IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.06.2023

PRONOUNCED ON : 12.09.2023

CORAM:

THE HON'BLE MR. JUSTICE S. VAIDYANATHAN

and

THE HON'BLE MR. JUSTICE K. RAJASEKAR

Appeal Suit No.702 of 2018
and
Civil Miscellaneous Petition No.19747 of 2018

The Special Tahsildar (L.A.No.2)
SIPCOT (TACID Division)
Cuddalore
Now at the Sub Collector Cuddalore ...Appellant/ Referring Officer

vs

1. Thiru. Duraisamy ... 1st Respondent/ Claimant

2. State Industries Promotion Corporation
of Tamil Nadu (SIPCOT) Limited,
Rep. by its Chairman and Managing Director,
No.19-A, Rukmani, Lakdhmipsyhy Road,
Egmore, Chennai – 600 008.
...2nd Respondent/ Proposed Respondent

Appeal Suit filed under Section 54 of Land Acquisition Act, against the Award dated 18.09.2017 in L.A.O.P. No.69 of 2015, by the Special Subordinate Court for LAOP cases, Cuddalore.

For appellant	:	Mr. T. Chandrasekar, Special Government Pleader
For R1	:	Mr. M. Selvam
For R2	:	Mr. M. Naresh

JUDGMENT

(The Judgment of the Court was made by K. RAJASEKAR, J.)

The Land Acquisition Officer, the Special Tahsildar has filed the appeal, challenging the enhancement of compensation awarded by the Land Acquisition Tribunal, Special Sub Court, Cuddalore in L.A.O.P.No.69 of 2015, by order dated 18.09.2017.

2. In G.O.Ms.No.179, Industries (MIF-1), dated 30.06.1997, the Government of Tamil Nadu has accorded administrative sanction for acquiring lands to the extent of 178.01.0 hectares from Kayalpattu Village, Cuddalore Taluk, Cuddalore District for establishing industrial complex by the SIPCOT (TACID Division). Based on the G.O., notification dated 21.01.1999 under Section 4(1) of the Land Acquisition Act, 1894 (Act 1894 hereafter) for acquiring 10.017.5 hectares of land situated in Survey Nos.141, 145 and 147 was issued. Thereafter, the enquiry was conducted by

the Land Acquiring Officer for fixing the market value of the lands, for payment of compensation to the land owners. After enquiry, the Award No.4/2000, dated 10.08.2000 was passed by the Land Acquiring Officer, fixing the market value as Rs.93,579/- per hectares. The trees in the lands were also separately valued and 30% solatium and 12% interest as additional amount was also awarded.

3. Aggrieved over the compensation awarded, the land owners of Survey No.147/2A have sought for enhancement which resulted in reference under Section 18 of the Land Acquisition Act, 1894, to the Special Court.

4. The case of the claimant is as follows:

The Award Officer has erred in fixing the data land, and failed to consider that similar nature of land in Survey No.190/2 in Kayalpattu Village, was sold for Rs.1,00,000/- per acre as on 15.06.1998. The Kayalpattu Village and Andarmullipalam Village are adjacent to each other. The acquired lands situated to the East of Cuddalore - Chidambaram Road. In the acquiring land, the claimant has raised groundnut, Tapioca, Rice, Casurina, Palm trees and cashew trees. The market value fixed as

Rs.37,900/- per acre by the Award Officer is very low, and the same is to be enhanced to Rs.2,00,000/- per acre. The income earned from the cashew trees were not properly taken into account and other trees, such as, Coconut and Palm trees were not properly compensated.

5. The Referring Officer filed their statement and stated that the land belongs to the claimant in R.S.No.147/2A to the extent of 0.14.0 hectares has been awarded compensation of Rs.27,698/-, after considering the locality, irrigation facilities and other potentiality of the land. After considering 65 sale transactions, the Data Sale land was properly fixed and compensation has also been awarded. Hence, prays to dismiss the reference.

6. Before the Tribunal, on the side of the Claimant, PW1 was examined and no documents marked and on the side of Respondent No.1, RW1 was examined and Ex.R1 was marked.

7. The Tribunal after considering the evidence placed on record, awarded compensation, at Rs.2,00,000/- per acre with 9% interest for the first one year from the date of possession and thereafter 12% interest till the date of payment of compensation. The Tribunal has also awarded

30% solatium with interest at the rate of 6% per annum from the date of possession till the date of payment. The claimant has not filed any appeal against the compensation fixed by the Special Court.

8. Aggrieved over the above award, the present appeal has been filed by the Referring Officer on the ground that quantum of compensation fixed under various heads is on the higher side, and there is no basis for awarding the enhanced compensation.

9. The learned Special Government Pleader submits that data land fixed by the Land Acquisition Officer is proper and same has not been accepted by the Special Court without any valid reason. The Tribunal has also failed to deduct the development charges which is required to be made, the Tribunal has also without following the guidelines laid down under various judgments of the Hon'ble Apex Court, arrived the market value of the land.

10. The learned counsel for the land owners submits that the Tribunal has adopted several methods and rightly concluded and fixed the compensation for the lands acquired in this case. The land owners proved

their claim and it is also admitted by the respondents that acquired lands are valued for more than compensation amount awarded by the Tribunal herein, hence prays to dismiss the appeal.

11. This Court have considered the arguments made by both sides and perused the materials placed on record.

12. Points arises for consideration before this Court whether the compensation fixed by the Tribunal to the lands of claimant is proper and valid and the award of the Tribunal requires interference by this Court or not?

13. As per Award No.4 of 2000, dated 10.08.2000, the Land Acquisition Officer has fixed the value of compensation for the lands to the extent of 10.17.5 hectares situated at Kayalpattu Village including Survey No.147/2A, to the extent of 0.14.0 hectares, which is the subject matter of this appeal. The Award-Ex.R1 shows that the Officer has considered 23 sale transactions taken place one year prior to the date of notification under Section 4(1) of the Land Acquisition Act, 1890. After considering 23 Sale transactions, he has fixed the Data land in Survey No.101/4 at Kayalpattu Village to the extent of 0.57 hectares of punja land, which was sold in Sale

deed No.93, dated 24.01.1998 on the file of Joint Sub Registrar, Cuddaore. This Data land was sold for a sum of Rs.37,900/- per acre. He has also considered the cashew trees, Bamboo trees and Neem tree and independently assessed the value of the above trees.

14. Based on the reference made under Section 18(1) of the Land Acquisition Act, 1894, the learned Special Judge for LAOP Cases has conducted enquiry. On the side of the claimant, he examined himself as P.W.1 but no documents filed to show that the value of land fixed by the Acquiring Officer is not the same as market value. The learned Special Judge has recorded that she had given sufficient opportunity for the claimant to produce the evidence to support of his case for enhancement of compensation. Based on the cross examination of P.W.1, wherein it was informed that, by way of mediation, some of the land owners have been paid Rs.2,75,000/- per acre [for vacant lands] and Rs.3,00,000/- per acre [for lands with cashew trees]. Based on this evidence, recorded in the cross examination of P.W.1/Claimant, it is held that the market value of the land of the claimant is to be valued as Rs.3,00,000/- per acre. However, by confering the relief claimed by the claimant, the value of lands per acre fixed as Rs.2,00,000/-.

15. The learned Special Judge has also held that the compensation fixed for the lands of trees as Rs.4,960/- is proper. Thereafter, the Tribunal has awarded 30% solatium on the market value fixed and 6% interest on the solatium from the date of possession till the date of payment and 9% interest for the enhanced compensation for one year from the date of possession thereafter, 12% interest per annum till the date of deposit of compensation amount.

16. It is submitted by the learned Special Government Pleader that without any valid evidence or any basis the learned Special Judge has enhanced the market value of the acquired lands from Rs.37,900/- to Rs.2,00,000/- per acre and the Tribunal has also failed to deduct development charges for the acquired lands, which warrants interference of this Court.

17. The Hon'ble Apex Court in ***Major General Kapil Mehra and Others vs. Union of India*** reported in ***2015 (2) SCC 262*** has reiterated various principles and factors to be considered by the Land Acquisition Officer as well as the Court, the relevant paragraph Nos.10, 11 and 12 are incorporated hereunder.

"10 . Market Value: *First question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors: (i) existing geographical situation of the land; (ii) existing use of the land; (iii) already available advantages, like proximity to National or State Highway or road and/or developed area and (iv) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.*

11. *The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification Under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.*

12. *In Viluben Jhalejar Contractor v. State of Gujarat MANU/SC/0286/2005 : (2005) 4 SCC 789, this Court laid down the following principles for determination of market value of the acquired land:(SCC pp. 796-97, paras 17-20)*

17*. Section 23 of the Act specifies the matters required to be considered indetermining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification Under Sub-section (1) of Section 4.*

> ***18.*** *One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefor. It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.*
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> ***19 .*** *Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification Under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.*
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> ***20.*** *The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition....”*

18. The Hon'ble Apex Court in several judgments reiterated that the burden of proof is always on the claimants to prove any, by adduction cogent and acceptable evidence that the lands are capable of fetching higher compensation than what is determination by the Land

Acquiring Officer, which is only an offer. [Refer ***Periyar and Pareekanni Rubbers Limited vs. State of Kerala (AIR 1990 SC 2192)*** and ***the Special Deputy Collector and Others vs. Kurra Sambasiva Rao and Others (1997 6 SCC 41)***].

19. The case in hand, it is true that except oral evidence of the claimant, no other corroborative evidence produced on the side of the claimant to substantiate his case for enhancement of compensation. However, the claimant has relied on the orders passed by the Special Court in L.A.O.P.No.522 of 2013 and L.A.O.P.No.523 of 2013, dated 13.10.2015, wherein, the Special Court has awarded compensation of Rs.5,00,000/- per acre for the lands acquired by separate acquisition proceedings. However, the lands are situated adjacent to the claimant's land in the very same village. In the cross examination of P.W.1, it was suggested from the side of the Land Acquisition Officer that the other land owners have been paid compensation of Rs.2,75,000/- per acre for vacant agricultural lands and Rs.3,00,000/- per acre for the lands with cashew nut trees.

20. On the side of the respondent/Land Acquisition Officer, R.W.1 was examined and admitted by him that the Special Court has passed

an order fixing the compensation of Rs.5,00,000/- per acre in the lands related to L.A.O.P.No.522 of 2013 and L.A.O.P.No.523 of 2013. He has stated that it was the subject matter of appeal before the High Court. The learned Special Judge, based on the above evidence instead of granting compensation of Rs.5,00,000/- per acre, accepted the suggestion of the respondent/Land Acquisition Officer, that they have agreed to pay the compensation for a sum of Rs.2,75,000/- to Rs.3,00,000/- based on the nature of lands which are similar to the lands of the claimants.

21. This finding has been now challenged before this Court on the ground that fixation of compensation is not proper and has no basis.

22. In ***Special Deputy Collector and Others vs. Kurra Sambasiva Rao and Others*** cited above, in paragraph No.6, the Hon'ble Apex Court has held that:

> *"6. .... It is, therefore, the paramount duty of the courts of facts to subject the evidence to very close scrutiny, objectively assess the evidence tendered by the parties on proper consideration thereof in correct perspective to arrive at adequate and reasonable market value. The attending facts and circumstances in each case would furnish guidance to arrive at the market value of the acquired lands. It is equally relevant to consider the neighbourhood lands as are*

possessed of similar potentiality or any advantageous features or any special circumstances available in each case. The Court is required to take into account all the relevant considerations. The Court is required to keep at the back of its mind that the object of assessment is to arrive at reasonable and adequate market value of the lands. In that process, though some guess work is involved, feats of imagination should be eschewed and mechanical assessment of the evidence should be avoided. Even in the absence of oral evidence adduced by the Land Acquisition Officer or the beneficiaries the judges are to draw from their experience the normal human conduct of the parties and bonafide and genuine sale transactions are guiding star in evaluating the evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place very heavy burden on the public exchequer to which other everyone contributes by direct or indirect taxes."

23. In ***Major General Kapil Mehra and Others vs. Union of India,*** cited above reiterated that, where definite material is not forthcoming, either in the shape of sales of similar lands, other sale instances as well as other evidences to be considered.

24. Admittedly, even though no documentary evidence was produce on the side of the claimant to prove their case of enhancement, the respondent has reported before the Special Court that they have amicably settled with some of the land owners whose lands also subjected to Award

No.4 of 2000, dated 10.08.2000 by paying Rs.3,00,000/- per acre to the lands which are having trees such as, cashew trees. After submitting their willingness to pay the compensation for a sum of Rs.3,00,000/- to the claimant's land by way of cross examination before the Court, now the respondent is not entitled to turn back and say that the amount of compensation fixed by the Special Court is not valid.

25. Yet another admitted fact that in connected L.A.O.P.No.522 of 2013 and L.A.O.P.No.523 of 2013, the Special Court has fixed the compensation for the lands which was situated in the very same Village as Rs.5,00,000/- per acre. The Special Court has not fully accepted the value fixed in adjudicating process in other L.A.O.P.Nos.522 of 2013 and 523 of 2013, i.e., Rs.5,00,000/- per acre or value fixed amicably between the either parties in mediation process i.e., Rs.3,00,000/- per acre. The Special Court has taken the view that, since the claimant has claimed in oral evidence and based on record, claimed only Rs.2,00,000/- per acre, same has to be awarded. Similarly, the value of tree also considered and compensation is fixed. Since no exemplars in the from of sale was made available before the Special Court, reliance made by the Court based on the above admitted evidence is justified. The Court has also restricted the

fixation of land value based on the claim made by the claimant and there is no appeal filed by the claimant shows that he has satisfied with the award hence, this Court finds no reasons to modify the award.

26. The Special Government Pleader has also contended that the Special Court has failed to deduct the development charges for the lands and it is a mandatory deduct the development charges and prays to deduct the same. The Hon'ble Apex Court in ***Kapil Mehra vs. Union of India (UOI)*** case, cited above in paragraph No.29 has considered the mandate of deducting development charges for equalising the factor of the market value of a small plot of land as compared to a large area of land acquired. After considering the various previous Judgments of the Hon'ble Apex Court, in paragraph No.39 has held as follows:

> *"39. We have referred to various decision of this Court on deduction towards development to stress upon the point that deduction towards development depends upon the nature and location of the acquired land. The deduction includes components of land required to be set apart under the building rules for roads, sewage, electricity, parks and other common facilities and also deduction towards development charges like laying of roads, construction of sewage."*

27. The deduction of development charges would be applicable, if the Court adopts the comparable sales method of valuation of the land for fixing the market value of the agricultural land. In this case, the Tribunal has not adopted the comparable sales method of valuation of land. The Special Court has proceeded on the basis that there was a settlement between neighbouring land owners with the Land Acquiring Officer and the Land Acquisition Officer is willing to pay Rs.3,00,000/- per acre which is having trees. Further, those lands are agricultural lands similar to the lands in this case. Similarly, the comparable sales lands are not developed land deducting the development charges is not applicable to the present case. Hence, the contention of the appellant is hereby rejected.

28. Against the fixation of compensation, the claimant has not come forward to file any appeal for enhancement before this Court against the reasons stated by the Special Court for fixing the compensation. Based on the evidence placed on record, this Court finds that there is no reason to interfere with the said fixation. The learned Special Judge after fixing the compensation for the lands, has also awarded 30% solatium on the market value fixed by her and also awarded interest. Hence, this Court finds no merits in the appeal and the same is liable to be dismissed.

29. Accordingly, the Appeal suit filed by the Referring Officer is dismissed and the Award passed by the learned Special Judge in L.A.O.P.No.69 of 2015, dated 18.09.2017 is hereby confirmed. No costs. Consequently, the connected miscellaneous petition stands closed.

(S.V.N., J.) (K.R.S., J.)
12.09.2023
(1/2)

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No

To

1. The Special Subordinate Judge,
 Cuddalore.

2. The Public Prosecutor,
 High Court, Madras.

S. VAIDYANATHAN,J.,
and
K. RAJASEKAR,J.,

ssi

Pre-delivery Judgement made in
A.S. No.702 of 2018

12.09.2023
(1/2)