IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.07.2024	27 .12.2024

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

A.S.Nos.551 of 2006 & 131 of 2007

A.S.No.551 of 2006:

1.Vasandhamani
2.Rajkumar
3.Muralidharan
4.S.Bhaktavatsalu(Died)
5.L.Jaganathan
6.Manickammal(Died) .. Claimants 6 to 11/Appellants
7.B.Vasundhara
8.Vijay Venkataswamy
9.Lakshmi Narayana
10.Santha
11.Dheenadayapari

12.Padmalochana

13.Shakuntala .. Appellants

[Appellants 7 to 9 brought on record as LRs of the deceased 4th appellant vide order of Court dated 13.06.2008 made in C.M.P.No.943 of 2008]

[Appellants 10 to 13 are brought on record as LRs of the deceased 6th appellant vide order of Court dated 10.01.2023 made in C.M.P.No.601 of 2006 in A.S.No.551 of 2006]

-Vs-

1.The Land Acquisition Officer,
(Revenue Divisional Officer),
Coimbatore.

2.Rengasamy

3.R.Mani

4.R.Palanisamy

5.R.Kandasamy

6. Aerodram,

Control Officer,

Peelamedu Airport,

Coimbatore. .. Respondents

[Respondents 2 to 6 are not necessary
parties & R2 to R6 – Given up]

Appeal suit filed under Section 54 of the Land Acquisition Act, as against the judgment and decree dated 29.10.2004 made in LAOP.No.137 of 1996, on the file of the Subordinate Court, Coimbatore.

For Appellants : Mr.T.R.Rajaram

For Respondents : Mr.M.Muthusamy
Government Advocate
for R1

: R2 to R6- Given up.

A.S.No.131 of 2007:

The Land Acquisition Officer,
&Revenue Divisional Officer,
Coimbatore. .. Appellant/Referring Officer

Vs.

1.Rengasamy

2.R.Mani

3.R.Palanisamy

4.R.Kandasamy

5.Vasanthamani

6.Rajkumar

7.Muralidharan

8.L.Bhaktavatsalu (Died)

9.L.Jaganathan (Died)

10.Manickammal .. Claimants 1, 3 to 11/Respondents

11.The Controller of Aerodrome,
Civil Aerodrome,
Peelamedu,
Coimbatore Airport. .. Beneficiary/Respondent

12.B.Vasundhara

13.Vijay Venkataswamy

14.Lakshmi Narayana

15.Geethalakshmi

16.Thulasidharan

17.Yesodha

18.Kiruthika .. Respondents

[Respondents 12 to 14 are brought on record as LRs of the deceased 8th respondent vide order of Court dated 20.06.2008 made in C.M.P.No.1 of 2008 in A.S.No.131 of 2007]

[Respondents 15 to 18 are brought on record as LRs of the deceased 9th appellant vide order of Court dated 10.01.2023 made in C.M.P.No.597 of 2024 in A.S.No.131 of 2007]

Appeal suit filed under Section 54 of the Land Acquisition Act, as against the judgment and decree dated 29.10.2004 made in LAOP.No.137 of 1996, on the file of the Subordinate Court, Coimbatore.

For Appellant	: Mr.M.Muthusamy Government Advocate
For Respondents	: Mr.D.Shivakumaran for R2 to R4
	: T.R.Rajaraman for R5 to R7, R10, R12 to 18
	: R1- died
	: R11- No appearance

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COMMON JUDGMENT

As against the LAOP award made in L.A.O.P.No.137 of 1996, the original land owners have filed A.S.No.551 of 2006 for enhancement while the Land Acquisition Officer-cum-Revenue Divisional Officer has preferred an appeal in A.S.No.131 of 2007.

2. Since these appeals are arising out of the same judgment and decree made in LAOP.No.137 of 1996, these two appeals are taken up together and disposed of by way of common judgment.

3. The present appellants are claimants 6 to 11 in LAOP No.137 of 1996. Originally the appeal suit was posted along with a batch. In view of certain factual dissimilarity, it was de-linked from the batch. The batch of those cases are disposed of by a common order in various batches. One such is A.S.No.131 of 2007 which is an appeal preferred by the Land Acquisition Officer wherein compensation was fixed along with 30% towards solatium and 12% additional market value for the period between 19.05.1992 and 29.07.1994 and interest at the rate of 9% for the entire compensation including the enhanced amount of one year from 26.06.1992 and thereafter 15% per annum till the deposit namely 8 weeks from the date of receipt of copy of the judgment and the original land owners are permitted to

withdrew the amount. The appeal by the claimants was de-linked and not posted.

4. Learned counsel for the Claimants/Appellants in A.S.No.551 of 2006 would contend that with regard to the very same 4(1) notification dated 07.06.1992 various award has been made by the Revenue Divisional Officer and the Reference Court has also passed orders. Against the same, some of the claim Petitioners and the Government have preferred a batch of Appeals viz., A.S.Nos. 123 to 130, 133 & 134 of 2007 and 589 to 595 of 2006 & 649 to 655 of 2006. The same were disposed of by the Division Bench of this Court by way of common judgment dated 23.02.2010. At paragraph No.18, it is observed as under:

> *"Even though, based upon Exs.C4 and C5-sale deeds, [Reference Court has taken the market value at Rs.20,000/- per cent, but the Reference Court has made 60% deduction for development charges and taken Rs.7447/- per cent]. Pointing out that the*

land owners themselves have asked for only Rs. 10,00,000/- per Hectare. There again, Reference Court restricted to Rs.5000/- per cent. We are of the view that the Reference Court was very conservative in fixing the market value at Rs.5000/- per cent. We are of the opinion that Reference Court ought not to have restricted Rs.5000/- per cent. However, since Claimants have not preferred any appeal or Cross-Objection for enhancement, the matter has to be left there. The market value fixed by the Reference Court itself is very low, we find no reason for further deduction. We therefore confirm the market value of the land fixed by the Reference Court at Rs.5000/- with 30% solatium and 12% additional market value for 792 days [19.5.1992 to 29.7.1994]. In so far as interest, Tribunal has awarded interest on the enhanced amount with 30% solatium i.e. at the rate of 9% for one year period from 26.06.1992 and thereafter at 15% p.a. till the date of deposit, the same is also confirmed."

5(a). Learned counsel for the Acquisition Officer would contend that the since the claim petitioner in above stated cases himself has claimed a sum of Rs.10,000/- per hectare and based upon Ex.C4 & ExC5, the Division Bench though arrived at marked value of Rs.20,000/- per cent and since the claim Petitioners(in that case) claim is Rs.10,000/- per hectare, the same is restricted to Rs.5,000/- per cent and accordingly granted the amount as prayed for by the claim Petitioners in view of the restricted claim.

5(b). He would further contend that in the present case in LAOP.No.137 of 1996, it is a specific case of the land owner claim Petitioner that they claimed Rs.30,000/- and in LAOP, a sum of Rs.8,000/- was granted. Hence, the matter needs to be argued.

6. After going through the order of the Division Bench as cited and extracted supra, I find that Ex.C3 & Ex.C4 was accepted. However, only on the point that since claim petitioner therein himself has claimed lessor amount and hence, the Court has granted what is claimed by the claim petitioner therein. So, the same amount of Rs.5,000/- per cent of land,

cannot forms basis for determination of compensation in the instant case, for the reasons discussed infra.

7. The learned Government Advocate for the Land Acquisition Officer could contend that the judgment of the Division Bench has to be applied and the amount fixed has to be granted in this case also. However, I find that in that case, since therein the claim petitioner himself has claimed lesser amount, the court has granted what is claimed by the claim petitioner. That cannot be the ground to deny fair compensation to the petitioner. In this connection, the following factual position needs consideration.

(a) One L.Venkatapathy, alongwith his brothers M/s.L.Bhakthavatchal, L.Jagannathan and his sister-in-law Manickammal are the legal heirs of the deceased Sri R.V.Lakshmaya Naidu.

(b) Award was passed in Award No.5 of 1994 in proceedings RC No.1729/90-A5.

(c) Land acquired is situated in S.F.No.325/2A3 in

Uppilipalayam Village.

(d) It is needless to mention that the property adjoins the Coimbatore airport for the development of which the property has been acquired and as such situated in a place connecting crucial transport and communication line to Coimbatore internationally. It is also relevant to note that the property is surrounded by Engineering Colleges, Schools, Medical College, Arts College, the Residency Club and important Hospitals. Further, the property is also surrounded by Staff Quarters for the staff belonging to the above colleges and Housing Colonies, most of them belonging to the Government of Tamilnadu itself.

(e) There are residential colones like Kakkan Nagar, AKG Nagar, Agasthiyar Nagar, Ramanuja Nagar, Mullai Nagar, Thiruvalluvar Nagar, Alamelu Nagar, etc. There is also a number of private layouts such as Thulasiamman layout providing valuable house sites. Further there are four Kalyana Mahals in the vicinity of the property. There are also numerous industrial establishments in and around the property.

S.F.No.325/2A3 apply with equal force to the property acquired in S.F.No.328/1.

(f) Manickammal is the wife of late Ramasamy. According to her claim petition before the Subordinate Judge,

- 25% of the compensation awarded by this court in the above LAOP No.137 of 1996 be paid to the 6th claimant Vasanthamani on behalf of the claimants 6 to 8 viz. Mrs.Vasanthamani, Mr.Rajkumar and Mr.Muralidharan who are all the legal heirs of the deceased claimant Mr.L.Venkatapathy ;
- 25% of the said compensation be paid to the 9th claimant Mr.L.Bakthavatsal ;
- 25% of the said compensation be paid to the 10th claimant Mr.L.Jagannathan and
- 25% of the said compensation be paid to the 11th claimant Mrs.Manickammal

To avoid future complication and multiplicity of proceedings, apportionment of compensation to be credited as requested by the 11th claimant.

8. Perused the lower court records and objection filed by the second respondent Airport Authority of India (AAI) before the I Additional Subordinate Judge, Coimbatore wherein in the objection statement, it is stated that an Aerodrome Airport was constructed at Peelamedu, Coimbatore way back in the year 1942 and subsequently in the year 1992-93 and 1992, with a view to extend and broaden the run way, in order to facilitate longer and more number of air crafts to utilise the facility at Ciombatore Airport and accordingly AAI sought for acquisition of lands immediately abutting the then existing runway. In pursuant to the request made by the AAI, the first respondent before the Sub Court had acquired 18.16.5 hectares of land under 4(1) Notification dated 02.07.1992. By the said notification, lands were acquired that are situated immediately adjacent to the existing run way.

9. The claim application filed by the claimants in respect of 1.06.5 hectares comprised in S.F.No.325/2A3 in Upilipalayam village. As per the Government Gazette, it was published only on 07.06.1992 at Page

124 in Tamil Nadu Government Gazettee G.O.No.268 dated 07.06.1992. On the point of locationally advantage, various pleas has been taken as found in the lower court order and locationally advance description and points to be taken note of in award compensation. Potential valueof the land and comparative as well as statistics have also been filed before the learned Subordinate Judge.

10. Following decisions are necessary for consideration of the factual situation.

11. The earlier Division Bench, which disposed of the A.S.No.123 to 130 and 133 & 134 of 2007 and 589 to 595 of 2006 & 649 to 655 of 2006, have dealt with in detail about the fixation of market value and other instance.

12. In sum and substance, the judgment of the Division Bench in

the above extracted case is to the effect that since the claimants original land owners restricted the claim Rs.5,000/- and the claimants did not preferred any appeal or cross objection, and even those appeals are preferred by the Land Acquisition Officer, that order was passed. However, in the instant case, the present appellants are the claimants 6 to 11 in LAOP No.137 of 1996. As per the documentary evidence, the claim amount is Rs.30,000/- per cent. From the reading of the order passed by the reference Court and the Division Bench, I find that Ex.C4 and Ex.C5-sale deeds are taken up for consideration and the Division Bench of this Court also accepted the same be a basic value for determination of compensation. As per the sale deed, the value of 1 cent is Rs.21,800/- and the same is adopted. The 4(1) notification effected in the year 1992 and therefore, as per the decision of this Court 15% increase in market value to be taken for Rs.21,800/- and hence, for the mathematical calculation, the same may be rounded off to Rs.25,000/- per cent.

13. Now coming to the point of deduction, if any to be made. On

perusal of the order passed by the reference Court, it appears that it speaks to Rs.20,000/- value. Thereafter 60% deduction was effected.

14. The learned counsel for the appellants and the learned Government Advocate was heard. Whether in a fully developed area any deduction to be made or not is a primary point that has to be addressed. However, the same is no longer res integra in view of the judgment of the Hon'ble Supreme Court, in the case of ***Special Thasildar, Neighbourhood Scheme v. Jaganathan Gounder*** reported in **2009 SMLJ 2** ***and Atma Singh v. State of Haryana reported in 2008 (2)SCC 568*** which has been dealt with in detail by brother Justice Dr.G.Jayachandran in the case of ***Special Thasildar v. Alpin Pio and Others reported in AIR 2022 Madras 151,*** wherein it is held as under :

> *"30. The Hon'ble Supreme Court in Atma Singh v. State of Haryana,(2008) 2 SCC 568, (cited supra) referred to an earlier decision relating to deduction towards development charges, in Bhagwathula Samanna v. Special Tehsildar & Land Acquisition Officer, 1991 (4) SCC 506, wherein it was held thus :-*

In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is given taking into consideration the expenses required for development of the larger tract to make smaller plots within that area in order to compare with the small plots dealt with under the sale transaction. However, in applying this principle of deduction it is necessary to consider all relevant facts. It is not the extent of the area covered under the acquisition which is the only relevant factor. If smaller area within the large tract is already developed and situated in an advantageous position suitable for building purposes and have all amenities such as roads, drainage, electricity, communications, etc. then the principle of deduction simply for the reason that it is part of the large tract acquired, may not be justified. In the present cases the lands covered by the acquisition are located by the side of the National Highway and the Southern Railway Staff Quarters with the Town Planning Trust Road on the north. The neighbouring areas are already developed ones and houses have been constructed, and the land has potential value for being used as building sites. Having found that the land is to be valued only as building sites and having stated the advantageous position in which the land in question lies though forming part of the larger area, the High Court should not have applied the principles of deduction. It is not in every case that such deduction is to be allowed. Therefore, the High Court erred in making a deduction of one-third of the value of the comparable sale and thus reducing the fair market value of land *from Rs.10 per sq yd to Rs.6.50 per sq. yd.*

12.Therefore, in view of this Court, on applying the above dictum of the Hon'ble Supreme Court to the facts of the case in hand, the omission to deduct development charges is a conscious omission. Land kept development for an industry, if acquired for some other industry, developing the land does not arise. At the most, the Requisition Body has to modify the land suitable to their requirement."

15. In the **Special Tahsildar, Neighbourhood Scheme v. Jaganathan Gounder reported in (2009) SMLJ,** the Division Bench of this Court had observed as below:

"21. In a recent decision of a three Judge Bench of the Honourable Supreme Court in REVENUE DIVISIONAL OFFICER cum-L.A.O. V. SHAIK AZAM SAHEB ((2009) 1 Scale 545), the positive as well as negative factors indicated in VILUBEN JHALEJAR CONTRACTOR V. STATE OF GUJARAT, (2005) 4 SCC 789) as factors germane for consideration for the purpose of determining the market value was re-iterated

thus:-

"11. Determination of market value of a land acquired in terms of the provisions of the said Act depends upon a large number of factors, the first being the nature and quality of the land, i.e., whether agricultural land or homestead land. Apart from nature and quality of land in the event the agricultural lands are acquired the other factors relevant therefor are also required to be considered, namely, as to whether they are irrigated or non- irrigated, extent of facilities available for irrigation, location of the land, closeness thereof from any road of highway, the evenness of land, its position in different seasons particularly in rainy season, existence of any building or structure as also the development in and around the area. A host of other factors will also have a bearing on determining the valuation of land.

12. The mode and manner in which determination of such valuation are to be carried out would also depend upon the facts and circumstances of each case, namely, whether any deed of sale executed in respect of similarly situated land near about the date of issuance of *notification under Section 4(1) of the Act is available, or in absence of any such exemplars whether the claim can be determined on yield basis or in case of an orchard on the basis of the number of fruit bearing trees and the yield therefrom."*

16. In another case reported in **2020(7)MLJ405,** Justice R.Mahadevan (as Lordship then was) has held in Paragraph 25 as follows:

"25. However, in Tenneti Kamesam v. Land Acquisition Officer [Appeal (Civil) No. 993 of 2008 dated 04.02.2008], cited on the side of the respondents/claimants, it was observed by the Supreme Court as under:

"In the impugned order itself, it has been mentioned that there was no dispute with regard to the fact that the land in question was situated in a well-development town surrounded by several structures, residential buildings and other commercial establishments, apart from being located near a railway station and other facilities. It is, therefore, evident that

the land was already situated in a developed area and the question of deduction of development charges did not, therefore arise."

17. It remains to be stated that in respect of the very same notification, the bench which has disposed of A.S.No.132 of 2007, in the appeal filed by referring answer, has categorically held that "Being near to the city and in the midst of developed area, the acquired lands are in advantageous position having potentiality of development. While fixing the market value, the Land Acquisition Officer is required to consider the location of property, its advantages as well as potentiality. Existing amenities that the acquired lands having access to two main Roads and its potentiality to residential, Commercial and educational institutions and its proximity to Coimbatore City, the compensation given was meagre amount."

18. This is in respect of the very same notification and hence,

basing upon the above said decision as well as the judgment of this Court in A.S.No.132 of 2007, the learned counsel appearing for the appellants/Land Acquisition Officer could contend that the market value is fixed at Rs.2,500/- per cent and other interest are calculated as above. In the instant case, as per Ex.C4 and Ex.C5, 1 cent value is Rs.21,800/- as notified therein.

19. My attention is drawn to the judgment of the Hon'ble Supreme Court in **2017 (9) SCC 426** wherein the Hon'ble Supreme Court while granting higher compensation under Section 28A of the Land Acquisition Act, 1894, has observed that grant of higher compensation to the land owners, the spirit contained in Section 28 A that, in absence of exemplars and other evidence higher compensation can be allowed for others whose land was acquired under same notification, the purpose and objective behind aforesaid provision is salutary in nature and further held that the Court, reiterated, not precluded from awarding a higher compensation than claimed amount.

20. The essence of the judgment is that once such a fair compensation is determined judicially, all land owners, whose lands are taken away by the same notification and become beneficiary thereon and not only except could governance but also amount to determination by giving different treatment to the present identical situation.

21. Yet another decision in **2017 (13)SCC 557,** it is held that land in question as well as the land covered under same sale deed are approximately having similar dimension and are situated in same village. Some sort of guesswork is necessary while determining compensation for land acquired perceiving from viewpoint of prudent purchaser. When there is no other reliable material on record by adding 15% normal escalation taken, per year by Supreme Court in recent times per year keeping in mind escalation in price of lands day by day and hence merely because some of the claimant has asked for Rs.5000/- before the Land Acquisition Officer(not in this case) that cannot be the ground to deny a higher

compensation in the appellate Court on the ground that some of the land owner cover under the same notifications, has claimed the lesser amount at the initial instant.

21(a). The judgments of the Hon'ble Supreme Court could indicate that since the neighbouring land owners covered under the batch have been granted of compensation at the rate of Rs.21,800/-, the same has to be extended to the claimant also and the Court is not precluded from awarding the higher compensation than claimed when the neighbouring land owners have been granted higher compensation.

22(a). Hence, in view of the recent decision of the Hon'ble Supreme Court as stated supra in **Narendra** case and Impulse India Pvt., Lt., case, I am inclined to enhance the amount to per cent pay value at Rs.21,800/- and 15% increase market value, the claimants are entitled to Rs.25,000/- per cent, and in view of the decision in **Alpin Pio** case by Justice Dr.G.Jayachandran, development charges need not be deducted since the area is already developed one.

22(b). However, in this case, the acquired land is not a developed area and accordingly, the above decision in *Alpin Pio's* case do not advance the case of the appellants. Accordingly, 1/3rd of the market value is to be deducted towards the development charges for the property as per the statute.

22(c)**.** Hence, the appeal is partly allowed to the extent that the land value is set at Rs.21,800/- per cent and after impleading 15% increase in the market value rounded off to Rs.25,000/-. The appellants are entitled for 30% solatium and 12% additional market value for **802 days** and interest at the rate of 9% for the entire and compensation including the amount now enhanced and thereafter, the said amount has to be deposited within a period of twelve(12) weeks from the date of receipt of a copy of this order, failing which the decree amount will carry 15% interest per annum till the date of deposit.

23. Some of the land owners are arrayed as respondents. They are also entitled for the similar benefits since they are not joined as appellants. However, they are also land losers and who are originally the land owners.

24**. In the result,**

i. The appeal filed by the previous land owners in A.S.551 of 2006 is partly allowed to the extent indicated above. No Costs.

ii. The appeal filed by the Government in A.S.No.131 of 2007 is dismissed. Consequently, connected miscellaneous petition is closed. No Costs.

iii. Balance of court fee if any shall be paid.

27.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
RGR/PJL

To
1. The Subordinate Judge,
Coimbatore.

2.The Section Officer,
VR Section,

Madras High Court,
Chennai.