THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

A.S.Nos. 407, 408, 409 & 410 of 2011
and
Cross Objection Nos. 54 of 2023 & 42 of 2024

A.S.No. 407 of 2011

The Special Tahsildar (L.A.).,
Salem - Karur New Broad Guage,
Railway Line Scheme, Salem. ...Appellant

Vs.

1.Chenniappan

2.Chinna Gounder

3.K.Palanivel

4.P.Palanivel
Nos.1 to 4 are represented by their
Power of Attorney Natesa Gounder @ Natesan

5.Natesa Gounder @ Natesan

6. The Deputy Chief Engineer (Construction),
Southern Railway, Salem - 636 005. ...Respondents

Prayer: First Appeal filed under Section 54 of the Land Acquisition Act, against the judgment and decree of the I-Additional Sub-ordinate Judge, Salem in LAOP.No. 3 of 2002 dated 29.11.2010.

For Appellant : Mrs.R.Anita
Special Government Pleader
For Respondents : Mrs.P.V.Rajeswari for R1 to R5
M/s.P.T.Ramkumar for R6

COMMON JUDGMENT

(Judgment of the Court was made by R.SUBRAMANIAN, J.)

Challenge in these appeals by the Special Tahsildar, Land Acquisition, Salem - Karur New Broad Guage Railway Line Scheme is to the awards of the reference Court made in LAOP.Nos. 3, 4, 5 & 7 of 2002.

2. The land belonging to the respondents in all these appeals were acquired for the purposes of laying an under pass cross for new Broad Guage Line. The lands were situate at Pallapatti Village (Kandampatti) which is a part of Salem Town even at the time of 4(1) notification dated 24.03.2000. The Land Acquisition Officer passed an award on 21.03.2001

fixing compensation payable at Rs.47/- per square feet. Dissatisfied with the award, the claimants / land owners sought for a reference under Section 18 of the Land Acquisition Act.

3. Upon reference, the land owners filed claim statement seeking a sum of Rs.400/- per square feet. In support of the contentions, the claimants had produced sale deeds relating to properties in the vicinity which were marked as Exs.C1 & C2. The Advocate Commissioner's report and plan filed in LAOP.No. 77 of 2000 were also marked as Exs.C9 & C10. While the claimants were examined as C.W.1 to C.W.3, one P.N.Prabhakaran was examined on the side of the Land Acquisition Officer. Exs.C1 to C19 were marked on the side of the claimants and Exs.R1 to R6 were marked on the side of the Land Acquisition Officer.

4. The reference Court, upon consideration of the evidence placed before it, fixed the value of the land based on the exemplar sales at Rs.155/- per square feet. It also deducted 20% towards development charges. Thus, the compensation arrived at per square feet was Rs. 124/-. The reference Court also awarded severance compensation at 25% of the entire market

value for the lands covered by LAOP.Nos. 4 & 5 of 2002 and at 15% for the lands covered by LAOP.No. 7 of 2002.

5. The details of land acquired are as follows:-

AS.Nos.	LAOP Nos.	Survey Nos.	Extent of Land
A.S.No. 407 of 2011	LAOP.No. 3 of 2002	64 / 1A1A	0.11.55 Hectare
A.S.No. 408 of 2011	LAOP.No. 4 of 2002	64 / 1A2A	0.18.0 Hectare
A.S.No. 409 of 2011	LAOP.No. 5 of 2002	64 / 1A3A	0.16.0 Hectare
A.S.No. 410 of 2011	LAOP.No. 7 of 2002	69 / 1B1 69 / 1B2 69 / 1B4 69 / 4A	0.21.0 Hectare
		Total Extent	**0.66.55 Hectares**

Though an extent of 21 ares was the subject matter of LAOP.No. 7 of 2002, the land is located in at least four survey numbers and it belongs to four different persons. The Special Tahsildar is on appeal, challenging the quantum of compensation awarded.

6. While the claimants in LAOP.Nos. 4 & 7 of 2002 have preferred Cross-objections seeking Rs.400/- per square feet, Mrs.R.Anitha, learned Special Government Pleader appears for the appellant would vehemently

contend that the Trial Court was not right in taking a sale deed of very small extent as an exemplar sale deed to arrive at the value of large area of land. She would also submit that the Trial Court was not justified in deducting 20% towards developmental charges, it should have been 30%, as it is normally done, in cases where sale deed for a smaller extent of land is taken as an exemplar to fix the value of large extent of land.

7. Contending contra, Mrs.P.V.Rajeswari, learned counsel for the respondents in A.S.Nos. 407 & 409 of 2011 and Mr.B.Kumarasamy, learned counsel for the respondents in A.S.Nos. 408 & 410 would submit that this Court and the Hon'ble Supreme Court have repeatedly held that there is nothing wrong in taking the value of a smaller extent also for fixing the value of a larger extent of land, provided certain deductions are made. They would also point out that the acquisition is to build an under-pass and the entire land is utilized for the under-pass and the approach roads. Therefore, there is no necessity for deduction of development charges. They would also point out that the land acquired from each of the claimants is not a very large extent so as to involve normalization, while sale deed of a smaller extent was taken as an exemplar sale deed.

8. The learned counsel for the respondents / land owners would also draw our attention to the judgment of a Division Bench of this Court in the ***Special Tahsildar, Land Acquisition Vs. T.Sundaresan and Another*** made in ***A.S.No.865 etc., batch of 2004*** where, the Division Bench had considered the quantum of compensation to be awarded to the land acquired for the same project situate in the same village very near by to the acquired land that is subject matter of these appeals to contend that the Division Bench has upheld the valuation of Rs.120/- per square feet. Our attention is also drawn to the judgment of the Hon'ble Supreme Court in ***Nelson Fernandes Vs. Special Land Acquisition Officer*** where, it has been held that if land is acquired for the purposes like laying of railway track or for laying road, the question of deduction for development charges does not arise. We have considered the rival submissions.

9. It is not in dispute that the land covered by A.S.No.865 etc., batch of 2004 were also acquired for the same project and they are situate in the vicinity of the lands subject matter of these appeals. In the said judgment dated 16.09.2011, the Division Bench had considered the location of the lands and the relevant sale deeds and has come to the conclusion that the

market value of the land would be Rs.120/- per square feet. We find that the Division Bench has dealt with the question of development charges also very extensively in the aid judgment. We therefore, do not see any reason to delve independently into the evidence that is available on record in these appeals.

10. Once it is not in dispute that the lands subject matter of appeals in A.S.No.865 of etc.,batch of 2004 are similarly situate and they were also acquired for the same project and the 4(1) notification is little earlier than the 4(1) notification in the present appeals, I think we can safely adopt the same reasoning in these appeals also. The trial court has on the basis of the exemplar sale deeds arrived at a value of Rs.155/- per square feet. We donot find any error in the said fixation made by the trial court. We therefore, fix the valuation at Rs.155/- per square feet. As pointed out, since acquisition for a railway under-pass with approach roads, we do not think, we should deduct any amount for development charges. Therefore, the deduction made by the reference Court at 20% is set aside. The claimants in A.S.Nos. 408 & 409 though have not field cross-objections would entitled to the same compensation as awarded by us, subject to their paying deficit Court fee in that appeals.

11. In fine these First Appeals are dismissed and the cross-objections are allowed. The compensation is fixed at Rs.155/- per square feet in all the Appeals. The claimants in LAOP.No. 4, 5 & 7 of 2002 would be entitled to the severance compensation as awarded by the Trial Court on the increased value of the land and all statutory benefits as are available to them under the Land Acquisition Act, 1894. No costs. Consequently, connected miscellaneous petitions are closed.

(R.S.M., J.) **(R.S.V., J.)**
02.08.2024

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Internet:Yes
Index: No
Speaking
Neutral Citation : No

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Salem.

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