THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2024

CORAM:

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

A.S.No.776 of 2019
and
C.M.P.No.23685 of 2019

1.Mohammed Ikbal

2.Shakeera Banu ... Appellants

Vs.

The Land Acquisition Officer and
Revenue Divisional Officer, Vellore ... Respondent

Prayer: Appeal Suit filed under Section Section 54 of the Land Acquisition Act read with Section 96 of the Code of Civil Procedure praying to allow the appeal with costs, by enhancing the compensation awarded by modifying the judgment and decree dated 16.07.2019 passed in L.A.O.P.No.1 of 2016 by the Special Subordinate Judge for L.A.O.P. cases, Vellore.

For Appellant	:	Mr.N.Manikandan
For Respondents	:	Mrs.R.Anitha, Special Government Pleader

JUDGMENT

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

The appeal is at the instance of the land owners whose lands were acquired for the purpose of widening of Tamil Nadu State Highway that branches off from the Chennai – Bangalore National Highway at Melvisharam Village for the purpose of widening of the bridge on the river Palar.

2. An extent of 0.32.5 hectares equivalent to 34970 sq.ft of land was acquired from the appellants and they were situate in the following survey numbers:

Sl.No.	Survey No.	Extent
1.	143 / 2A	0.08.0
2.	143 / 3B	0.12.5
3.	143 / 4B	0.07.0
4.	143 / 5B	0.00.5
5.	152 / 2	0.04.5
	Total	0.32.5

3. Since there was no agreement between the parties on the price that is to be paid for the acquired lands in terms of Section 19(2) of the Tamil Nadu Highways Act, 2001 a reference was made to the Collector under sub-Section 3 of Section 19 of the Tamil Nadu Highways Act, 2001. The Collector passed an award determining the compensation at Rs.4.69/- per sq.f. for the punja land and Rs.4.64/- per sq.f. for the nanja land. The trees were valued at Rs.1,00,253/-. In addition to the above, the Collector also granted 12% additional amount for the period between 09.09.2011 and 18.05.2015 and 30% solatium, apart from interest. Since the land owners raised an objection relating to the quantum of compensation, a reference was made to the Court under Section 20 of the Act. The said reference was numbered as L.A.O.P.No.1 of 2016.

4. The reference Court/ the Special Sub-Court, Vellore took up the reference and the land owners were examined as CW1 and CW2. Exs.C1 to C3 were marked. On behalf of the referring officer, the Headquarters Deputy Tahsildar, Walaja Taluk was examined as RW1. No documentary evidence was produced on the side of the respondent.

5. The land owners sought to justify their claim for higher compensation by relying upon the extract from the guideline value register for the relevant period, which was marked as Ex.C1, a sale deed dated 31.10.2013, which was marked as Ex.C2 and a sketch showing the exact location of the property acquired was also filed as Ex.C3.

6. The learned Sub-Judge, Vellore, rejected both the documents viz., Exs.C1 and C2 on the ground that the guideline value cannot form the basis for determination of the compensation and that the sale deed marked as Ex.C2 is after the publication of 15(2) notification and therefore it would not be safe to rely upon the same.

7. The learned Sub-Judge however took note of the location of the property and also the other locational advantages enjoyed by the property, which is abutting a National Highway, concluded that it would fetch at least a sum of Rs.50/- per Sq.ft. On the said conclusion, the learned Sub-Judge awarded a compensation of Rs.50/-, apart from the statutory benefits that were made available to the owners of the land under Section 23 of the Land

Acquisition Act, 1894, which is made applicable to acquisition for Highways also under sub-Section 6 of Section 19 of the Tamil Nadu Highways Act, 2001. The learned Sub-Judge however awarded interest at 9% for the period of one year from the date of compensation and 15% thereafter till date of payment.

8. The Government had accepted the award. The land owners are before us seeking enhancement. The application in C.M.P.No.23685 of 2019 has been filed even along with the appeal seeking to produce the guideline value of the property that is subject matter of acquisition during the year 2011 and the sale deed dated 24.09.2010, which relates to the property situate in S.No.147/4 to establish that the land would fetch a higher value.

9. We have heard Mr.N.Manikandan, learned counsel appearing for the appellants and Mrs.R.Anitha, learned Special Government Pleader (Land Acquisition) appearing for the respondent.

10. Mr.N.Manikandan, learned counsel appearing for the appellants would submit that in the absence of any other evidence, the Court can well be guided by the guideline value register, which has been marked as Ex.C1, which shows the value of the property subject matter of acquisition as on 01.04.2012 is about Rs.134/- per Sq.ft. in S.No.143/2 and Rs.335/- per Sq.ft. in respect of the S.Nos.143/3, 143/4 and 143/5. He would also submit that the sale deeds which are post acquisition can also be relied upon, if they are shown to be *bona fide* transactions.

11. The learned counsel for the appellants would also draw our attention to the additional documents filed by him along with C.M.P.No.23685 of 2019 and point out that the guideline value at the time of acquisition that is in the year 2011 in respect of S.No.143/2, 143/3 and 143/4 was about Rs.150/- per Sq.ft. and as per the sale deed dated 24th September 2010, the residential land from near the acquired land situate in S.No.147 also abutting the National Highways has been sold for Rs.107.50/- per Sq.ft. Therefore, according to the learned counsel these two documents would demonstrate the value of the property was hovering around Rs.100/- to Rs.150/- at the relevant point of time and therefore fixation of Rs.50/- by the learned Sub-Judge, that too, without any evidenciary basis is inappropriate.

12. Justifying the production of additional evidence in the appeal, the learned counsel for the appellants would submit that the existence of the sale deed dated 24.09.2010 was not known to the appellants and only after gaining knowledge of the said document they had applied for the certified copy and obtained it subsequently and therefore they should be allowed to produce the same in the appeal.

13. The learned counsel would also point out that a reference under Section 20 of the Tamil Nadu Highways Act is a proceeding, which is intended to provide an opportunity to the land looser, because of the acquisition, to obtain a fair compensation and therefore this cannot be treated as any other litigation, where very strict standards for entertaining additional evidence should be applied.

14. Contending contra Mrs.R.Anitha, learned Special Government Pleader would submit that in the absence of any acceptable evidence, the learned Sub-Judge was right in fixing Rs.50/- per Sq.ft as market value for the lands that were acquired, taking into account the location of the land and the other advantages enjoyed by it. She would also fault the appellants for not having produced these documents before the trial Court itself. She would submit that the requirements of Order 41 Rule 27 have not been satisfied. Therefore, the application filed seeking to let in additional evidence should not be entertained.

15. We have considered the rival submissions.

16. As far as the contention of the learned counsel that the guideline value fixed for the purpose of stamp duty could be taken into account for fixation of compensation, we must straight away point out that the same is not possible. This Court and the Hon'ble Supreme Court have repeatedly held that the adoption of guideline value for fixation of compensation in cases arising under Land Acquisition Act, 1994 will not be just and proper. We are therefore unable to accept the contention of the learned counsel that the guideline value can be taken into account for fixation of value.

17. However, as regards the other document that has been filed viz., the sale deed dated 24.09.2010, we must point out that the property that is sold under the said document is situate within 100 meters from the property that is under acquisition and it also abuts the National Highway from Chennai to Bangalore. No doubt, the extent of property dealt with is very small and it is stated in the document itself that the property has been developed into house sites.

18. We find that the reasons that are assigned by the appellants for non-production of the documents at the time of trial satisfy the requirements of Order 41 Rule 27 and therefore we deem it fit to receive the said document and proceed to fix the value of the acquired land on the basis of that document. In the light of the above conclusion **C.M.P.No.23685 of 2019** is **allowed in part,** the certified copy of the sale deed dated 24.04.2010 alone is received as additional evidence and the same is marked as Ex.C4.

19. Let us now consider the valuation part of it. The land acquired measures about 0.32.5 hectares equivalent to 34970 Sq.ft. No doubt, it abuts the National Highways on one side and State Highways on the other.

It has all the locational advantages of being developed into residential plots. The eye evaluation sketch which has been produced by the learned Special Government Pleader also shows that the acquired land is just about 100 meters away from the land in S.No.147, which is covered by the sale deed, has been received as additional evidence and marked as Ex.C4.

20. This Court as well as the Hon'ble Supreme Court have repeatedly held that a land looser due to an acquisition should be paid the highest amount as compensation while comparable sale method is adopted as the basis. The land in S.No.147 has been sold at Rs.107.50/- per Sq.ft as per Ex.C4 sale deed.

21. The learned counsel for the appellants would implore us to adopt the same value. The learned Special Government Pleader would however contend that what is sold under Ex.C4 sale deed is only a very small extent of 1860 Sq.ft. compared to the extent of the acquired land, which is about 34970 Sq.ft. The learned Special Government Pleader would submit that the entire land may not fetch the same price. Therefore, we will have to adopt certain deductions.

22. The learned counsel for the appellants would rely upon the judgments of the Hon'ble Supreme Court in ***Nelson Fernandes and others Vs. Special Land Acquisition Officer, South Goa & Ors*** reported in **2009 (7) SCC 447** and the judgment of the Division Bench of this Court in **Special Thasildhar Land Acquisition, Outer Ring Road Project, CMDA, Egmore, Chennai- vs – Palin Reshma Jacob & others, A.S.No: 574 to 583 of 2012 dated 31-08-2015,** wherein it was pointed out that in case of acquisition of land for either road projects or for projects of construction of bridge or railway line, where the entire property is used, deductions for development charges need not be made.

23. We had no quarrel with the proposition that the purpose of acquisition should also be looked into while considering the question of deductions. There are normally two kinds of deductions one for largeness in area and the second towards development. The deductions for largeness in area is made to bring the value of a large extent of land to match the value of the small extent of land if the exemplary sale deed is for a small extent of land. The deductions for development charges is made where the acquisition is for housing projects, where certain extent of land has to be set apart for roads and for other public purposes. These two deductions are independent of each other. Where the acquisition is for a road building project or a project for laying a railway line the question of development does not arise as the entire land is used for the purpose of acquisition. However when large tract of land is acquired for the purpose of laying a road or widening the road and the compensation is determined on the basis of exemplar sale deed/s, which deals with the very small extent of land, it becomes obligatory on the part of the Courts to adopt a method by which the value of a small extent of land is matched with that of the larger extent of land. We can call it an attempt to equalize the valuation, so that it is reasonable and the Government is not forced to pay the compensation at the rate at which the small piece of land is sold for a larger extent of land.

24. As we had already pointed out the extent of land that is to be acquired is about 34970 Sq.ft. Though it lies in four survey numbers, the survey numbers are contiguous and situate in one big block. While the land sought to be acquired from the first appellant viz.,Mohammed Ikbal measures about 20.5 ares equivalent to 22058 Sq.ft., the land that is sought to be acquired from the other appellant Shakeera Banu measures about 12 ares equivalent to 12912 Sq.ft.

25. The land sold under the exemplary sale deed viz., Ex.C4 measures only about 1860 Sq.ft., which is at least 1/6th of the land acquired from the 2nd claimant and 1/10th of the land acquired from the 1st claimant. We therefore find that adoption of the value as reflected by Ex.C4 sale deed dated 24.09.2010 as it is, without applying deductions may not be just and proper. We will have to necessarily apply the deductions for the largeness in area. We therefore find that a deduction of 20% would be just and equitable in the circumstances of the case. The sale deed Ex.C4 is one year prior to the acquisition. Naturally we will have to adopt increase in 10% value per year. Thus calculated, the value of one square feet of land as reflected by Ex.C4 sale deed after applying 10% towards escalation and 20% towards deductions for largeness in area, would be Rs.94.60/- (107.50 + 10% – 20% = 107.50+10.75-23.65 = 94.60/-).

26. We therefore fix the compensation for the acquired land at

Rs.94.60/- per Sq.ft. The appellants would also be entitled to additional amount at 12% per annum for the period from 09.09.2011 to 18.05.2015 and solatium at 30%. The learned Sub-Judge had granted interest at 9% per annum for a period of one year from the date of taking possession and 15% thereafter this runs counter to Section 24 of the Tamil Nadu Highways Act. Section 24 provides for payment of interest at 9% from the date of taking possession till date of payment. Therefore, the appellants would be entitled to interest on the compensation (94.60 + 12% additional amount + 30% solatium) at 9% per annum from the date of taking possession till date of payment. The respondent will have twelve (12) weeks time to deposit the balance amount that accrues due to the enhancement made by us along with the other statutory benefits and interest. The compensation granted towards trees is confirmed. The appeal is therefore **allowed** to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M., J.) **(R.S.V., J.)**
24.04.2024

dsa
Index : No
Internet : Yes

Neutral Citation : No
Speaking order

To

The Special Subordinate Judge for L.A.O.P. cases,
Vellore.

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

dsa

A.S.No.776 of 2019

24.04.2024