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THE HIGH COURT OF JUDICATURE AT MADRAS

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| <b>Reserved on</b><br>15.07.2024 | <b>Delivered on</b><br>23.07.2024 |
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CORAM:

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

**S.A.No. 661 of 2010**

The Special Tahsildar,  
Adi Dravida Welfare,  
Sathyamangalam.

...Appellant

Vs.

Velusamy

...Respondent

Prayer: Second Appeal filed under Section 13 of the Tamil Nadu Acquisition of Land for Adi Dravida Welfare Schemes Act, 31 of 78 r/w. Section 100 of C.P.C., against the judgment and decree made in C.M.A.No. 7 of 2005 dated 22.01.2007 on the file of the Sub-Court, Gobichettipalayam, Erode District.

For Appellant : Mr.R.Siddharth  
Government Advocate

For Respondent : Mr.A.R.Balaji  
for Mr.S.Ramesh Kumar



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## **J U D G M E N T**

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

The Special Tahsildar / Acquiring Authority is on appeal, aggrieved by the award of the learned Sub-Judge, Gopichettipalayam made in L.A.C.M.A.No. 7 of 2005, an appeal under Section 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (herein after referred to as the Act).

2. The factual backdrop leading to the appeal is as follows:-

An extent of 5.08 acres of land belonging to the respondent was sought to be acquired for the purpose of providing free house sites to Adi Dravida people belonging to Rajan Nagar Village of Sathyamangalam Taluk of Erode District. A notification under Section 4(1) of the Act was published in the Erode District Gazette on 20.09.2003. The local publication as required under the Act were also made subsequently. An enquiry under Section 5 was conducted and ultimately an award came to be passed on 28.12.2004. The Special Tahsildar, Adi Dravidar Welfare who passed the award granted a sum of Rs.52,965/- per acre. Claiming that the award is very meagre, the respondent herein filed an appeal under Section 9

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of the Act before the jurisdictional Sub-court namely, Sub-Court,  
Gobichettipalayam.

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3.At trial before the learned Sub-ordinate Judge, the claimant / appellant filed two sale deeds dated 19.12.2003 and 14.11.2002 as Exs.C1 & C2 respectively. The claimant was examined as C.W.1 and two other witnesses connected with the sale deeds were examined as C.W.2 & C.W.3. The Award Officer was examined as R.W.1 & Exs.R1 to R18 were marked. The learned Sub-ordinate Judge, upon consideration of the evidence on record, took the value at Rs.7,50,000/- per acre and determined the value of the acquired land at Rs.38,10,000/-. He also awarded the statutory benefits viz., solatium at 15% and interest at 6%. It is this award, which is subject matter of challenge in this Second Appeal.

4.The following question of law was framed for determination in the appeal on 18.04.2024:-

*"Whether the learned Subordinate Judge was right in fixing the compensation on a complete guess work without following the well laid down criteria as found in various judgments of this Court and the Hon'ble Supreme Court,*



*particularly when compensation is fixed on the basis of comparable sale deeds."*

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5. The counsel were put on notice on question of law and heard on 15.07.2024. Mr.R.Siddharth, learned Government Advocate appearing for the appellant would vehemently contend that the learned Sub-ordinate Judge has not followed any of the principles that have been laid down in respect of determination of compensation using the exemplar sale method. He would also further point out that while Ex.C1, sale deed relates to an extent of about 5 cents, Ex.C2 relates to 20 cents. He would also fault the learned Sub-ordinate Judge for not having deducted any amount towards development charges while fixing the compensation on the basis of a sale deed on a smaller extent of land. The learned counsel would also rely upon the judgment of the Hon'ble Supreme Court in ***Union of India Vs. Premlata and Others*** reported in ***(2022) 7 SCC 745*** wherein, the Hon'ble Supreme Court has pointed out that while a sale instance of a small plot is taken as the basis for determination of compensation for larger extent of land, suitable deductions should be made.



6. Contending contra, Mr.A.R.Balaji, learned counsel for the respondent / land owner would submit that the Trial Court had taken into account the combined effect of Exs.C1 & C2 while determining the compensation. Though it has not dealt with the documents separately and applied a deduction, the amount of Rs.7,50,000/- granted by the Trial Court can be justified on the basis of the available evidence. The learned counsel would point out that under Ex.C1 which is prior to the publication of the notification under Section 4(1), an extent of 3 cents of land has been sold for a consideration of Rs.36,000/- and as per Ex.C2, an extent of 20 cents of land has been sold for Rs.98,559/-.

7. The learned counsel for the respondent would point out that the land in Survey No.495/1 covered by Ex.C1 and the land in Survey No.869/10 covered by Ex.C2 are situate very near to the acquired land and enjoy the same advantages as the acquired land. The learned counsel would further point out that Ex. C2 dated 14.11.2002 is not a sale deed executed for the market value of the land. Drawing our attention to the recitals contained in the document, the learned counsel would submit that the document has been executed after receiving consideration on the capitalised



value which is not the market value. Therefore, according to the learned counsel, the only document that is available is the sale deed dated 19.12.2003 marked as Ex.C1. He would also point out that the purchaser under the said document Thiru.P.K.Palanisamy has been examined as C.W.2. The learned counsel would draw our attention to the evidence of R.W.1 wherein, he has admitted that the acquired land is in a well developed locality and Housing Colony, Shops, Paper Factory, Schools etc., are in vicinity of the acquired land. Therefore, according to the learned counsel, if the compensation is calculated on the basis of Ex.C1, sale deed, what has been fixed by the Court reflects the just compensation. We have considered the rival submissions.

8. No doubt, the learned Sub-ordinate Judge has not detailed as to the method adopted by him in fixing the compensation. Since the acquisition is of the year 2005, we do not propose to remit the matter for reconsideration. We have gone through the evidence ourselves. Section 103 enables us to determine questions of fact also. If we find that the decision of Appellate Court on questions of fact turns out to be wrong, if we are to answer the question of law on the basis of the precedents that are available including



the judgment of the Hon'ble Supreme Court in **Premalata's** case cited supra, we find that the learned Trial Judge was not right in fixing the compensation payable to the respondent on a rough and ready method without adopting an appropriate methodology. Therefore, in view of the decision on the question of law the decision of the Sub Court on facts namely, the conclusion arrived by him fixing the compensation at Rs.7,50,000/-, becomes erroneous.

9. In such situation, Clause-b of Section 103 enables us to decide the question of fact afresh without remitting the matter to the Trial Court on the available evidence. We have the documentary evidence in the form of Exs.C1 & C2 which are two sale deeds prior to the publication of the notification under Section 4(1) of the Act. Ex.C1 is for an extent of 3 cents and Ex.C2 is for an extent of 20 cents. The area of the land acquired is about 5 acres and 8 cents. Therefore, it is clear that the value reflected either by Ex.C1 or by Ex.C2 cannot be taken as the basis without applying appropriate deductions.



10. A perusal of Ex.C2 shows that it is not a sale deed executed for the market value of the property. Recitals therein show that, it is a sale deed executed on the basis of a capitalized value which is not the market value. Therefore, it won't be safe to rely upon the Ex.C2 to arrive at the conclusion regarding the value of the property. The evidence of R.W.1 shows that the acquired land has all amenities. Housing Colonies, Shops, Overhead Tank, Paper Factory, Educational Institutions are located in the vicinity of the acquired land. Therefore, we can safely conclude that the acquired land enjoys of the benefits of a developed land.

11. The next question that would arise is whether it will be safe for the Court, the sale deed for a very small extent of land in order to determine the compensation payable for a large extent of land. The law on the question is no longer res-integra. In ***Sri Ram M.Vijayalakshamma Rao Bahadur Rane of Vuyyur Vs. Collector of Madras*** reported in (1969) 1 ***MLJ (SC) 45***, the Hon'ble Supreme Court had an occasion to consider the question. The Hon'ble Supreme Court held when comparable sale deeds pertaining to different transactions were relied upon by the parties the one



representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. Subsequently, the Hon'ble Supreme Court also held that the Court can adopt an appropriate deduction where the extent of land acquired is much larger comparing to the extent of land dealt with in the comparable sale instances.

12. In ***Anjani Molu Dessai Vs. State of Goa and Another*** reported in ***(2010) 13 SCC 710***, the Hon'ble Supreme Court while concluding the averaging of prices in different sale deeds is not fair held that an appropriate deduction could be applied towards development. While doing so, the Hon'ble Supreme Court had after referring to the judgment in ***Sri Ram M.Vijayalakshamma Rao Bahadur Rane of Vuyyur Vs. Collector of Madras*** referred to supra held as follows:-

*"23. Therefore, we are of the view that the averaging of the prices under the two sale deeds was not justified. The sale deed dated 31.01.1990 ought to have been excluded for the reasons stated above. That means compensation for the acquired lands had to be fixed only with reference to the sale deed dated 30.08.1989 relied upon by the Land Acquisition Collector which will be Rs.57.50 per square metre. As the said market value has been fixed with reference to comparable*



*bharad land with fruit trees, the question of again separately awarding any compensation for the trees situated in the acquired land does not arise."*

13. This principle has been followed by this Court in ***Special Tahsildhar, Adi Dravidar Welfare and Others Vs. Kandaswamy Gounder and Others*** reported in ***2016 SCC Online Mad 14145***. The Division Bench in Paragraph 11 of the said judgment observed as follows:

*"11. The proposition that large area of land cannot possibly fetch a price at the same rate at which small plots are sold is not absolute proposition and in given circumstances, it would be permissible to take into account the price fetched by the small plots of land. If the larger tract of land, because of advantageous position, is capable of being used for the purpose for which the smaller plots are used and is also situated in a developed area with little or no requirement of further development, the principle of deduction of the value for purpose of comparison is not warranted. With regard to the nature of the plots involved in these two cases, it has been satisfactorily shown on the evidence on record that the land has facilities of road and other amenities and is adjacent to a developed colony and in such circumstances, it is possible to utilise the entire area in question as house sites. In respect of the land acquired for the road, the same advantages are*



*available and it did not require any further development. We are, therefore, of the view that the High Court has erred in applying the principle of deduction and reducing the fair market value of land from Rs. 10/- per sq. yard to Rs. 6.50 paise per sq. yard. In our opinion, no such deduction is justified in the facts and circumstances of these cases. The appellants, therefore, succeed”.*

14. Another Division Bench of this Court in the ***Special Tahsildar (Land Acquisition), Krishna Water Supply Project Unit - 3, Tiruvallur Vs. Rathinareddi*** reported in ***2003 2 LW 267*** has held that the Court must always take the sale transaction which fetched the maximum price and which is most advantageous to the land owners should be taken into account after referring to the judgment in ***Sri Ram M.Vijayalakshamma Rao Bahadur Rane of Vuyyur*** referred to supra. While doing so, the Division Bench observed as follows:-

*"10. It is settled law, while fixing the market value, the comparable sale transaction which fetched maximum price; and which is the most advantageous to the Claimants, alone should be taken into consideration, since the guideline and principle laid down is that Court should see at what price a willing seller will sell. {Refer [i] 1969 (1) MLJ SC 45 (Rane*



*of Vuyyur v. Collector of Madras); [ii] AIR 1972 Madras 170 = 85 L.W. 158 (State v. P. Seetharamammal); and [iii] AIR 1989 SC 2051 (Mehta Ravindraraj Ajitraj v. State of Gujarat)}"*

15. Even in the judgment relied upon by the Government Pleader, ***Union of India Vs. Premrata and Others*** reported (2022) 7 SCC 745, the Hon'ble Supreme Court has pointed out that the deductions towards development charges can be made to equalize the value of the and acquired with that of the land covered by the exemplar sale deeds which are for the smaller extent. The Hon'ble Supreme Court also pointed out that since all the sale deeds available were for a smaller extent of land, the price therein can be made the basis after making a deduction and thus preventing grant of excess compensation and, in fact, the Hon'ble Supreme Court had applied a deduction of 40% towards development charges. Paragraph 17 & 18 of the said judgment reads as follows:-

*"17. Applying the law laid down by this Court on the deduction to be made towards development charges while determining the compensation to the facts of the case on hand, it is required to be noted that in the present case a large parcel of land admeasuring 46 ha 89 R has been acquired. The sale*



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*instances at Exts. 91 to 93 in respect of plots out of land bearing Survey No. 42 are with respect to small pieces of land admeasuring 1200 sq ft which were non-agricultural developed plots and even the market price mentioned in the said sale deeds were on square foot basis. In the present case, the acquired land is a barren agricultural land which may have a non-agricultural potentiality. Therefore, considering the fact that the sale exemplars/sale deeds produced at Exts. 91 to 93 are in respect of very small plots of land and were non-agricultural developed plots and even the same were on the highway and having the access to the main road, we are of the opinion that there shall be at least 40% deduction towards development charges. As such, the High Court has not assigned any good reason as to why and on what basis, it considered proper to make deduction towards development charges @ 33.33% (1/3rd deduction). The High Court has not at all considered the relevant factors while making an appropriate deduction towards development charges.*

*18. Therefore, considering the relevant factors on the appropriate deduction towards development charges as per the law laid down by this Court in the aforesaid decisions, and when we take note of the facts of the case on hand, we find that firstly, the land acquired in question is a large extent of land (45 ha 89 R); secondly, it was an agricultural land not fully developed; thirdly, the landowner having not filed any*



*exemplar sale deed relating to large pieces of land sold in acres to prove the market value of the acquired land; and fourthly, exemplars relied upon by the landowner, especially Exts. 91 to 93 pertain to very small plots/parcels of land and that too, in respect of small plots which were developed and converted to non-agricultural use and the distinguishing features noticed in the land in sale deeds, Exts. 91 to 93 are not present in the acquired land, we are of the firm view that the deduction towards development charges at 1/3rd as deduced by the High Court can be said to be on a lower side. Considering the aforesaid facts and circumstances and the relevant factors, we are of the opinion that if 40% deduction is ordered to be made towards development charges, it can be said to be an appropriate deduction towards development charges in the facts and circumstances of the case.*

16. If we have to examine the evidence on record in the light of the legal position enumerated above, Ex.C1 / sale deed can be taken as the basis after providing for appropriate deduction. Under Ex.C1 / sale deed, an extent of 3 cents of land has been sold for Rs.36,000/-. Therefore, a cent of land has been sold for Rs.12,000/-. Value of 1 acre of land would be Rs.12,00,000/-. We find that Ex.C2 / sale deed is not for the market value. It has been executed for capitalized value. We therefore, do not think that it



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will be safer to take Ex.C2 as the basis for determination of the compensation. If we take Ex.C1 as the basis and apply a deduction of 40% as held by the Hon'ble Supreme Court in **Premlata's** case referred supra, we find that the claimant would be entitled to Rs.7,20,000/- per acre as compensation instead of Rs.7,50,000/-. The claimant would also be entitled to solatium at 15% and interest at 6% on the compensation determined as above.

17. This Second Appeal is allowed fixing the compensation at Rs.7,20,000/- per acre of land. The claimant would also be entitled to solatium at 15% and interest at 6% on the compensation determined as above. No costs.

(R.S.M., J.) (R.S.V., J.)  
23.07.2024

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**R.SUBRAMANIAN, J.**  
**and**  
**R.SAKTHIVEL, J.**

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To:-

The Sub-Court,  
Gobichettiplayam,  
Erode District.

**S.A.No. 661 of 2010**