IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.11.2024
Pronounced on	20.12.2024

CORAM :

THE HONOURABLE Mr.JUSTICE **R.SUBRAMANIAN**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.171 of 2023
and
C.M.P.No.5016 of 2023

1. The State of Tamil Nadu,
   Rep by its District Collector,
   Vellore District.

2. The Special Tahsildar
   (Adi Dravidar Welfare Department),
   Guidyatham. ... Appellants

Vs.

V.C.Jayachandiran ... Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., r/w Section 13 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, to set aside the judgement and decree dated 23.09.2019 made in A.S.No.1 of

2019 on the file of the Spl.Sub Court, (LAOP Cases), Vellore, modifying the Award No. 7/1997-1998 dated 25.03.1997, on the file of the Special Tahsildar (ADW) and Land Acquisition Officer, Gudiyatham, Vellore.

For Appellants : Mr. R.Siddharth,
Government Advocate
For Respondent : Mr. N.Sudharsan

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J U D G M E N T

C.KUMARAPPAN, J.

The Acquiring Authority is the appellant herein. The instant Second Appeal has been filed, aggrieved by the award of the learned Special Subordinate Judge, Special Sub Court (LAOP Cases), Vellore, made in A.S.No.1 of 2019, dated 23.09.2019, filed under Section 9 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (hereinafter referred to as the Act).

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

The land comprised in S.No.157, measuring an extent of 0.61 Ares, and S.No.158, measuring an extent of 0.66.5 Ares, situated at Mittapalli Madura Masigam Village, was acquired by the Land Acquisition Officer for the purpose of providing House Sites to Adi Dravidars (Irulars). The Tahsildar has issued a notification under Section 4(1) of the Act, vide notice dated 04.03.1997. He also conducted an enquiry under Section 5 of the Act and collected 5 sale deeds registered at the Office of the Sub-Registrar, Pernambut, between the period from 01.02.1996 to 15.03.1997, for the purpose of determination of the market value. The sale deed registered under document No.115 of 1996, was taken as a data sale deed, where an extent of 1.07 acres of land was sold for a sum of Rs.29,000/-. Based on the same, the market value was determined for the acquired lands at the rate of Rs.27,103/- per acre. Aggrieved with the said award, the claimant preferred an appeal in A.S.No.1 of 2019, before the learned Special Subordinate-Judge, Special Sub Court (LAOP Cases), Vellore.

3. At trial, the claimant himself was examined as CW1. On behalf of the claimant, 5 documents were marked as Ex.A1 to Ex.A5. On behalf of the Government, the Special Tahsildhar, Gudiyatham, was examined as RW1, and no document was marked on their behalf. In the appeal, the market value was enhanced to Rs.4.60/- per sq.ft for the acquired lands, and 30% solatium and 12% interest were awarded. It is this award under challenge in the instant

Second Appeal.

4. We have heard Mr.R.Siddharth, learned Government Advocate appearing for the appellants, and Mr.N.Sudharsan, learned counsel for the respondent.

5. Mr.R.Siddharth, the learned Government Advocate, appearing for the appellants, would vehemently contend that the learned Special Subordinate-Judge has not followed any of the principles that have been laid down in respect of the determination of compensation using an exemplar sale deed, and that, contrary to the statutory principles, has given 30% solatium and 12% interest erroneously. It is also his contention that the Appellate Court did not give proper deduction towards the development. Hence, he prayed to interfere with the order of the Appellate Court.

6. Per contra, Mr. N.Sudharsan, the learned counsel for the respondent would contend that the Acquiring Authority did not take into consideration of the correct market value, and the data sale deed dealt with by the Acquiring Authority is in respect of land situate at a far away place, and that those lands are not similar to that of the acquired land. It is also his

contention that the acquired land is surrounded by many leather factories and has various industries, and that the acquired land could also be used as house sites. Hence, it is his contention that the award of the Appellate Court is well-merited and does not require any interference by this Court.

7. The following questions of law arise for consideration in the appeal.

(i) Whether the learned Special Subordinate Judge was right in not adopting any deduction for development charges.

(ii) Whether the learned Special Subordinate Judge was right in awarding solatium at 30% and interest at 12%.

8. We have given our anxious consideration of the submissions made on either side.

9. The acquired land is situated in S.Nos. 157 and 158, having a total extent of 3.15 acres or 1.27.5 hectares. The Acquiring Authority, by taking into consideration document No.115 of 1996, dated 06.02.1996, determined the market value at Rs.27,103/- per acre.

10. On a perusal of the Appellate Court's award, it reveals that the

Appellate Court has considered an exemplar sale deed (Ex.A4), dated 24.02.1997, qua the sale deed prior to the 4(1) notification. The exemplar sale deed is in respect of S.No.159 of Masigam Village, and the acquired land is adjacent to the above land. The very survey number of the acquired land, viz., S.Nos. 157 and 158 itself clearly indicates the close proximity of both the acquired land and the land covered by the exemplar sale deed.

11. Before we delve into the legality of the determination, we deem it appropriate to deal with certain legal precedents. In ***Sri Ram M.Vijaylakshmamma Rao Bahadur Ranee of Vuyur Vs. Collector of Madras,*** reported in ***(1969) 1 MLJ (SC) 45***, the Hon'ble Supreme Court of India held that, when comparable sale deeds of different transactions are relied upon by the parties, the one representing the highest market 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, compared to the extent of land dealt with in the comparable sale instances.

12. In yet another decision of the Hon'ble Supreme Court of India 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.Vijaylakshmamma Rao Bahadur Ranee of Vuyur 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. The above 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 judgement 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 ***Special (Land Acquistion), 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 judgement in ***Sri Ram M.Vijayalakshmamma Rao Bahadur Ranee 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 (Ranee 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 learned Government Advocate, ***Union of India Vs. Premalata and Others***, reported in ***(2022) 7 SCC 745***, the Hon'ble Supreme Court has held that the post-notification sale deeds are generally ignored unless evidence is let in to show that there was no increase in price despite such acquisition. The Hon'ble Supreme Court has further held that adequate discount has to be given for taking the exemplar of small plots into consideration. Paragraphs 17 and 18 of the said judgment read 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 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 nonagricultural 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. Let us proceed with the factual position, with the touchstone of the above legal principles. The Acquiring Authority has acquired the land of an extent of 3.15 acres in Survey Nos. 157 and 158. The data sale deed relied upon by the Acquiring Authority is in respect of the land of a larger extent of 1.07 acres in S.No.129/1C2, and the sale deed is dated 06.02.1996. Though the exemplar sale deed relied upon by the claimant is prior to the 4(1) notification, the exemplar sale deed (Ex.A4) is only in respect of the smaller extent of land, about 1089 sq.ft. Considering the large acquisition, we cannot take the actual value dealt under the exemplar sale deed, without any

deduction.

17. It is pertinent to mention here that whenever small extents of lands are purchased, the value of that smaller extent would include the development charges, such as the land used for road and other public purposes. In such a view of the matter, more so in tune with the above settled legal principles, some deduction should have been given towards the development charges. But, in our case, the Appellate Court did not give any deductions towards the development charges. Accordingly, considering the potentiality of the acquired land and its proximity with the land dealt in the exemplar sale deed, and its extent, we are of the firm view that an extent of 30% deduction is justifiable for consideration towards the development charges.

18. Coming to the market value, the appellate authority has determined Rs.4.60/- per sq.ft, as against Rs.0.62 determined by the Acquiring Authority. As we already stated, considering the proximity of the comparable land with the acquired land, and also considering the potentiality of the acquired land, we do not find any infirmity in determining the market value

at Rs.4.60 per sq.ft. However, it is incumbent upon us to hold that a deduction of 30% ought to have been given for the development charges. The appellate authority has erroneously granted solatium of 30% and 12% interest, which are not in consonance with the provisions of Act 31 of 1978. Therefore, it requires to modification, by awarding 15% solatium, and 6% interest per annum. Both the questions of law are answered partially in favour of the appellant.

19. In the result, this Second Appeal is partly allowed, fixing the compensation at Rs.4.60/- per sq.ft. A deduction of 30% would be applicable towards the development charges. The claimant would also be entitled to solatium at 15% and interest at 6% per annum on the compensation. Consequently, the connected Miscellaneous Petition is closed. No costs.

[R.S.M., J.] [C.K., J.]
20.12.2024

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

To

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