IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1006 of 2011
and M.P. Nos. 1 of 2011 & 1 of 2012

The Special Tahsildar
Adi Dravidar Welfare
Erode. ...Appellant

Vs.

1. Kamatchiammal (Deceased)
2. Muthusamy
3. Duraisamy
4. Ramasamy

Respondents 2 to 4 are residing at
Kanakkupillai Thottam
Muthu Reddiyur, Kalpavi Village
Bhavani Taluk. ... Respondents

[Respondents /Appellants 2 to 4 are impleaded as per the order dated 11.06.2008 in I.A.No.132/2007)

PRAYER: Second Appeal is filed under Section 13 of Tamil Nadu Acquisition of Land for Adi Dravidar Welfare Schemes Act, 31/78 read with Section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 10.02.2011 made in C.M.A. No. 5 of 2005 on the file of the Sub Court, Bhavani, Erode District, modifying the Award dated 08.02.2005 made in Award No.1/2005/A.Ni.A2/2003/A passed by the Special Tahsildar (ADW), Erode.

For Appellant : Dr.S.Suriya, AGP

For Respondents : Mr.T.Murugamanickam
Senior Counsel
For M/s.Zeenath Begum

JUDGMENT

The second appeal has been preferred by the respondent in C.M.A. No. 5 of 2005, which has been filed by the appellant therein for setting aside the acquisition proceedings of the Special Tahildar, Adi Dravidar Welfare, Erode dated 08.02.2005 made in Award No.1/2005/A.Ni.A2/2003/A and enhanced the compensation by fixing Rs.1,50,000/- per acre. The Sub Court has allowed the Civil Miscellaneous Appeal by enhancing the compensation from Rs.45,000/- per acre to Rs.90,000/- per acre and thereby, fixed the total compensation @ Rs.3,29,400/- along with 15% Solatium to the tune of Rs.49,410/- along with 6% interest from the date of taking possession by setting off the compensation of Rs.1,89,405/-, which has already been received by the land owner.

2. Having aggrieved by the enhanced compensation, the Special Tahsildar has preferred this second appeal by the following questions which are alleged to be the substantial questions of law that would arise in this second appeal:-

"(1) Whether the lower Court justified to enhance the award without assigning any convincing reasons to reject the document relied upon by the appellant to fix the value of the acquired land?

(2) Whether the lower Court enhanced the award based on the documents those are irrelevant and unconnected the acquired land?

(3) Whether the lower Court erred by discarding the documents considered by the Appellant to fix the value of the property and relied upon the documents produced by the respondents those are irrelevant and unconnected as far as the acquired land is concerned?

(4) Whether the Court has passed the award without appreciating material the holistic fashion in the manner known to law and thereby, fixed the compensation excessively."

3. In the impugned acquisition, 4(1) notification has been given on 30.09.2004 in respect of the respondents' land situated in T.S. No. 112/2 in

Kalpavi Village measuring to an extent of 3 acres 66 cents by the award dated 08.02.2005. The compensation was fixed @ Rs.1,89,405/-, which inclusively of 15% Solatium.

4. Despite the Government has rightly relied on the data deed dated 03.06.2004 in respect of T.S. No. 41/6 and rightly fixed the compensation, the Court has enhanced the same by relying on Exhibit A2, which is not correct. The land transacted through Exhibit A2 is situated in Kuruchi Village, which is far away from Kalpavi Village, where the acquired lands were situated. The acquired land is classified as 8.3.5 in Kalpavi Village and the nature of the land transacted through the sale deed relied by the Sub Court is classified as 8.2.4 in Kuruchi Village. As the quality of the land itself is different, the value fixed by the Sub Court is also not correct. The data land relied by the Government is exactly similar classified land falling under the category of 8.3.5. Hence, the award of the Sub Court should be set aside.

5. The learned Senior Counsel appearing for the respondents submitted that the Government relied on the Kist Assessment for fixing the market value of the property and it is not correct. As per Section 7 of the Tamil Nadu

Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) (hereinafter referred to as 'the Act' for short), the amount payable in respect of the any land shall be the market value. Hence, reliance cannot be placed on the Kist Assessment.

6. On perusal of the orders of the Sub Court, it is seen that the sale deed dated 09.02.2004 which has been marked as Exhibit A2 has been relied for fixing the market value. Even though the learned Additional Government Advocate appearing for the appellant has been pointing out there is a difference in classification of the data land and Exhibit A2 lands the fact remains that the parameter for determining the market value of the land should be done under Section 7 of the Act read with Rule (4) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979(hereinafter referred to as 'the Rules' for short).

7. According to Section 7(1) of the Act, the following procedure has to be adopted for determination of the amount :-

*"**7. Determination of amount.**—*

(1) The amount payable in respect of any land acquired under

this Act shall be the market value of such land on the date of publication of the notice under sub-section (1) of section 4.

The above provision is stated that the determination of the amount of compensation would be done on the basis of the market value and by following due procedure. Apart from the market value, Solatium of 15% on the market value should also be paid as per Section 7(2) of the Act. For the benefit of better understanding Section 7(2) is extracted as under:-

*"**7. Determination of amount.**—*

(1) ....

(2) In addition to the market value of the land as provided above, the prescribed authority shall in every case award a sum of fifteen per centum on such market value as solatium in consideration of the compulsory nature of the acquisition."

The method by which the market value as suggested under Section 7 of the Act has been elaborated under Rule 4 of the Rules. In the said Rules, the price paid for similar lands in the vicinity of the land acquired in the relevant point of time have been suggested as the basis for the determining the market value. The above Rule 4 would read as under:-

*“**4. Determination of market value of the land.-** The market value of the land under sub-section (1) of section 7 shall be determined in one or more of the following methods:-*

(i) The price paid for similar land or portion of same land in recent years after due allowance being made for lapse of time, advantage of situation or any other possible differences between the land sold and that proposed to be acquired.

(ii) The price paid for similar lands in the vicinity in recent years.

(iii) The annual income from the land which may be capitalised for a certain number of years of purchase, the number of years being determined on the nature of the land, the state of the money market and other relevant circumstances.

(iv) The value of the land shall be subject to full assessment including the value of trees, buildings, or crops standing thereon in the normal condition in which it would have come into the market at the time of publication of the notice under

sub-section (1) of section 4.”

Though the petitioner has stated that the Kalpavi Village in which the acquired land is situated and the Kuruchi Village, which is the land conveyed through Exhibit A2 are situated at a different vicinity. The fact was not established.

8. The learned Additional Government Pleader appearing for the appellant has produced the Topographic sketch to show the Survey No.112/2 is situated far away from Survey No.360/1. In fact, it is not even visible in the Topographic sketch and only the data land which is Survey No. 41/6 alone can be taken in the land in vicinity.

9. The learned Senior Counsel appearing for the respondents submitted that the other village where the lands transacted through Exhibit A2. The subject matter of A2 is situated in the adjacent village and hence, by production of the Topographic sketch of one particular village cannot be claimed that Exhibit A2 has got no relevance.

10. Even though these arguments are made before this Court the record would show that the Government did not produce any document to establish the fact that the Kalpavi village is situated far beyond from Kuruchi village and it has no relevance. In fact, the appellant authorities also avoided the witness box and did not subject themselves for examination in order to establish the fact now submitted before this Court.

11. In such case, the Court has got no other impediment to rely on the oral evidence of PW1 who has stated that the Kuruchi Village is just adjacent to Kalpavi Village. In fact, the learned Special Judge has also appreciated the fact that while fixing the compensation, the Government has taken into consideration of the lowest value among 89 documents taken up consideration. As the 89 documents which have been taken into consideration were inclusive of the lands situated in Kalpavi village as well as the Kuruchi village and transacted, the Sub Judge cannot be found fault relying on the Exhibit A2.

12. The fact that the authorities have considered several sale deeds registered in respect of the lands situated in both the Kalpavi village and the

Kuruchi village was not denied. So, it could have been safely presumed by the Sub Judge that the Kuruchi village is the village within the vicinity of the land acquired and relying it as the document for enhancing the compensation value by fair appraisal. The said exercise has been done correctly by taking note of the fact that the Government has fixed the market value only on the basis of the classification of the land unmindful of the fact that the lands transacted in the nearest vicinity during the relevant point of time can also be considered.

13. Since the learned Sub Judge has properly scrutinized the materials produced before him and also taking note of the fact that the Government itself has taken into account of the several documents, which have been transacted in respect of both the villages and then selected the data land in Survey No.112/2, I feel that the learned Sub Judge has properly appreciated the materials and adopted the right method to determine the compensation by enhancing it from Rs.45,000/- per acre to Rs.90,000/- per acre. Since the above order has been passed by fully understanding the import of Section 7 read with Rule 4 of the Act and Rules, I do not find any reason for interference.

14. The appeal is dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

07.11.2024

Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
Maya

To

1. The Judge,
   Sub Court,
   Bhavani, Erode District.

2. The Special Tahsildar (ADW),
   Erode.

3. The Section Officer,
   V.R. Section,
   High Court, Madras.

R.N.MANJULA, J.

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