IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.11.2024
Pronounced on	20.12.2024

CORAM :

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

AND

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

S.A.No.300 of 2022

1. The District Collector,
Dharmapuri District,
Dharmapuri.

2. The Special Tahsildar (ADW)/
Land Acquisition Officer,
Dharmapuri. ... Appellants

Vs.

Annapooraniammal ... 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 aside the judgement and decree dated 25.03.2021 made in C.M.A. (L.A). No. 01 of 2008 on the file of Principal Sub Court, Dharamapuri, modifying he Award No. 10/ADW/97-98, Na. Ka. No. 1709/97(A), dated 16.04.1998, on the file of the Special Tahsildar (ADW) and Land Acquisition Officer, Dharmapuri.

For Appellants : Mr. R.Siddharthan,
Government Advocate

For Respondent : V.R.Anna Ganthi

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J U D G M E N T

C.KUMARAPPAN, J.

The Acquiring Authority is on appeal, aggrieved by the award of the learned Principal Sub-Judge, Dharmapuri made in C.M.A (LA) No. 01 of 2008, dated 24.03.2021 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:-

An extent of 3.13.0 hectares of land belonging to the respondent and other persons were sought to be acquired for the purpose of providing free house sites to Adi Dravida people of MGR Nagar, Dharmapuri District. A notification under Section 4(1) of the Act was published on 23.09.1997 in the Dharmapuri District Gazette. 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 16.04.1998. The Special Tahsildar, Adi Dravidar Welfare, who passed the award, granted a sum of Rs.74,100/- per hectare. Claiming that the award is very meager, the respondent herein filed an appeal under Section 9 of the Act before the jurisdictional Sub-Court, namely, the Principal Sub-Court, Dharmapuri.

3. Before the trial Court, on behalf of the claimant as well as the Government, each one witness was examined. As claimant documents, 10 exhibits were marked. On behalf of the respondents, two documents were marked. The learned Principal Sub-Judge, upon consideration of the evidence on record, took the value of Rs.50/- per sq.ft and determined the value of the acquired land at Rs.32,89,650/-. She also awarded the statutory benefits, viz., solatium at 15%, and interest at 6%. The said award is the subject matter of challenge in the instant Second Appeal.

4. Mr. R. Siddharthan, the learned Government Advocate appearing for the appellants, would vehemently contend that the Appellate Court, qua the learned Sub-Judge, has not followed the principles that have been laid down in respect of determination of compensation by relying on the exemplar sale method. He would also point out that the appellate authority passed order based on earlier orders arising in the same acquisition, and has not considered an appropriate deduction towards the development charges. He would further contend that the exemplar sale deed relied upon by the petitioner is far away from the acquired land. He would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Union of India Vs. Premalata and Others*** reported in ***(2022) 7 SCC 745***, wherein the Hon'ble Supreme Court has held that a suitable deductions has to be made when smaller plot is taken as basis for determination of compensation.

5. Per contra, Mr. V.R. Anna Ganthi, the learned counsel for the respondent/land owner, would submit that the Appellate Court had taken into account Ex.C9, and the previous order of the Appellate Court, arising in the same acquisition, and that the Trial Court took cognizance of the lesser extent covered in the exemplar sale deed, and the factum of sale after the

date of 4(1) notification, had given a 25% deduction, which, according to the learned counsel, is justifiable on the basis of the available evidence.

6. The learned counsel for the respondent would further point out that the land in S.F. No.620/4 covered by Ex.C9, and the acquired land in Survey No.440/1B1 are very near to each other, and enjoy the same advantages as the acquired land. It is his further submission that both the acquired land, as well as the land dealt with in the exemplar sale deed, have similar potentiality. It is in this background the learned counsel for the respondent would contend that the deduction, which had been given by the appellate authority, is well within the permissible limit.

7. Apart from the above submission, the learned counsel would contend that the acquired land is a well-developed area, near Dharmapuri Town, and just 200 ft. away from Hogenakkal road, and that there were frequent transport facilities. As such, he would contend that the acquired land would cost more than Rs.15,00,000/- per acre, even on the date of the acquisition. Thus, it is his contention that there are no questions of law involved in this matter, and that the instant appeal is devoid of merits. Hence, he prayed to dismiss the same.

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

9. The following questions of law arises for consideration:-

(i) Whether the learned Principal Subordinate Judge was right in adopting only 25% deduction for development charges.

(ii) Whether the learned Principal Subordinate Judge was right in relying upon an exemplar sale deed which deals in the very small extent of land.

10. According to the award dated 16.04.1998, an extent of 3.13.0 hectares were acquired, and the total market value of the entire 3.13.0 hectares was determined as Rs.2,31,933/-. Towards the petitioner's share, a sum of Rs.69,450/- was awarded. According to the appellant, the market value per hectare would be around Rs.74,100/-, and the per sq.ft value is 0.68 paise. As rightly contended by the learned Government Advocate, though the claimant has relied upon the sale deed of the year 2008, the Appellate Court has proceeded on the basis of the previous order passed in CMA (LA) No. 13 of 2000, which also arose against the same award. The copy of the said order has been filed in the instant case as Ex.C10.

11. According to Ex.C.10, the exemplar sale deed dated 03.11.1997, is of the period just two months after 4(1) notification, wherein 1200 sq.ft were sold at Rs.48,000/-. To put it differently, per sq.ft was sold at Rs.40/-. Relying on the said exemplar sale deed, the Appellate Court had given a 25% deduction towards the development charges, and fixed the market value at Rs.50 per sq.ft. In such a view of the matter, though in the impugned CMA (LA), the respondent relied on the sale deed of the year 2008, the Appellate Court considered the previous order, which passed on the basis of November 1997 sale deed. Therefore, we do not find any infirmity in relying upon the exemplar sale deed dated 03.11.1997.

12. Before we delve further into the correctness of the determination of the market value, we deem it appropriate to deal with some precedents which rule this field. 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 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.

13. 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."

14. 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".

15. 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)}"

16. 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."*

17. Now, let us proceed to analyse the factual position of this case, with the touchstone of the above settled legal principles. According to the Acquiring Authority, the market value of the land per sq. ft is 0.68 paise. However, basing reliance upon the exemplar sale deed, the Appellate Court has determined the market value at Rs.50/- per sq.ft and has also given a

25% deduction towards the development charges, as the land dealt with in the exemplar sale deed is of a smaller extent.

18. On a perusal of the Appellate Court's order, it reveals that the appellate authority has rightly ignored the exemplar sale deed dated 22.05.2008, as it was well after to the 4(1) notification. However, it relied upon the previous award passed in C.M.A. (LA) No. 13 of 2000, wherein, the land of an extent of 1200 sq.ft in S.F.No.311/02, which was sold for Rs.48,000/- was dealt in. To put it differently, per sq.ft was sold for Rs.40/-. The subject land is situated in S.F.No.440/1B1, and the extent of acquisition is 0.81.5 hectares.

19. The Tribunal had also considered the potentiality of the land, the development prospects, its accessibility to the nearby town, and the transport facility, and ultimately has fixed the market value at Rs.50/- per sq.ft. We are also in agreement with the market value determined by the authority. But coming to the deduction part, the learned Principal Subordinate Judge had given only a 25% deduction towards the development charges. However, considering the total extent of land acquired from the respondent/claimant herein, and the exemplar sale deed, by following above judicial

pronouncements, we are of the firm view that the appropriate deduction for developmental charges would be 30%.

20. In view of what has been stated hereinabove, we are of the indubitable opinion that the claimant would be entitled to Rs.50 per sq.ft, and the applicable deduction would be 30%. Apart from that, the claimant would also be entitled to solatium at 15% and interest at 6% per annum on the compensation determined as above. Both the substantial questions of law are answered as above partially in favour of the appellant.

21. In the result, this Second Appeal is partly allowed, fixing the compensation at Rs.50/- per sq.ft, and the deduction would be 30%. The claimant would also be entitled to solatium at 15% and interest at 6% per annum on the compensation determined as above. 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

The Principal Sub Court,
Dharamapuri,

R.SUBRAMANIAN, J.
and
C.KUMARAPPAN, J.

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Judgement in
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