



S.A.No.2102 of 2001

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.2102 of 2001

The Special Tahsildar,
Tenkasi

... Land Acquisition Officer/
Respondent/Appellant

-Vs-

L.Krishnan

... Claimant/Appellant/
Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure r/w Section 13 of the Tamil Nadu Land Acquisition for Harijan Welfare Act 31 of 1978, against the judgment and decree dated 08.02.2001 on the file of the learned Principal Subordinate Judge, Tenkasi filed against the Award No.7/98-99 dated 27.11.1998 passed by the Special Tahsildar, (Land Acquisition), Adi Dravidar Welfare, Tenkasi.

For Appellant : Mr.A.Kannan,
Additional Government Pleader.

For Respondent : Mr.D.P.Sundararaj



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JUDGMENT

The respondent is the land owner and the appellant acquired the land of the respondent for the purpose of providing house-sites to the houseless poor people of Adi Dravidar and also establishing a colony. At the time of acquisition, the appellant fixed Rs.50/- per cent as a market rate and award was passed at the rate of Rs.50/- per cent in Award No.7 of 1998-99, dated 27.11.1998. The beneficiary / land owner challenged the said award before the Land Acquisition Tribunal / Principal Subordinate Judge, Tenkasi invoking Section 18 of the Land Acquisition Act, for enhancement of compensation as Rs.3,000/- per cent in C.M.A.No.25 of 2000. The learned Principal Sub Judge, Tenkasi, after enquiry, taking into consideration of the oral and documentary evidence and similar award in the similar matter in C.M.A.No.01 of 1999, which is adjacent to the land of the respondent and also the continuance of the same survey number, partly allowed the appeal and enhanced the award passed by the appellant herein from Rs.50/- to Rs.400/- per cent. Aggrieved by the said award passed by the Tribunal, the Special Tahsildar, Tenkasi, has filed the present second appeal.



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2. While admitting the second appeal, this Court formulated the following substantial questions of law:-

“1. Whether the Court below ought to have considered the respondent documents/exhibits and it erred in holding the documents placed by the respondents?

2. Whether the award of interest and solatium are in contravention of the decisions reported in 1997 5 SCC 148 and 1997 1 SCC 249?

3. Whether the enhancement of compensation could be made on the basis of sale deed of the respondent without examining either party without going into the merits of the individual facts of the case?”

3. The learned counsel for the appellant would submit that the Tahsildar applied his mind and the Tahsildar also considering the similar lands and the issuance of 4 (1) Notification and the market value prevailing at the relevant point of time, fixed the rate of Rs.50/- per cent. When the respondent filed the petition before Tribunal invoking Section 18 of Land Acquisition Act, they have preferred certain documents relating to the lands having lesser extents, that too, only for four or five cents plots and therefore, the land cannot be equated with the



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acquired land, which is the larger extent of 3 acres 19 cents. The Tribunal failed to consider the market value prevailing on the relevant period, since the land acquired is a barren land which would not fetch any future income and the acceptance of the document relied on by the respondent/land owner, is not having similar character and therefore, the order of the Tribunal is erroneous. Further, the interest and solatium awarded by the Tribunal is against the decisions reported in 1997 5 SCC 148 and 1997 1 SCC 249. The sale deeds considered by the Tribunal are not similar in nature and the character of the acquired land. Therefore, the order of the Tribunal has to be set aside and the award passed by the Tahsildar is to be confirmed. Accordingly, the second appeal is liable to be allowed.

4. The learned counsel for the respondent would submit that the acquired land is a punja and there are school buildings and other buildings nearby. Even nearby the land acquired, houses and plots are there. The land acquired for the purpose of providing house-sites to the landless poor people, especially, the marginal community. Therefore, they have not considered the potential value of the buildings and also market value of the property. The Tahsildar awarded only a sum of Rs.50/- per cent. Hence, they filed the petition for enhancement of



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compensation by invoking Section 18 of Land Acquisition Act. Even for the very similar land acquired by the same Tahsildar, the beneficiary in that land already filed an appeal/claim petition before the very same Tribunal in CMA.No.1 of 1999. In that case, the Tribunal considering the sample lands and adjacent lands and market value prevailing at the relevant point of time, fixed Rs.400/- as market rate per cent. Therefore, though the respondent claimed a sum of Rs.3000/- per cent, he restricted his claim for a sum of Rs.400/- as in the earlier case for the similar land was acquired and the Tribunal has also considered the entire facts and circumstances and potency of the land and prevailing market value of the land and the earlier award passed in C.M.A.No.1 of 1999 and similarity of the land, fixed Rs.400/- per cent and there is no merit in the second appeal. However, at that time the solatium was only 15%, but now as per latest development and the decision of the Hon'ble Supreme Court in the case of *Union of India and another Vs Tarsem Singh and others* reported in **2019 (9) SCC 304**, wherein it is held that when the award amount fixed and the solatium granted is 30% for one land, for the similar lands acquired for the similar purpose, all the beneficiaries are entitled to solatium in the same ratio and there should not be any discrimination on granting the solatium, the respondent/ eneficiary is also entitled



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to the solatium of 30%, for which, the learned Additional Government Pleader for the appellant would submit that the case was ended way back in the year of 1998 and they deposited 50% of the award amount passed by the tribunal and therefore, at this situation, the said decision would not be applicable.

5. Heard the learned counsel appearing on either side and perused the records.

6. Admittedly, the respondent's land was acquired by the appellant for the purpose of providing house-sites for houseless poor Adi Dravidas and they issued 4(1) Notification and subsequently, they also followed all the procedures. Therefore, no acquisition proceedings was challenged and the Tahsildar passed Award No.7 of 1998-99 and fixed market rate of Rs.50/- per cent. Challenging the said award, the respondent filed a claim petition before the Land Acquisition Tribunal, namely, Principal Sub Judge, Tenkasi for enhancement of compensation from Rs.50/- to Rs.3000/- per cent. The Tribunal, after enquiry, considered the oral and documentary evidence produced by both the parties, enhanced the market rate fixed by the Tahsildar from Rs.50/- to Rs.400/-.



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7. On perusal of the award passed by the tribunal shows that the market rate fixed at Rs.400/- referring the earlier award passed by the very same tribunal in C.M.A.No.1 of 1999, since both the lands are similar in character and also the subject matter of the lands is very comparative and the lands referred in the other award and the subject matter of the land are nearby the main road. Admittedly, the similar award passed by the very same Tribunal in C.M.A.No.1 of 1999 was not challenged by the appellant and they accepted the same and they also paid the entire award amount and that be the case, the award passed by the Tribunal has been challenged by the appellant. Therefore, considering the fact and circumstances, there is no reason to accept the contention of the appellant. However, given answer to the substantial questions of law, this Court has already stated that there was no procedural lapse. The award was also not challenged by both parties and only regarding the market value fixed by the tribunal alone, was challenged. Therefore, as already stated, the tribunal has fixed the market value in similar award is Rs.400/- per cent and there was no further appeal or challenge against that award. Therefore, this Court does not find any perversity and also it is only factual finding and there is no substantial law regarding the enhancement of compensation.



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8. As far as the first substantial question of law regarding consideration of documents, as already stated that though the appellant has not considered the documents filed by the respondent, however, the Tribunal in the similar matter fixed a sum of Rs.400/- per cent, considering the oral and documentary evidences. It is not the case of the appellant that the land covered in the said award is situated in other village or other District or far away the place from the subject matter of the land and there is no further challenge in the award passed in C.M.A.No.1 of 1999 and therefore, there is no perversity in the appreciation of evidence by the Tribunal and considering its own earlier award passed in C.M.A. No.1 of 1999, fixed the market rate at Rs.400/- per cent. Hence, the first substantial question of law is answered against the appellant.

9. As far as second substantial question of law is concerned, the interest and solatium granted by the tribunal is against the decision of the Hon'ble Supreme Court reported in 1997 5 SCC 148 and 1997 1 SCC 249. But however, the decision of the Hon'ble Supreme Court in the case of *Union of India and another Vs. Tarsem Singh and others* reported in 2019(9) SCC 304, wherein the discrimination by virtue of the National Highways Laws(Amendment) Act, 1997



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and the Land Acquisition Act, 1894 has been discussed and decided that all the owners are entitled to equal compensation. When the acquisition made for the similar purpose, all the beneficiaries must be treated equally and there may not be any discrimination and also granted solatium of 30%. It is not in dispute that only the appellant deposited 50% of the award passed by the tribunal and remaining 50%, they have not deposited and the appeal is of the year of 2001 and therefore, for the past 22 years the respondent/beneficiary has lost his right. Therefore, under these circumstances, considering the decision of the Hon'ble Supreme Court reported in 2019(9) SCC 304, the appellant is directed to pay the solatium of 30%. Accordingly, the second substantial question of law is answered against the appellant.

10. As far as the third substantial question of law, as already stated that the very same tribunal in similar matter has fixed market rate of Rs.400/- per cent and the appellant has not challenged the same and they have not raised the question that both the lands are not similar in nature. Therefore, under these circumstances, there is no reason to interfere with the award passed by the Tribunal by considering the sale deed of the respondent. Since the award was



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passed by the very same Tribunal and the same was marked with the consent of both the parties, no need to examine any of the witnesses. The award passed by the tribunal is a public document and therefore, the mere non-examination of witnesses while marking the document and awarded the compensation based on the earlier award passed by the very same tribunal, is not vitiated.

11. Under these circumstances, the award passed by the tribunal is in order and there is no merit in the second appeal. All the substantial questions of law have been answered in favour of the respondent and against the appellant. Accordingly, the second appeal fails and same is dismissed by confirming the judgment and decree passed in CMA No.25 of 2000, on the file of the learned Subordinate Judge, Tenkasi, dated 08.02.2001. However, the solatium payable to the respondent is enhanced from 15% to 30%. No costs.

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NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Principal Subordinate Judge, Tenkasi.
2. The Special Tahsildar (Land Acquisition),
Adi Dravidar Welfare, Tenkasi.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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