200/- @ Rs.1,200/- per cent vide Doc.No.2989/2004 dated 15.10.2004.

9. The learned Special Government Pleader, Shri.T.Chandrasekaran would further submit that the Reference Court has omitted to take the average value of Exs.C1 to C3 for the purpose of fixing the market value for the land in question. The Reference Court has taken into consideration of the sale exemplers viz., Exs.C1 to C3 which pertain to house sites. Whereas, the land acquired is classified as

wet lands. According to him that the Reference Court did not consider the nature of soil, location and the conditions of the acquired land as on the date of the publication of Section 4(1) Notification. It is also stressed upon that the oral evidence let in by the Government side is omitted to be appreciated in a proper perspective.

10. Resisting the aforesaid contentions, the learned counsel appearing for the land owner / Cross Objector Shri. J.Ram, would submit that the land value fixed by the reference Court is very less and the acquired land comes under Kundrathur Taluk, Kundrathur Town Panchayat Limit and situate within 8 kilometre distance from Porur, Pallavaram, Poonamallee and Tambaram and situate within 10 Kms distance from Meenambakkam Airport. He would also contend that the acquired land comes under C.M.D.A., city limit and also under industrial site under SIDCO.

11. According to him, the Reference Court without consideriing all the sale deeds Exs.C1 to C3, the Trial Court fixed the market value at Rs.39,113/- per cent is incorrect. He would further submit that at present the current market value is Rs.4,000/- per sq.ft., and therefore, prayed

to fix the market value at Rs.45,000/- per cent with all other benefits. To buttress his arguments, following judgments were referred to :

i) Nelson Fernandes and Others v. Special Land Acquisition Officer, South Goa and Others reported in (2007) 9 SCC 447.

ii) Sunder v. Union of India reported in 2001 (4) CTC 434.

12. Heard Mr.T.Chandrasekaran, Special Government Pleader appearing for the appellant. Mr.J.Ram, learned counsel appearing for the 1st respondent/claimant/Cross Objector and Mr.C.Manoharan, learned Standing Counsel appearing for C.M.D.A./2nd respondent and perused all the materials available on record.

13. At trial, on the claimant's side the owner Tvl.Vinayagam has examined himself as CW1. Copy of sale exemplers were marked as Exs.C1 to C3. The details of said sale deeds have been tabulated hereunder for easy reference.

Exhibits	**Extent & Nature of Land**	**Sale Consideration**	**Cost of 1 cent - land**	**Date of Sale Deed**

	sold			
Ex.C1	1890 Sq.ft.,- plot	Rs.2,55,150/-	Rs.58,817/-	23.02.2004
Ex.C2	1800 Sq.ft., - plot	Rs.2,43,000/-	Rs.58,806/-	24.11.2004
Ex.C3	3600 Sq.ft., - plot	Rs.4,86,000/-	Rs.58,809/-	25.05.2005

14. Whereas, on the side of the respondents, through the witness Mr.P.Rathinavelu/RW1 (Special Tahsildar-Land Acquisition), copy of the award was marked as Ex.R1.

15. In Nelson Fernandes' case, as mentioned supra, which was cited by the learned counsel for 1st respondent / claimant, the Hon'ble Supreme Court has held that normally 1/3rd amount has to be deducted. In the said case, the land was acquired for construction of new broadguage lane for the Konkan Railways. As the land was acquired for the purpose of laying railway lines, the question of development thereof would not arise.

16. In Sundar Vs. Union of India which was referred to, by the learned counsel for the claimant, wherein, the Hon'ble Supreme Court, after discussing the judgments made in :

i) Union of India v. Shri Ram Mehar and others reported in 1973 (1) SCC 109.

ii) Periyar & Pareekanni Rubbers Ltd. v. State of Kerala reported in 1991 (4) SCC 195.

iii) Premnath Kapur & another v. National Fertilizers Corporation of India Ltd., & Others reported in 1996 (2) SCC 71.

iv) Yadavrao P.Pathade v. State of Maharashtra reported in 1996 (2) SCC 570.

held that a person entitled to the compensation awarded, is also entitled to get interest on the agregate amount including solatium.

17. The Entire details of the acquired lands have been given herein for easy reference:

Survey No	:	163A/1A2, 163/1A3
Extent (in Hectares)	:	0.24.5 / 0.07.5
Classification	:	Wet land

Value fixed by the LAO on 17.08.2006 : Rs.1200/- per cent.

Value fixed by the
Reference Court on 16.02.2018 : Rs.39,113/- per cent.

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18. It is the evidence of the claimant that the acquired lands are fertile wet lands and being irrigated by Chembarambakkam Tank Water throughout the year and in a year three times, crops were being cultivated. It has been further stated that there is a rapid developments of industries and reputed educational institutions are located within 3 to 4 kilometres of Thirumudivakkam. Temples, Church and Mosque are located in and around Thirumudivakkam. Tambaram Railway Station,Central Bus Terminus, National Highways are near to Thirumudivakkam. Well known hospital is also located at Tambaram, Chrompet and Pallavaram. Most of the wet lands are converted as house sites which are sold for more than Rs.4,00,000/- per cent.

19. Whereas, on the part of the Government, it has been counteracted by stating that the sales statistics of Thirumudivakkam Village in Sl.No.165 was taken as data land. The sale was effected for an extent of 0.81 cents of wet land in Survey Nos.432/2B and 432/3 which was sold for Rs.97,200/-, which works out to Rs.1,200/- per cent.

20. In our case, Land was acquired for an extent of 0.32.0 ares, situate at No.92, Thirumudivakkam Village in the Taluk of Sriperumbudur in the District of Kancheepuram, for the purpose of formation of Outer Ring Road, by CMDA, Egmore, Chennai-8. Data Sale Deed relied upon by the land valuer is dated 15.10.2004 is much before the issuance of Notification under Section 4(1) in the given case.The sale deed pertains to Survey No.432/2B and 432/3 of 0.81 cents of wet lands, sold for Rs.97,200/- @ Rs.1,200/- per cent in Doc.No.2989/2004 dated 15.10.2004, the sale deed is of eight months before the issuance of notification.

21. On the side of the claimants, three data sale deeds have been marked as Exs.C1 to C3 and the entire details have been tabulated as mentioned supra.

22. Market value of the land has to be fixed as per Section 23 of the Land Acquisition Act. Section 23 of the Land Acquisition Act is extracted hereunder:

"23 Matters to be considered in determining compensation.

(1) *In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration -*

first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1);]

secondly, the damages sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the *declaration under Section 6 and the time of the Collector's taking possession of the land.*

[(1-A) In addition to the market-value of the land, as above provided the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.- In computing the period referred to in this sub-section, any period or periods, during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.]"

23. As per Section 23 of the Land Acquisition Act, compensation payable is the market value of the land on the date of publication of notification under Section 4(1) of the Act. Therefore, notification under Section 4(1) has a significance in determining the compensation.

24. The data sale deed relied upon by the Land Valuer, situate to the south of the acquired lands whereas the data lands which are relied upon by the claimant are situate to the east of the acquired lands. Considering all these aspects, the learned Reference Court has taken

the highest market value viz., Ex.C1 at Rs.58,817/- per cent after deducting 33.5% for developmental charges arrived at Rs.39,113/- per cent.

25. The learned counsel for the claimant would argue that no deduction charges need to be made for the acquired land. It is relevant to refer to the observations made by the Apex Court in ***Hasanali Khanbhai & Sons v. State of Gujarat*** reported in ***(1995) 5 SCC 422*** it was held that where the lands are acquired for specific purpose, deduction by way of development charges is permissible. This was also followed by the Apex Court in ***Land Acquisition Officer v. Nookala Rajamallu*** reported in ***(2003) 12 SCC 334.***

26. In the present case, as the land is acquired for the purpose of formation of Outer Ring Road, as observed by the Hon'ble Supreme Court in the aforementioned cases, deduction for development charges has to be made while fixing the market value.

27. In case of wet land, the land would have been already levelled for the purpose of cultivation. In general, 1/3rd deduction is being made

for development charges. However, this Court deems fit to deduct 25% as development charges for the reasons mentioned supra.

28. According to the claimant that the land acquired is fertile land being irrigated thrice a year with copious water supply throughout the year from Chembarambakkam lake. The Reference Court has taken the highest market value namely Ex.C1 sale deed. Whereas, sale exemplers Exs.C1 to C3 pertain to plots. In these circumstances, how the land which was acquired is to be valued is answered by the Hon'ble Supreme Court in ***Printers House (P) Ltd., v. Saiyadan*** reported in ***(1994) 2 SCC 133***, wherein it has been held that the comparable sales method of valuation of land can be adopted in case where the acquired land in question is being compared with the similar type of acquired land, made pursuant to the same preliminary notification. But if any of the factors such as location, shape, size, potentiality or tenure of the acquired land widely differs from the other plots then the market value of the acquired land has to be determined independently of the others.

29. We are not oblivious of the fact that the land has got potential value. The sale instances pertains to small plots. Whereas acquisition

was made in respect of larger area. Therefore, in order to do complete justice to the parties, taking into consideration of the nature of the land, potentiality and civic amenities namely electricity, water supply, transportation, industries, police station, railway station, schools and colleges etc., keeping in view of all the above said details, after deducting 25% as development charges, we deem it fit to fix the market value at Rs.44,108/- per cent.

30. In fine, value of the land is enhanced to Rs.44,108/- per cent with all attendent benefits. Time for deposit is three months from the date of receipt of a copy of this judgment.

31. In the result, based on the aforesaid observations, the appeal filed by the Special Tahsildar is dismissed and the cross-objection filed by the claimant is allowed. No costs.

[S.V.N., J.,]   [R.K.M., J.,]
26.06.2023

Index:Yes/No
Speaking/Non-Speaking Order
ssn

To

1. The Subordinate Court,
Kancheepuram.

2. The Special Tahsildar,
Land Acquisition Unit-I,
Outer Ring Road Project Phase-I,
Chennai Metropolitan Development Authority,
Egmore, Chennai-8.

3.The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai-600 008.

S.VAIDYANATHAN, J.,
and

R.KALAIMATHI, J.,

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