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A.S.NO.566 OF 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 29 / 07 / 2024

JUDGMENT DELIVERED ON : 27 / 09 / 2024

CORAM :

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

A.S.NO.566 OF 2018

AND

CMP NO.6666 OF 2021

1.Anandan (Deceased)	... 1 st Appellant / 1 st Claimant
2.Kuppu	... 2 nd Appellant / 2 nd Claimant
3.Mari	... 3 rd Appellant / 3 rd Claimant
4.Rajammal	
5.Ponnamalai	
6.Rajapuchpam	
7.Valarmathy	... Appellants / LR's of 1 st Appellant

(Appellants 2 & 3 - LR's of the deceased 1st appellant were already on record, and appellants 4 to 7 were brought on record as LR's of the deceased 1st appellant vide this Court's order dated 05.01.2018 made in CMP No.18179/2017 in A.S.SR.No.88770 of 2014)

Vs.



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1.Union of India

Rep. By Secretary to Government

(Revenue Department)

Government of Puducherry

Having office at Chief Secretariat

Goubert Salai,

Puducherry – 605 001.

... 1st Respondent / 1st Respondent

2.The Sub-Collector (Rev.)(North)

Cum Land Acquisition Officer

Kamaraj Salai, Saram,

Puducherry – 605 013.

... 2nd Respondent / 2nd Respondent

PRAYER: First Appeal filed under Section 54 of the Land Acquisition Act, 1894 praying to set aside the Award dated 23.07.2014 made in L.A.O.P.No.14 of 2010 on the file of the II Additional District Court at Puducherry in so far as rejecting the claim of the appellants to the extent of Rs.17,44,20,388/-, worked out at the rate of Rs.678/- per *sq.ft.* over and above the sum of Rs.100/- per *sq.ft.* fixed by the Reference Court, and fix the compensation at the rate of Rs.778/- per *sq.ft.* and allow the appeal.

For Appellants : Mr.V.Raghavachari
Senior Counsel
for M/s.B.S.Mitra Neeshan

For Respondents : Mr.P.S.Kothandaraman
Government Pleader (Puducherry)



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J U D G M E N T

R.SAKTHIVEL, J.

Aggrieved with the Judgment dated February 10, 2022, made in A.S.No.566 of 2018 by a Co-ordinate Bench of this Court, the appellants and the first respondent - Union of India had preferred Civil Appeal Nos.3899 and 3900 of 2024 respectively before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide its Order dated March 7, 2024 remanded the matter to this Court to redetermine the relevance of the Sale Deeds produced on record for the purpose of assessing the market value of the lands acquired from the appellants herein.

2.It is apposite to extract the relevant Paragraphs of the aforementioned Order dated March 7, 2024 viz., Paragraph Nos.7 to 11 hereunder:

“7.On consideration of the rival submissions, we deem it appropriate to remand the case to the High Court with a request to redetermine the relevance of the sale deeds produced



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on record, for the purpose of assessing the market value of the acquired land. All the contentions raised on behalf of the parties before us are left open to be urged before the High Court.

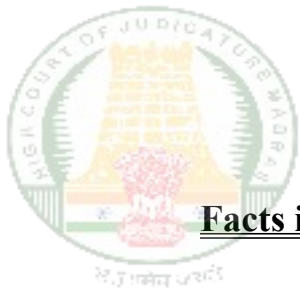
8.The instant appeals are, accordingly, allowed in part and the impugned judgment is set aside. The matter is remanded to the High Court. The parties are directed to appear before the High Court on 10.04.2024.

9.It is clarified that we have not expressed any opinion on the merits of the case.

10.It is pointed out at this stage by learned counsel for the land owners that the compensation awarded by the Reference Court has also not been released so far and that the Authorities have deducted the TDS on whatever compensation amount was paid to the land owners earlier.

11.Since the compensation awarded by the Reference Court is not in dispute at all, the Union of India and other official respondents are directed to release the compensation, as awarded by the Reference Court, along with solatium and statutory interest accrued thereupon till date to the land owners without prejudice to the rights of the parties. Since no TDS can be deducted on the compensation paid for compulsory acquisition, the amount deducted towards TDS shall also be released to the land owners without any delay.”

3.Hence, this Court will now be considering the matter afresh.



Facts in Brief :-

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4.The Government of Puducherry decided to acquire 'land measuring an extent of 19.92.70 Hectares in R.S.No. 21, 24, 25, 26, 43, 44 and 46 of Karuvadikuppam Revenue Village, Oulgaret Taluk, Puducherry District' ['acquired lands' for short] for the purpose of expansion of Puducherry Airport. The appellants own a 'land area of 2.39 Hectares (2,57,257.21 sq. ft) in R.S.No. 25/2 of Karuvadikuppam Revenue Village, Puducherry' ['subject land' for short]. Notification was issued under Section 4 (1) of 'the Land Acquisition Act, 1894' ['L.A. Act' for short] with respect to the acquired lands including the subject land and the same was published in the Gazette on June 30, 2006. The declaration under Section 6 of the L.A. Act was made public on April 25, 2007.

4.1.The 'Land Acquisition Officer' [henceforth 'L.A.O.'] assessed the acquired lands on November 28, 2006, and recorded their valuations on December 6, 2006. During the assessment, the L.A.O. reviewed 874 sale instances that took place between July 8, 2005, and July



7, 2006 *i.e.*, the one-year period before the Notification under Section 4(1)

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of the L.A. Act. Among these sale instances, 78 sale instances were rejected as they involved the sale of land with superstructures. Further, 45 sale instances were excluded because they related to the sale of less than 500 *sq.ft.*, and 576 sale instances were excluded due to their long distance from the acquired lands. Out of the remaining 175 sale instances, the highest sale at Rs.167/- per *sq.ft.*, was rejected as it occurred on February 1, 2006, in anticipation of the acquisition. The next highest sale at Rs.66/- per *sq.ft.*, pertaining to an extent of 1600 *sq.ft.* of vacant house layout plotted in R.S.No.43/4B, executed for a sale consideration of Rs.64,000/- was selected, and after applying a standard deduction of 33.3% towards development charges, the market value was assessed at Rs.41/- per *sq.ft.* Among the acquired lands, R.S.No.46 had the highest guideline value of Rs.60/- per *sq.ft.* Since it exceeded the assessed market value, the L.A.O. chose to use the said guideline value of Rs.60/- per *sq.ft.*, as the market value.



4.2. Then, the L.A.O. issued Award No. 1/2009 dated January

21, 2009, valuing the acquired lands at Rs. 60 per *sq.ft.* For determining

the rightful claimant(s) to receive the Award pertaining to subject land, the

L.A.O. made a reference under Section 30 of the L.A. Act, leading to

L.A.O.P. No. 199 of 2009. The said L.A.O.P was disposed of by an Award

dated September 9, 2009, whereby appellants 1 to 3 were declared as

rightful owners entitled to receive the compensation awarded equally.

Thereafter, at the request of the appellants 1 to 3, the L.A.O. referred the

matter under Section 18 of L.A. Act to the Court to determine the quantum

of compensation on March 17, 2010, resulting in L.A.O.P. No. 14 of 2010

on the file of 'II Additional District Court at Puducherry' ['Reference

Court' for short], wherein the appellants sought to enhance the

compensation to Rs. 778 per *sq.ft.* by filing a claim petition. The 2nd

respondent filed counter to contest the claim petition and the same was

adopted by the 1st respondent.



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5. During the proceedings under Section 18 of the L.A. Act, the

appellants 1 to 3 / claimants - Anandan, Kuppu, and Mari, deposed as P.W.1 to P.W.3, and Ex-P.1 to Ex-P.5 were marked on the side of the claimants. One Yeshvanthaiyah, Tahsildar Land Acquisition cum Executive Magistrate, attached to the 2nd respondent's office deposed as R.W.1, and Ex-R.1 to Ex-R.4 were marked by the respondents.

6. The Reference Court on considering the evidence and materials available on record, concluded that the claimants did not file any independent Sale Deeds not considered by the L.A.O. Ex-P.1 to Ex-P.5 - Sale Deeds, recorded in the sales data of the respondents, were already rejected after due consideration by the respondents. Hence, the Reference Court went on to fix the market value at Rs.100/- per *sq.ft.*, and accordingly enhanced the compensation. Aggrieved with the same, the present Appeal Suit was filed before this Court by the claimants praying to enhance the compensation to Rs.778/- per *sq.ft.*



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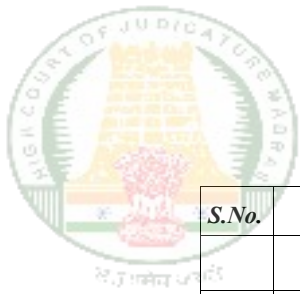
7. On Appeal before this Court, this Court after hearing both

sides, vide its Judgment dated February 10, 2022, enhanced the compensation to Rs.250/- per *sq.ft.* Against the same, as stated *supra*, the appellants / claimants as well as the first respondent preferred Civil Appeals before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India remanded the matter to this Court. Thus, the Appeal Suit has come up before this Court again, for fresh adjudication.

Arguments:-

8. Pending this appeal, the appellant filed a petition under Order XLI Rule 27 read with Section 151 of 'The Code of Civil Procedure, 1908' ('CPC' for short) and prayed to receive the petition mentioned documents. Details of the additional documents sought to be received are as hereunder:

<i>S.No.</i>	<i>Dated</i>	<i>Description of documents</i>	<i>Rate (Per Sq.ft.)</i>
1	19.09.2005	Certified copy of Sale Deed registered as Document No.5013/2005 at Sub-Registrar's Office, Oulgaret	Rs.751.50
2	20.09.2005	Certified copy of Sale Deed registered as Document No.5025/2005 at Sub-Registrar's Office, Oulgaret	Rs.756.50
3	03.10.2005	Certified copy of Sale Deed registered as Document	Rs.721.00



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<i>S.No.</i>	<i>Dated</i>	<i>Description of documents</i>	<i>Rate (Per Sq.ft.)</i>
		No.5232/2005 at Sub-Registrar's Office, Oulgaret	
4	31.10.2005	Certified copy of Sale Deed registered as Document No.5745/2005 at Sub-Registrar's Office, Oulgaret	Rs.722.00
5	06.01.2006	Certified copy of Sale Deed registered as Document No.87/2006 at Sub-Registrar's Office, Oulgaret	Rs.925.00
6	27.02.2006	Certified copy of Sale Deed registered as Document No.1092/2006 at Sub-Registrar's Office, Oulgaret	Rs.1,055.50
7	03.05.2006	Certified copy of Sale Deed registered as Document No.2761/2006 at Sub-Registrar's Office, Oulgaret	Rs.500.00
8	01.06.2006	Certified copy of Sale Deed registered as Document No.3331/2006 at Sub-Registrar's Office, Oulgaret	Rs.770.00
9	-	Photos (Originals) 2 Nos. Taken in the year 2004	
10	-	Photos (Originals) 2 Nos. Taken in March 2021	

9.Reiterating the averments stated in the affidavit filed in support of the petition under Order XLI Rule 27 of CPC, Mr.V.Raghavachari, learned Senior Counsel for the appellants / claimants has argued that the additional documents / Sale Exemplars sought to be marked are already recorded in the Valuation Report (Ex-R.3). The lands covered under the additional documents are located within a radius of 1.5 km from the subject land. The respondents ought to have filed the Sale Deeds relating to Ex-R.3 – Valuation Report, but for reasons best known to them, did not file them. In these circumstances, no prejudice would be



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caused to the respondents if the petition is allowed and the documents are received and marked on the side of the appellants. Accordingly, he prayed to allow the petition.

9.1.Further, the learned Senior Counsel for the appellants / claimants argued that the subject land is closer to urban area and have tremendous potential for growth in value. Out of the 02.39.00 Hectares of land acquired from the claimants for the expansion of the Airport, each claimant is approximately entitled to 2 Acres. The claimants filed Ex-P.1 to Ex-P.5 - Sale Deeds as sale exemplars. Under Ex-P.1 - Sale Deed, the lands were sold for Rs.778/- per *sq.ft.* The lands covered under Ex-P.2 to Ex-P.5 were sold for Rs.375/- per *sq.ft.*, Rs.667 per *sq.ft.*, Rs.611 per *sq.ft.*, and Rs.200 per *sq.ft.* respectively. Further, the lands covered under Ex-P.1 to Ex-P.4 - Sale Deeds are situate within 1500 meters radius from the subject land, and are more or less of the same potential value as the subject land for they're all situate near the urban area. Hence, there is no reason to reject Ex-P.1 to Ex-P.4 and they are good sale exemplars. The Reference



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Court, without appreciating these sale exemplars, fixed Rs.100/- per *sq.ft.*, which is on the lower side.

9.2.He further argued that the vacant lands covered under the additional documents in Serial Nos. 1 and 2, dated September 19, 2005 and September 20, 2005 respectively, are situate in Survey No. 132 of Karuvadikuppam Village, and fetched Rs.751.50/- per *sq.ft.* and Rs. 756.50/- per *sq.ft.* respectively. Further, the vacant lands covered under the additional document in Serial No.7 dated May 3, 2006, situate in Survey No.86/1, were sold for Rs.500/- per *sq.ft.* Further, it is a settled legal position that the highest value among the exemplars shall be taken, provided it is a *bona fide* transaction. Accordingly, he prayed to allow the Appeal and enhance the compensation to Rs.778/- per *sq.ft.*

9.3.In support of his submissions, learned Senior Counsel for the appellants relied on the following Judgments:

(i) Mehrawal Khewaji Trust Vs. State of Punjab and Others, reported in ***(2012) 5 SCC 432***. In this case, the Hon'ble Supreme Court held as follows:



“17.It is clear that when there are several exemplars with reference to similar lands, it is the general rule that the highest of the exemplars, if it is satisfied, that it is a bona fide transaction has to be considered and accepted. When the land is being compulsorily taken away from a person, he is entitled to the highest value which similar land in the locality is shown to have fetched in a bona fide transaction entered into between a willing purchaser and a willing seller near about the time of the acquisition. In our view, it seems to be only fair that where sale deeds pertaining to different transactions are relied on behalf of the Government, the transaction representing the highest value should be preferred to the rest unless there are strong circumstances justifying a different course. It is not desirable to take an average of various sale deeds placed before the authority/court for fixing fair compensation.”

(ii) Suresh Kumar Vs. Town Improvement Trust reported in **(1989) 2 SCC 329**. In this case, the Hon'ble Supreme Court held in paragraph No.14 that *“the price fetched for smaller extent of land similarly situated with the same kind of advantages and drawbacks can also be applied to a large area valued plotwise instead of blockwise.”*

(iii) Land Acquisition Officer, Kammarapally Village, Nizamabad District, A.P. Vs. Nookala Rajamallu & Others reported in **(2003) 12 SCC 334**. In this case, the Hon'ble Supreme Court held as follows:



“6. Where large area is the subject-matter of acquisition, rate at which small plots are sold cannot be said to be a safe criteria. Reference in this context may be made to few decisions of this Court in *The Collector of Lakhimpur v. Bhuban Chandra Dutta*, *Prithvi Raj Taneja v. The State of Madhya Pradesh* and *Kausalya Devi Bogra v. Land Acquisition Officer*.

7. It cannot, however, be laid down as an absolute proposition that the rates fixed for the small plots cannot be the basis for fixation of the rate. For example, where there is no other material, it may in appropriate cases be open to the adjudicating court to make comparison of the prices paid for small plots of land. However, in such cases necessary deductions / adjustments have to be made while determining the prices.”

(iv) *Nelson Fernandes & Others Vs. Special Land Acquisition Officer, South Goa & Others* reported in (2007) 9 SCC 447.

The Hon'ble Supreme Court held thus:

“30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in *Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat and Land Acquisition Officer vs. Nookala Rajamallu* had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. . . .”



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10.Per contra, learned Government Pleader (Puducherry)

appearing for the respondents has argued that if the documents mentioned in the petition under Order XLI Rule 27 of CPC are truly relevant to decide the matter, the appellants ought to have adduced them before the Reference Court; the appellants miserably failed to do so. He contended that allowing the petition would cause unnecessary delay in the proceedings and already sufficient documents are available on record to decide the appeal. Further, when the matter was previously heard by a Co-ordinate Bench of this Court, learned Counsel for the appellants submitted that he would establish his case without pressing on the Order XLI Rule 27 petition and based on this submission, the Co-ordinate Bench dismissed the petition.

10.1.Further submitted that, the appellants / petitioners pray to mark 8 documents and 2 photographs as additional evidence in the appeal. Among these 8 documents, except Serial Nos.1, 2 and 7, the other documents pertain to lands with superstructures and it is difficult to



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separately determine the land value and the building value in them.

Moreover, the said lands are far away from the subject land. Hence, marking them would not be helpful for adjudicating the matter. The L.A.O., after considering the facts and circumstances of the case and after recording his subjective satisfaction, rightly rejected the said documents. Accordingly, he prayed to dismiss the petition.

10.2.Further submitted that Sales Data has been scientifically considered by the L.A.O. The property covered under Ex-R.4 which was used for arriving at the assessed value, is situated in the same survey number as some of the acquired lands and hence, there is no need to look beyond it. Since the acquired lands had the highest guideline value at Rs.60/- per *sq.ft.*, which was higher than the assessed value of Rs.41/- per *sq.ft.*, the L.A.O awarded compensation based on the said highest guideline value. The Reference Court has enhanced it to Rs.100/- per *sq.ft.*, which itself is on the higher side. Further submitted that the topography of entire Karuvadikuppam Village changes drastically in respect of every survey



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number and it would be completely unscientific to compare distant survey

numbers. The L.A.O after considering the entire materials and evidence,

has rightly awarded compensation. Hence, there is no warrant to interfere

with the said Award. Accordingly, he prayed to dismiss the appeal.

10.3. In support of his contention, learned Government Advocate (Pondicherry) has relied on the following judgments:

(i) *Mummidi Apparao (D) Through L.Rs. Vs. Nagarjuna Fertilizers and Chemicals Ltd.* reported in AIR 2009 SC 1506.

(ii) *Mala Etc. & Others Vs. State of Punjab and Others* reported in 2023 LiveLaw (SC) 663 : 2023 INSC 735.

(iii) *The Special Tahsildhar, Land Acquisition, Unit-I, Air Force Station, Thanjavur Vs. Thaineesraj and Others* reported in 2008 (1) CTC 511.

(iv) *The Land Acquisition Officer Vs. Rev. Fr. Ronald D.Souza* reported in 2014 (3) AKR 314 (Karnataka High Court).

Points for Consideration:-

11. The following points arise for consideration in this Appeal Suit:

(I) Whether the petition filed by the appellants under Order XLI Rule 27 of the CPC is to be allowed?



(II) Whether the market value arrived at Rs.60/- per *sq.ft.* by the L.A.O for the subject land, is justifiable in law?

(III) Whether Ex-P.1 to Ex-P.5 - Sale Deeds are relevant for consideration while determining the market value of the subject land?

(IV) Whether the Award of the Reference Court whereby it awarded enhanced compensation at the rate of Rs.100/- per *sq.ft.* is to be interfered with? If so, what is the market value of the subject land?

Discussion and Decisions:-

12.Heard both sides. Perused the materials available on record as well as the case laws relied on either side. There is no quarrel with the legal proposition laid down in them. However, some of them are not applicable to the facts and circumstances of this case.

Point No.I - Whether the petition filed by the appellants under Order XLI Rule 27 of CPC is to be allowed?

13.As stated *supra*, during the pendency of this Appeal, the appellants filed a petition under Order XLI Rule 27 read with Section 151



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of CPC in CMP No.6666 of 2021 praying to receive the petition mentioned

documents as additional documents. The 3rd appellant - Mari D/o.

Anandan, filed an affidavit in support of this petition, wherein she has stated that the respondents are bound to produce the Sales Data containing the particulars of all the sales that took place in Karuvadikuppam Revenue Village, for the period between July 8, 2005 and July 7, 2006, and the copy of the Sale Deeds mentioned therein for determining the market value of the subject land. The respondents have deliberately failed and neglected to produce the same. A sum of Rs.778/- per *sq.ft.* is the prevailing market value in the vicinity. The appellants have collected the petition mentioned Sale Deeds effected between July 8, 2005 and July 7, 2006 in and around the locality of the subject land, which could shed more light on the actual market value during the relevant period. The said documents would be of immense assistance in enabling this Court to adjudicate the issues involved in this appeal. Accordingly, she prayed to allow the petition and permit the appellants to mark the same on their side.



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14.This Court has considered the submissions made on either side in this regard and perused the petition mentioned documents. This Court is not inclined to allow the petition under Order XLI Rule 27 of CPC for the reasons to be stated *infra*.

15.Additional Documents other than those in Serial Nos.1, 2 and 7 pertain to lands with superstructures and are far away:-

15.1.As rightly submitted by the learned Government Pleader (Puducherry), except additional documents in Serial Nos.1, 2 and 7, other documents concern lands with superstructures. Since it is difficult to determine the separate value of the land from these documents, in the absence of expert evidence and report demonstrating the separate value of the land, these documents are not helpful to decide the matter. Further, while no evidence has been adduced on either side to demonstrate the distance between the subject land and the land covered under the additional documents, Ex-R.2 - Topo Sketch would show that the properties covered



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under the additional documents are far away from the subject land. It would be unscientific to compare distant land owing to varying topography of the Karuvadikuppam Village. Hence, they are as such not helpful in adjudication of the matter.

16.Additional Documents in Serial Nos.1, 2 and 7 pertain to lands that are far away. Further, lands covered under Additional Documents in Serial Nos.1 & 2 have an extensive road frontage:-

16.1.As far as the lands covered under the additional documents in Serial Nos.1 and 2 are concerned, the said properties are comprised in R.S.No.132 and their market values are Rs.752/- per *sq.ft.* and Rs.757/- per *sq.ft.* respectively. Ex-R.2 - Topo Sketch reveals that, unlike the subject land, the entire extent of land comprised in R.S.No.132 is a long stretch of land abutting the main road. Their extensive road frontage is the key factor behind their higher price. This is fortified by the fact that the market value of R.S.No.110 having less road frontage, situate on the opposite side of the main road, ranges from Rs.142/- to Rs.187/- per



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sq.ft., and the market value of R.S.Nos.137 and 138 situate on the eastern

side of R.S.No.132 ranges from Rs.140/- to Rs.180/- per *sq.ft.*

16.2.Further, there is no evidence available on record to show the distance between the lands covered under additional documents in Serial Nos.1, 2 and 7 and the subject land. But the learned Government Pleader, after furnishing a copy to the other side, has submitted typed-set of papers to this Court on December 8, 2021, wherein it has been *inter alia* stated that the lands covered under additional documents in Serial Nos.1 & 2 are situate 1400 meters away from R.S.No.46/3A and the land under additional document in Serial No.7 is 1450 meters away from R.S.No.46/3A. The appellants have concurred with the said particulars. To be noted, as per Ex-R.2 - Topo Sketch, the subject land is situate further north of R.S.No.46/3A, which means the subject land would be farther away from the lands covered under additional documents in Serial Nos.1,2 and 7 than R.S.No.46/3A. As stated *supra*, it is unscientific to compare distant survey number in this case.



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16.3. Hence, additional documents in Serial Nos.1, 2 and 7 do

not help in deciding the Appeal.

17.It is appropriate to state here that this Court while dealing with an Appeal under Section 54 of the L.A. Act, which is on par with an Appeal under Section 96 of CPC, the Appellate Court shall not look beyond the evidence presented before the Reference Court and cannot take any additional evidence; exception being Order XLI Rule 27 of CPC. As per Order XLI Rule 27, the Appellate Court may receive additional evidence provided that the petitioner(s) establishes that the Reference Court, though it ought to have accepted the evidence /document(s), refused to do so, [or] despite their due diligence, the additional document(s) / witness(es) sought to be received / permitted were not within their knowledge or could not be produced by them before the Reference Court [or] the Appellate Court is satisfied that the additional document(s) / witness(es) is necessary to decide the appeal. In the instant case, the appellants / petitioners have not satisfied any of the aforementioned



conditions. Hence, this Court is of the view that Order XLI Rule 27

Petition does not have any merits and deserves to be dismissed.

Accordingly, CMP No.6666 of 2021 is dismissed. **Point No.I is answered accordingly against the appellants and in favour of the respondents.**

Point No.II - Whether the market value arrived at Rs.60/- per sq.ft. by the L.A.O for the subject land, is justifiable in law?

18.The acquired lands are situate in R.S.Nos.21, 24, 25, 26, 43 and 44 of Karuvadikuppam Village and are all adjacent to each other. The L.A.O. collected 874 Sales Data and rejected 78 sales as they involved the sale of land with superstructures; rejected 45 sales as they related to the sale of less than 500 sq.ft.; and rejected 576 sales due to their long distance from the acquired lands. Only 175 Sales Data pertaining to R.S.Nos.20, 21, 26, 42, 43, 45 and 46, which relate to lands closer to the acquired land, were retained.

18.1.According to the L.A.O. among the 175 Sales Data in Ex-R.3 – Valuation Report, Serial No.164 - Sale Deed dated February 1,



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2006 pertaining to 1200 *sq.ft.* in R.S.No.45/3, fetched the highest sum at

Rs.167/- per *sq.ft.* and the other lands fetched a maximum of Rs.66/- per

sq.ft. The L.A.O. rejected the Sale Deed dated February 1, 2006 by stating

that the said transaction was carried out in anticipation of the acquisition

with the intention of inflating the market value. According to L.A.O. the

next highest sale is at Rs.66/- in Serial No.128 of Ex-R.3 – Valuation

Report (Document No.847/2006) pertaining to an extent of 974 *sq.ft.*, of

vacant house layout plotted in R.S.No.43/4B, executed for a sale

consideration of Rs.64,000/-. The same was selected, and after applying a

standard deduction of 33.3% towards developmental charges, the value

was assessed at Rs.41/- per *sq.ft.*

18.2.To be noted, L.A.O. filed Ex-R.4 - Sale Deed (Document No.847/2006) which relates to aforementioned Serial No.128. The said Sale Deed pertains to 1600 *sq.ft.* of vacant land which has been sold for Rs.64,000/- i.e., Rs.40/- per *sq.ft.* Hence, Ex-R.3 Valuation Report does not reflect correct particulars.



18.3. That apart, among the acquired land, R.S.No.46 had the highest guideline value of Rs.60/- per *sq.ft.* Since it exceeded the assessed value, the L.A.O. fixed said highest guideline value of Rs.60/- per *sq.ft.* as the market value.

18.4. The L.A.O. ought to have annexed the Sale Deed dated February 1, 2006 along with the Award or filed the same before the Reference Court for consideration; but the L.A.O. failed to do so. Hence, this Court does not have an opportunity to appreciate the Sale Deed dated February 1, 2006 in terms of its market value, genuineness and *bona fides*. The L.A.O. has not assigned any reason for non-filing of the said Sale Deed. It is settled legal position that in the absence of Sale Deed(s), the Sales Data and the Award of the L.A.O. alone cannot be relied upon by the Court for determining the market value. The fact that Ex-P.5 belonging to altogether a different village was recorded in the Sales Data in Serial No.800 (as per R.W.1's evidence) exemplifies why Sales Data or Award of the L.A.O. shall not be relied upon in the absence of the relevant Sale



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Deed(s). In these circumstances, this Court is of the view that the market

value arrived by the L.A.O at Rs.60/- per *sq.ft.* for the subject land is not

justifiable in law. **Point No.II is answered accordingly in favour of the appellants and against the respondents.**

Point No.III - Whether Ex-P.1 to Ex-P.5 - Sale Deeds are relevant for consideration while determining the market value of the subject land?

19.Before the Reference Court, the appellants marked Ex-P.1 to Ex-P.5 - Sale Deeds. This Court has perused Ex-P.1 to Ex-P.5. The following table shows the particulars of Ex-P.1 to Ex-P.5:-

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Dated</i>	<i>Survey No.</i>	<i>Rate per Sq.ft.</i>
1	Ex-P.1	03.08.2005	52	Rs.778/-
2	Ex-P.2	27.10.2005	82	Rs.375/-
3	Ex-P.3	28.10.2005	83	Rs.667/-
4	Ex-P.4	20.02.2006	121/5	Rs.611/-
5	Ex-P.5	31.05.2006	16/6	Rs.200/-

20.Ex-P.5

20.1.As stated *supra*, the subject land is situate in R.S.No.25/2 of Karuvadikuppam Revenue Village. Whereas, bare reading of Ex-P.5



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dated May 31, 2005 would show that the lands described therein are situate

in Saram Revenue Village *i.e.*, in a different village. When this Court

brought the said fact to the notice of both the parties, they agreed after

verification that the lands described in Ex-P.5 are not related to the village

where the subject lands are situated, and that Ex-P.5 - Sale Deed has been

filed inadvertently. Hence, Ex-P.5 is not relevant to decide the case.

Accordingly, Ex-P.5 is hereby rejected from the purview of consideration

for determining the market value of the subject land.

21.Ex-P.1

21.1.As far as Ex-P.1 is concerned, it is a Sale Deed dated

August 3, 2005 executed in respect of 1800 *sq.ft.* of house property, for a

sale consideration of Rs.14,00,000/-. Annexure - II thereof, titled

“STATEMENT OF MARKET VALUE UNDER RULE 3(1) OF THE

PONDICHERRY STAMP (PREVENTION OF UNDERVALUATION OF

INSTRUMENTS) RULES, 1970” states that *“the executants estimate or*

the market value of the building Rs.14,00,000/-”. Thus, it is clear that Ex-



P.1 concerns land with superstructure and the Sale Consideration was

primarily for the building. As stated *supra*, since it is difficult to determine the separate value of the land covered under Ex-P.1, in the absence expert evidence and report demonstrating the separate value of the land, Ex-P.1 is not helpful in determining the market value of the subject land. Hence, this Court rejects the same.

22.Ex-P.3

22.1.As far as Ex-P.3 is concerned, it is a Sale Deed dated October 28, 2005 executed in respect of 1200 *sq.ft.* of two-storey house property, for a sale consideration of Rs.8,00,000/-. Annexure - I (a) thereof states that the land and the building is valued at Rs.8,00,000/-. Like in the case of Ex-P.1, since it is difficult to determine the separate value of the land covered under Ex-P.3, in the absence of expert evidence and report demonstrating the separate value of the land, Ex-P.3 is not helpful in determining the market value of the subject land. Hence, this Court rejects the same.



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23.Ex-P.4 and Ex-P.2

23.1.As far as Ex-P.4 is concerned, it is a Sale Deed dated February 20, 2006 executed in respect of 1800 *sq.ft.* of two-storey house property in Shanthi Nagar extension in R.S.Nos.121-5/A1 and 121-5/A2 of Karuvadikuppam Revenue Village, for a sale consideration of Rs.11,00,000/-. Annexure - I (a) thereof states that the land value is Rs.3,06,000/- while the building value is Rs.7,94,000/-. This means that the separate value of land covered under Ex-P.4 is Rs.170/- per *sq.ft.*

23.2.As far as Ex-P.2 is concerned, it is a Sale Deed dated October 27, 2005, pertaining to an unapproved plot in Plot No.31 measuring 1800 *sq.ft.*, in Kumaran Nagar extension, in R.S.No.82/2 of Karuvadikuppam Revenue Village, executed for a sale consideration of Rs.6,75,000/- *i.e.*, Rs.375/- per *sq.ft.*

23.3.There is no clear and cogent evidence to show the distance between the property covered under Ex-P.2 & Ex-P.4 and the subject land. In the typed set of papers submitted by the learned



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Government Pleader, after furnishing a copy to the other side, to this Court

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on December 8, 2021, it has been stated that the lands covered under Ex-P.2 and Ex-P.4 are situate 1025 meters and 570 meters away from R.S.No.46/3A respectively. As stated *supra*, the appellants have concurred with the said particulars. Reading the typed-set of papers in conjunction with Ex-R.2 - Topo Sketch would show that the distance mentioned in the typed-set is probable. Hence, this Court would take the distance as mentioned in the typed-set for consideration while determining the market value.

23.4.It is apposite to mention here that this Court is acutely conscious of the fact that, since this is an Appeal under Section 54 of the L.A. Act, this Court cannot look into evidence beyond the case file, unless additional evidence under Order XLI Rule 27 of CPC is allowed and marked. In this case, as decided in Point No.I, no oral and documentary evidence under Order XLI Rule 27 of CPC is allowed and marked.



23.5. Admittedly, the subject land is a large extent of

agricultural land situate near urban area. Ex-R.2 - Topo Sketch would show that the subject land is surrounded by house sites. L.A.O. collected 874 sale instances, almost all of them are either house properties or house sites, which shows that the subject land had potential for growth in value at the time of Section 4(1) Notification. Had the subject land been developed into layouts and sold as house sites, it would have fetched a market value around that of the lands covered under Ex-P.2 and Ex-P.4, which are recorded under the Sales Data in Serial Nos.289 and 533 respectively as R.W.1's oral evidence. At this point, the question before this Court is whether to determine the market value of the subject land based on Ex-P.2 or Ex-P.4. It is well settled position of law that highest value has to be taken into account while determining the market value [*See. Mehrawal Khewaji Trust (Supra)*]. Among Ex-P.2 and Ex-P.4, Ex-P.2 has the highest value at Rs.375/- per *sq.ft.*, and hence, this Court would determine the market value of the subject land based on Ex-P.2. Thus, Ex-P.2 is relevant



for determining the market value of the subject land. **Point No.III** is

answered accordingly.

Point No.IV - Whether the Award of the Reference Court whereby it awarded enhanced compensation at the rate of Rs.100/- per *sq.ft.* is to be interfered with? If so, what is the market value of the subject land?

24.The Reference Court has not appreciated the evidence available on record, especially Ex-P.2 and Ex-P.4, in the right perspective. Without any basis or rationale, the Reference Court has fixed the market value at the rate of Rs.100/- per *sq.ft.* Further, the Judgment of the Reference Court is not in consonance with Order XLI Rule 31 of CPC for the absence of point for determination and reason for the decision; there was no reason assigned for rejection of Ex-P.2 and Ex-P.4. Therefore, the Award of the Reference Court is to be interfered with and the market value is to be decided on the basis of Ex-P.2.

25.Bare perusal of the description of property under Ex-P.2 would show that the property covered thereunder was a house site layout in



a residential area (Kumaran Nagar Extension) and that it had road, water,

electricity and such other amenities. In contrast, the subject land is an

agricultural land vast in extent without any such amenities. Generally

when a large extent of land is acquired, their valuation would differ to a

considerable extent from the small plots of house sites. It is not appropriate

to compare such small house sites with such large extents of land. But in

the instant case, the sale instances are primarily of house sites or house

property and hence there is no other option except to rely on Ex-P.2 for

determining the market value of the subject land. Therefore, this Court is

of the view that while relying on Ex-P.2, necessary deductions for the

formation of road and other civic amenities, expenses of development of

the sites by laying out roads, drains, sewers, water and electricity lines,

etc., are to be made vide ***The Land Acquisition Officer Vs. Nookala***

Rajamallu And Ors. Reported in 2003 (12) SCC 334.

26.In the instant case, the subject land was acquired for expansion of Puducherry Airport. Expansion of Airport would be primarily



construction of new runways. There is no evidence on record to show that

development are to be made. In *Nelson Fernandes's case (supra)*, the

Hon'ble Supreme Court held that the question of development charges

would not arise in case of laying railway lines on the land acquired. Since,

in this context, construction of railways is analogous to construction of

runways, this Court is of the view that the *Nelson Fernandes's case* is

applicable to the instant case. In these circumstances, this Court is of the

considered view that development charges would not apply.

27.1.Considering that the subject land is extensive while land

covered under Ex-P.2 is a relatively small but developed house plot situate

in a residential area, this Court deems fit to apply standard deductions of

33.33% on the market value of land covered under Ex-P.2 viz., Rs.375/- per

sq.ft., to arrive at the market value of the subject land. Accordingly, this

Court fixes the market value of the subject land at Rs.250/- per *sq.ft.* Point

No.IV is answered partly in favour of the appellants.



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27.2.The appellants were permitted to file this appeal as

indigent persons vide order dated October 24, 2017 made in M.P.No.1 of 2014. The appeal is valued at Rs.17,44,20,388/-. The court fee payable is Rs.1,30,81,259/-. The appellants have partly succeeded in the appeal. The question that arises for consideration is as to what is the court fee payable by the appellants since they have succeeded partially in the appeal. Order XLIV Rule 1 of the Code of Civil Procedure which provides for appeal by indigent persons makes provisions of Order XXXIII, which relates to suits filed by indigent persons, applicable to appeals also. Rule 10 of Order XXXIII prescribes the procedure to be followed in cases where indigent persons succeeds in the appeal and Rule 11 of Order XXXIII provides for the procedure when the indigent person fails. The rules do not make a provision in a situation where the indigent person partly succeeds in the appeal. The issue, however, is not *res integra*. A Division Bench of the Kerala High Court in **R.V.Dev @ R. Vasudevan Nair vs Chief Secretary, Government of Kerala** reported in **AIR 2004 Kerala 11**, dealt with a



situation analogous to the situation that has arisen before this Court in this

appeal. Considering the scope and ambit of Rules 10 and 11 of Order

XXXIII and after referring to various decisions on the issue, the Kerala

High Court has held that where indigent persons succeeds in part, he or she

is liable to pay court fee with regard to the extent to which the indigent

person succeeds and the defendant who contested the suit is liable to pay

court fee for the balance amount. In paragraph 23 of the judgment, the

Division Bench held as follows:

"23.The question whether the plaintiff suing as a pauper is liable to pay court fee when he succeeds in respect of part of the claim made by him in the suit was considered and settled by the Madras High Court way back in the year 1891. In the decision reported in (1891) ILR 14 Madras 163 (Chandrareka v. Secretary of State for India) a Division Bench of the Madras High Court held that the plaintiff in that partition suit who obtained a decree for Rs.100/- being a moiety of the property claimed is liable to pay court fee with regard to the sum of Rs.100/- and the 1st defendant who contested the suit is liable to pay court fee for the balance amount under Section 411 of the C.P.C. Of 1882."

The Bench further went on to conclude as follows:

"29.Therefore, it is clear that if the plaintiff who is permitted to institute the suit as an indigent person



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succeeded in part in a suit, the Court-fee payable by him on the plaint or memorandum of appeal has to be apportioned between the plaintiff and the defendant in proportion to the success of each party. Therefore, the liability of the plaintiff who sued as indigent person or in forma pauperis to pay the Court-fee if he succeeds entirely in the suit and to pay the Court-fee in proportion to the success if he succeeds partly in the suit under the provisions of Rule 10 and to pay the entire Court-fee if he fails in the suit under Rule 11 of Order 33 of the Present Civil Procedure Code of 1908 and under the analogous provisions of the previous Code is well established."

27.3.The said judgment of the Kerala High Court was confirmed by the Hon'ble Supreme Court in **R.V.Dev @ Vasudevan Nair vs. Chief Secretary, Government of Kerala and others** reported in **(2007) 5 SCC 698**. The Hon'ble Supreme Court also referred to the judgment of the Patna High Court in **Ram Saran vs. State of Bihar** reported in **AIR 1959 Patna 384**, wherein, the Patna High Court has taken a view that in cases where the indigent person succeeds partially, wide discretion is given to the Court to decide as to who should be liable to pay the court fee. In doing so, the Patna High Court had held as follows:

"8.From rules 10 and 11 of Order 33, it follows, therefore that if the plaintiff's suit is dismissed, the court



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has no discretion or option in the matter, but to order the plaintiff or any added co-plaintiff to pay the court fee. In such a case, the court cannot direct the court fee to be paid by the defendants. It must be paid only by the plaintiff, or the co-plaintiff as the case may be, and by none else. If, however, the plaintiff succeeds in the suit, the court has been given a discretion to direct from which party the court fee shall be payable. In such a case, the court has been given a wide discretion.

It can direct the entire court fee to be paid either by the plaintiff, or the defendant, or both. On the facts and circumstances of each particular case, the court can exercise its discretion, and direct the court fee to be payable accordingly. But to a case like the present, where the suit has been decreed in part, that is, the plaintiff's claim has been partly allowed and partly disallowed, there is no provision in the Code which in terms applies. The Code has not laid down anywhere the procedure which is to be followed by the court in such a case. Obviously, therefore, to such a case neither rule 10, nor rule 11, in terms, would apply."

27.4. After referring to the judgment of the Patna High Court, the Hon'ble Supreme Court had dismissed the appeal against the judgment of the Kerala High Court in **R.V.Dev @ Vasudevan Nair vs. Chief Secretary, Government of Kerala and others** reported in **(2007) 5 SCC 698**. Therefore, we find that neither Order XXXIII Rule 10, nor Order XXXIII Rule 11 would apply to a case where the indigent person partially



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succeeds. As found by the Kerala High Court in **R.V.Dev's case** referred

to supra, the indigent person would be liable to pay the court fee only in

respect of the portion to which he succeeds in the suit or the appeal and as

far as the remaining claim is concerned, the defendant/respondent who had

resisted the suit/appeal will be liable to pay the court fee. This Court has

fixed the compensation payable to the appellants at Rs.250/- per square

feet as against the claim of the appellants at Rs.778/- per square feet. The

difference is Rs.528/- per square feet. This Court, therefore, concludes that

the appellants would be liable to pay court fee for the compensation

calculated at Rs.250/- per square feet. For the remaining amount, the

respondent / Government would be liable to pay the court fee. We had

concluded that the appeal will have to be allowed partially with

proportionate costs. Therefore, the court fee on Rs.250/- per square feet,

should also be payable by the Government to the appellants by way of

costs. Instead of directing the appellants to pay the court fee on Rs.250/-

per square feet and recovering it from the appellants, we direct the



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respondent / Government to deduct the court fee payable calculated on the

compensation of Rs.250/- per square feet from the costs that is payable by

it in this appeal which would meet the ends of justice. This Court,

therefore, concludes that while the appellants would be liable to pay court

fee on the compensation calculated at Rs.250/- per square feet, the same

shall be taxed as costs in this appeal and the same shall be deducted by the

Government from the costs that is payable by it to the appellants. The

appellants would, therefore, be entitled to costs in this appeal only to the

extent of counsel's fee that is allowable in the appeal.

Conclusion:-

28.In the result,

(i)As decided in Point No.(I), C.M.P.No.6666
of 2021 is dismissed.

(ii)Appeal Suit is partly allowed with
proportionate costs by fixing the market value at
Rs.250/- per *sq.ft.* The total compensation payable
shall be calculated accordingly.



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(iii)The second and third appellants are each entitled to $1/3^{\text{rd}}$ of the total compensation payable.

(iv)The appellant Nos.4 to 7, being the legal heirs of the first appellant are collectively entitled to $1/3^{\text{rd}}$ of the total compensation payable.

(v)The appellants are also entitled to all statutory benefits that are available to them under the Land Acquisition Act, 1894, including solatium and interest.

(vi)Any amount already deposited / paid to the appellants/claimants shall be deducted from the total compensation payable.

(vii)The appellants are entitled to claim counsel's fee as indicated in paragraph No.27.4, as per Rules.

[R.S.M., J.]

[R.S.V., J.]

27 / 09 / 2024

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking Order

TK



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To
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- 1.The Secretary to Government
Union of India, Government of Puducherry
(Revenue Department)
Having office at Chief Secretariat
Goubert Salai, Puducherry – 605 001.

- 2.The Sub-Collector (Rev.)(North)
Cum Land Acquisition Officer
Kamaraj Salai, Saram,
Puducherry – 605 013.



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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN

A.S.NO.566 OF 2018

27 / 09 / 2024