BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.02.2023

Pronounced on :10.04.2023

THE HONOURABLE MRS.JUSTICE **N.MALA**

A.S.(MD)Nos.21 and 22 of 2023
and
C.M.P.Nos.1209 and 1211 of 2023

The Special Tahsildar, (LA)
Tamilnadu Road Sector Project,
Thanjavur.

...Appellant in both A.S.

Vs.

R.Swaminathan

...Respondent in both A.S.

Common prayer: Appeal Suit is filed under Section 54 of Land Acquisition Act, praying to set aside the Judgment and Decree dated 06.09.2016 made in L.A.O.P.No. 33 and 34 of 2011, on the file of Sub- Ordinate Court, Kumbakonam.

For Appellant (in both A.S Nos.) : Mr.Veera Kathiravan, Additional Advocate General Assisted by Mr.D.Gandhiraj, Special Government Pleader

For Respondent (in both A.S Nos.) : Mr.S.Ramsundar vijaya raj

JUDGMENT

The special Tahsildar, L.A, Tamil Nadu Road Sector Project, Thanjavur has filed the above appeals challenging the Judgement and Decree passed in L.A.O.P.Nos.33 and 34 of 2011, dated 06.09.2016 on the file of Principal Sub Judge, Kumbakonam.

2.As common issues arise for determination in both the appeals the same are disposed of by this common Judgment. The appellant in the appeal will be referred to as the LAO and the respondent as the claimant.

3.The Government of Tamil Nadu acquired an extent of 0.42.64 hectares of land in several fields in Thepperumanallur village in the taluk of Thiruvidaimaruthur of Thanjavur District for the public purpose of formation of Kumbakonam bye-pass road under the Tamil Nadu Road Sector Project, by invoking the provisions of Sec. 15(1) of Tamil Nadu High Ways Act, 2001. The Sec. 15(1) notice under the Tamil Nadu High ways Act, 2001 was issued on 07.11.2009.

4.The punjai lands of the claimant in Survey No.4/7, measuring 0.007.06 hectares and Survey No.4/8 measuring 0.02.10 hectares were acquired for the said purpose. The land acquisition officer passed an award dated 23.07.2010 under Section 19(3) r/w. 19(6) of the Tamil Nadu High Ways Act,2001 and fixed the market value of the lands in S.No.4/7 at Rs.2,000/- per cent and awarded a sum of Rs. 37,540/- as compensation and for the lands in S.No.4/8, at Rs.42 per sq.ft. and awarded a sum of Rs.94,878/-. Aggrieved by the meagre compensation, awarded by

the Land Acquisition Officer, the claimant sought for reference under Section 22(3) of the Tamil Nadu High Ways Act.

5.Before the Reference Court, the claimant examined himself as P.W.1 and marked the sale deed dated 19.01.2010 as Ex.P.1. On the side of the respondent/Government one Thiruvanandan, was examined as R.W.1 and no documents were produced.

6.The reference Court framed the following issues:-

"1.தமிழ்நாடு நெடுஞ்சாலைச் சட்டம் பிரிவு 15(2)ன்கீழ் ஆர்ஜிதம் செய்யப்பட்ட சொத்தின் சந்தை மதிப்பு எவ்வளவு?
2.இந்நீதிமன்றம் திர்மானிக்கவேண்டிய இழப்பீடு எவ்வளவு?."

7.The Reference Court on the basis of the pleadings and evidence on record, fixed the market value of the land at Rs.168 per sq.ft., relying on Ex.P.1, the sale deed executed by one of the land owners in favour of the Government by private negotiation. Aggrieved by the enhancement of market value of the claimant's lands, the Land Acquisition Officer has filed the above appeal.

8.The learned counsel for the State submitted that the Reference Court erred in relying on Ex.P.1 for enhancing the market value to Rs.168/- per sq.ft. The counsel further submitted that the Land acquisition Officer had classified the lands into three categories, on the basis of the proximity of the lands under acquisition from the town limits. Hence there was no infirmity in fixing different rates for the acquired lands. The learned counsel for the State further submitted that, as the lands belonging to the respondent were far away from town limits, the market value was fixed at Rs.42 per sq.ft and Rs.2,000/- per cent. The counsel further submitted that there were no similarities between the lands covered under Ex.P.1 and the lands of the claimant's and therefore the Reference Court fell into error in adopting the value at Rs.168 per sq.ft, for the claimant's lands. The counsel therefore submitted that the Judgment and Decree of the Reference Court was un-sustainable and deserved to be set aside.

9.The learned counsel for the respondent on the other hand submitted that when a part of the acquired lands were purchased by the Government through private negotiations and the Government itself fixed the market value at Rs.168 per sq.ft, the land owner was entitled to the said amount, as the object of acquisition was one and the same wit for formation of Kumbakonam bye-pass road. The counsel further submitted that the claimant purchased the acquired lands in S.No.4/8 at Rs.85/- per sq.ft and so the Reference Court was justified in enhancing the rate from Rs.42/- per sq.ft. to Rs.168 per sq.ft. The counsel therefore submitted that there was absolutely no infirmity in the award of the Reference Court and the same deserved to be confirmed.

10. I have heard both the learned counsels and I have perused the records.

11.The short point for consideration in these appeals is whether the respondent/claimant in the appeal is entitled to the market value of Rs.168 per sq.ft as reflected by Ex.P.1, if not, what would be the reasonable compensation for the respondents/ claimants lands?

12.The undisputed facts of the case are that the claimant's nanjai lands measuring 0.07.06 hectares (8177 sq.ft) in Survey No.4/7 and S.No.4/8 measuring 0.02.10 hectares in Thepperumanallur Village, Kumbakonam taluk, Thanjavur District were acquired for the public purpose of formation of Kumbakonam bye-pass road, that the Land acquisition Officer passed the award No.7 of 2010 dated 23.07.2010, fixing the market value at Rs.2,000/- per cent for lands in S.No.4/7 and Rs.42 per sq.ft. for the lands in S.No.4/8, that the claimant not satisfied with the land value fixed by the Land Acquisition Officer, requested for reference under Section 22(3) of the Tamil Nadu High Ways Act seeking enhancement of compensation, that the Reference Court, Kumbakonam on consideration of oral and documentary evidence on record, enhanced the market value of the lands to Rs.168 per sq.ft on the basis of Ex.P.1. and that aggrieved by the market value fixed by the Reference Court at Rs.168 per sq.ft, the Land acquisition Officer has filed the above appeals.

13.The claimant relied on Ex.P.1, which is a sale deed dated 19.03.2010, executed between the appellant and the owner of the lands in Survey field 264/7B2.

The sale was executed after mutual negotiations between the parties to the document.

As per the sale deed, the market value of the land was fixed at Rs.3,45,600/- and 9% amount was added and the total consideration was fixed at Rs.3,76,704/-, (i.e) Rs.168 per sq.ft.

14.It is seen from Ex.P.1, that the land covered under the said document was a housing plot, at Plot No.43 in KMBF, New town in Survey field 264/7B2, of an extent of 0.02.00 sq.mtrs. It is clear from the document that the land sold under the said document was a housing plot and was situated in the New Town area. It is trite in law, that the burden is on the claimant to prove that the lands covered under Ex.P.1 are similar to his lands.

15.The Hon'ble Supreme Court in the case of *Bhim Singh Vs. State of Haryana* reported in ***2003(10)SCC 529,*** held that, "what price is fetched after full development cannot be the basis for fixing compensation, in respect of the land which was agricultural". So also in *Ranvir Singh Vs. Union of India,* it was held "The market value of fully developed land cannot be compared with wholly undeveloped land although they may be adjoining or situated at a little distance. For determining market value, it is trite, the nature of land plays an important role".

16.In the present case, the sale deed of the land owner though not marked before the Reference Court, was produced before this Court by way of additional typed set. The appellant did not object to the filing of the respondent's sale Deed, as the acquisition was initiated on the basis of the title of the claimant under the said sale Deed. In the description of the property, it is seen that the lands are referred to as "Punjai lands" and the consideration paid for 15,681.80 sq.ft of land was Rs. 3,60,681/- at Rs.23 per sq.ft. It is therefore clear that the lands covered under Ex.P.1 and the lands belonging to the claimant's are not similar and therefore the claim for Rs.168 per sq.ft cannot be entertained.

17. The learned counsel for the claimant urged that, as the lands were acquired for the same purpose wit for formation of Kumbakonam bye-pass road, the appellant ought to have fixed the marked market value at Rs.168 per sq.ft for all the acquired lands. The counsel further submitted that, different systems ought not to have been adopted by the appellant, as the lands were acquired for one and same purpose. The contentions of the learned counsel for the claimant are untenable. It is settled legal proposition that lands of similar potentiality or value and with similar advantages only offer comparable parity of value. When large extent of lands are acquired, even though from a single village, all lands cannot be classified as possessed of the same market value. The burden is always on the claimant to establish the parity of his lands with the other lands. In the present case, there is absolutely no evidence on the similarity of the claimants lands with that of the lands covered in Ex.P.1.

18.In the case on hand 0.42.64 hectares of lands in several survey no's. were acquired in Thepperumanallur Village. The LAO categorized the lands into 3 categories on the basis of their proximity to the Municipal limits and fixed 3 different rates for the acquired lands. It is seen that the land under Ex.P.1 is a housing plot situate within the municipal area. The claimants lands are outside the Municipal area and the same are wet and dry agricultural lands. In my view, the contention of the learned counsel for the claimant that as the lands were acquired for one and the same purpose the rate at Rs.168 per sq.ft should be fixed for his lands is not acceptable. In the absence of any evidence on the parity of the lands, the rate fixed at Rs.168 per sq.ft for the lands in S.No.264/7B2 cannot be adopted mechanically. In this respect, it is pertinent to refer to the Judgment of the Hon'ble Supreme Court in the case of *Basanth Kumar and Others Vs. Union of India and Others* reported in ***1996 (11) SCC 542,*** the Hon'ble Supreme Court on the issue of treating the entire lands in a village as one unit held as follows:-

> *"The learned Judges have adopted the principle that the entire lands in the village shall be treated as one unit and the compensation shall uniformly be determined on that basis. The principle is wholly unsustainable in law and cannot be a valid ground for determination of compensation. It is common knowledge that even in the same village, no two lands command higher market value and as the location goes backward, market value of interior land would be less even for the same kind of land. It is a settled legal position that the lands possessed of only similar potentiality or the value with similar advantages offer comparable parity of the value. It is common knowledge that the lands in the village spread over the vast extent. In this case, it is seen that land is as vast as admeasuring 1669 bighas, 18 biswas of land in the village. So, all lands cannot and should not be classified as possessed of same market value. Burden is always on the claimant to prove the market*

value and the court should adopt realistic standards and pragmatic approach in evaluation of the evidence. No doubt, each individual had different parcels of the land out of that vast land. If that principle is accepted, as propounded by the High Court, irrespective of the quality of the land, it will be entitled to the same compensation. That principle is not the correct approach in law. The doctrine of equality in determination and payment of same compensation for all claimants involved in the same notification is not a good principle acceptable for the aforestated reasons. When both the lands are proved to be possessed of same advantages, features etc., then only equal compensation is permissible".

19.In view of the above discussion, I hold that the claimant is not entitled to the market value of Rs.168 per sq.ft fixed under Ex.P.1. As it is found that claimant is not entitled for the value under Ex.P.1, it is now to be decided as to what would be the reasonable compensation for the claimants lands.

20.The claimant though did not file the sale deed evidencing his ownership of the lands before the Reference Court, at the time of hearing, produced the same in the additional typed set of papers. The appellant did not object to the said document probably because the said document was the document of title of the claimant on which basis the appellant initiated the acquisition proceedings against him. From a perusal of the sale Deed, it is seen that the claimant had purchased the land under Acquisition in S.No.4/8 measuring 15681.80 sq.ft. on 03.09.2007 in Document No. 2843 of 2007 for a sale consideration of Rs.23 per sq.ft.

21.It is further seen that the Deputy Collector (Stamps) initiated 47(A) proceedings, wherein the market value of the land in S.No.4/7 was fixed at Rs.85 per sq.ft. The 47(A) proceedings were of the year 2008, which was one year prior to the 15(1) notification dated 07.11.2009. As the acquired lands were purchased by the claimant at Rs.85 per sq.ft, I am of the considered view that the market value for S.No.4/7 can be safely fixed at Rs.85 per sq.ft. I am fortified in my view by the Judgment of the Hon'ble Supreme Court in *Dollar Company, Madras Vs. Collector of Madras, AIR 1975 SC 1670,* wherein it was held that the best evidence for determining the market value is the sale of the very property to which the claimant is a party. As the lands in S.No.4/8 are also classified as dry lands, the rate adopted for S.No.4/7, which is also dry land is adopted for S.No.4/8 also. Therefore, I am of the considered view that reasonable rate for the claimants land can be fixed at Rs.85 per sq.ft. I therefore find that the claimant is entitled to Rs.85 per sq.ft for his lands in S.No.4/7 and 4/8.

In fine, the appeals are partly allowed, the claimant shall be entitled to Rs.85 per sq.ft along with all statutory benefits. Consequently, connected C.M.Ps. are closed. There shall be no order as to costs.

10.04.2023

dsn

Speaking order:Yes/No
Index : Yes/No
Neutral Citation: Yes/No

To.
The Sub- Ordinate Judge, Kumbakonam.

N.MALA.J.,

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