



A.S.No.237 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2024

CORAM:

**THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE C.KUMARAPPAN**

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M.R.Somu @ Munien

...Appellant

Vs.

1. Union of India, Rep. By
Secretary to the Government (Revenue),
Puducherry

2. The Sub Collector (Rev), North cum Land,
Land Acquisition Officer, Puducherry

...Respondents

Prayer: Appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908, praying to set aside the award dated 20.08.2019 made in L.A.O.P No.63 of 2011 on the file of the Court of the II Additional District Judge, Pondicherry.

For Appellant

:

Mr.T.P.Manoharan
Senior Advocate
Assisted by



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For Respondents

:

Mr.T.M.Naveen

M/s.V.Usha

Additional Government

Pleader [Puducherry]

Assisted by

Mr.J.umaran

Additional Government

Pleader [Puducherry]

J U D G M E N T

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

This appeal is filed under Section 54 of the Land Acquisition Act, 1894 [*hereinafter referred to as the “Act”*]. Challenge is to the award of the Court passed in reference under Section 18 of the Act, confirming the compensation awarded by the Collector under Section 11 of the said Act.

2. An extent of about 13.89.90 hectares in Arikanmedu Village in Puducherry was sought to be acquired as the land was classified as an Archaeological Site where an Indo Roman Trading Station existed in the past. The Archaeological Survey of India excavated the ancient site and found that the same should be declared as a protected ASI monument and



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recommended acquisition of the said area on 13.03.2003. Consequent upon such recommendation, a notification under Section 4 of the Act was published in the State Gazette on 23.09.2003. Invoking the emergency provision, the enquiry under Section 5 (A) of the Land Acquisition Act was dispensed with. An award came to be passed on 12.10.2005 by the Land Acquisition Officer granting a sum of Rs.2,909/- per Are. The land acquired from the appellant forms part of the total acquired land and it measured about 8.88.40 hectares. Claiming that the compensation awarded is too low, the appellant sought for a reference under Section 18 of the Act. The same was numbered as LAOP No.63 of 2011. The appellant filed a claim petition seeking a sum of Rs.1,500/- per sq.ft. The Learned IInd Additional District Judge, Puducherry before whom the reference was made concluded that the claimant land owner has failed to prove that the value of the land is about Rs.1,500/- per sq.ft. The Sale deeds of the years 2013 and 2015 which were filed as comparable sales were rejected by the Court since they were more than 10 years and 12 years after the acquisition. Aggrieved by the same, the claimant is on appeal.



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3. We have heard Mr.T.P.Manoharan, learned Senior counsel for Mr.T.M.Naveen, learned counsel for the appellant and Mrs.V.Usha, learned Additional Government Pleader, Puducherry assisted by Mr.J.Kumaran, learned Additional Government Pleader, Puducherry for the respondents.

4. Mr.T.P.Manoharan, learned counsel for the appellant would vehemently contend that the award dated 24.10.2005 does not contain any reasons for fixation of the land value at Rs.2,909 per Are. Drawing our attention to the award which has been marked as Ex.R1 before the reference Court, the learned Senior counsel would submit that no reasons have been assigned for the fixation and the award does not disclose consideration of some materials like comparable sale deeds in the vicinity of the acquired lands. The learned counsel would also rely upon Section 20 and 28 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*, which provide for acquisition of land declared as a protected monument by the Central Government. Section 20 and 28 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*, reads as follows :-

20. Power to acquire a protected area.- If the Central



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Government is of opinion that any protected area contains an ancient monument or antiquities of national interest and value, it may acquire such area under the provisions of the Land Acquisition Act, 1894 (1 of 1894), as if the acquisition were for a public purpose within the meaning of that Act.

28. Assessment of market value or compensation.-(1) The market value of any property which the Central Government is empowered to purchase at such value under this Act or the compensation to be paid by the Central Government in respect of anything done under this Act shall, where any dispute arises in respect of such market value or compensation, be ascertained in the manner provided in sections 3, 5, 8 to 34, 45 to 47, 51 and 52 of the Land Acquisition Act, 1894 (1 of 1894), so far as they can be made applicable: Provided that, when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person



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nominated by the Central Government and one a person nominated by the owner, or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector. 2 [(2) For every antiquity in respect of which an order for compulsory acquisition has been made under sub-section (3) of section 23 or under sub-section (1) of section 26, there shall be paid compensation and the provisions of sections 20 and 22 of the Antiquities and Art Treasures Act, 1972 (52 of 1972) shall, so far as may be, apply in relation to the determination and payment of such compensation as they apply in relation to the determination and payment of compensation for any antiquity or art treasure compulsorily acquired under section 19 of that Act.]

Provided that, when making an enquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Central Government and one a person



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nominated by the owner, or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Collector. 2 [(2) For every antiquity in respect of which an order for compulsory acquisition has been made under sub-section (3) of section 23 or under sub-section (1) of section 26, there shall be paid compensation and the provisions of sections 20 and 22 of the Antiquities and Art Treasures Act, 1972 (52 of 1972) shall, so far as may be, apply in relation to the determination and payment of such compensation as they apply in relation to the determination and payment of compensation for any antiquity or art treasure compulsorily acquired under section 19 of that Act.]

5. Relying upon Section 20 of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the learned Senior counsel would submit that if the Central Government is to acquire any land, which is classified as a protected area, the acquisition has to be done by following the



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procedure under the *Land Acquisition Act 1 of 1894* and Section 28 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*, prescribes the methodology for determining the compensation. Laying particular emphasis on the proviso to Section 28, the learned Senior Counsel would submit that it is incumbent upon the Land Acquisition Officer to take the assistance of two assessors, one of whom shall be appointed by the Central Government and the other by the land owner. The learned counsel would submit that the very award is illegal as the procedure prescribed under proviso to Section 28 has not been followed.

6. Contending contra, Mrs.V.Usha, learned Additional Government Pleader, appearing for the respondent would submit that even though Section 20, makes the provisions of the Land Acquisition Act applicable, the proviso to Section 28 would come into play when there is a dispute regarding the value of the land. When there is no dispute, the acquisition Officer is under no obligation to take the assistance of the assessors. She would also contend that such an objection was never taken before the reference Court and in an appeal under Section 54 of the Act.



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Hence it was not for the land owner to contend that the award was vitiated.

Drawing our attention to Section 18 of the Act, the learned Additional Government Pleader would submit that scope of reference under Section 18 is limited to :-

- (a) Determination of the area of the land
- (b) The compensation payable
- (c) Persons to whom it is payable or
- (d) the apportionment of the compensation among the persons interested.

7. If the scope of the reference before the reference Court is restricted to only the above four aspects we cannot, in an appeal under Section 54, enhance the same and interfere with the award on the ground that proviso to Section 28 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*, has not been followed.

8. We have considered the rival submissions.



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9. On the above contentions of the learned counsel for parties, the only point that arises for determination in this appeal is as to:-

Whether the determination of compensation made under the award dated 12.10.2005 is in accordance with the procedure prescribed under the Land Acquisition Act or not.

10. **On the point:-**

Section 11 of the Act, invests the power in the Collector to pass an award determining the compensation after conducting an enquiry. In the case on hand, one Bala Krishnan S/o. Varadharamanujam Tahsildar in the office of the District Collector [Revenue] viz., Land Acquisition Officer has been examined as RW1. In his evidence, in Chief examination he has set out the methodology adopted by the Land Acquisition Officer to fix the compensation. He refers to about 431 Sales which had taken place between 20.09.2001 to 22.09.2003 and the collector has rejected 427 Sales and has retained four sales which reflect the value of Rs.2,909 per Are. But when we scan the award which has been marked Ex.R1 for reasons, we find none.



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11. Interestingly on the aspect of valuation, this is what the award says :-

Valuation

The Valuation proposal was sent to Government on 13.10.2003 and the same was approved by them vide letter No.6138/Rev-B1/2003 dated 14.10.2003 and the land value has been fixe at the rate of Rs.2,909/- per Are. A copy of the notes of valuation inspection is appended to this proceedings in Annexure D.

12. The award does not reflect the exercise that is reflected in the proof affidavit. Award enquiry was held on 24.11.2004. Even before the enquiry, the valuation proposal was sent to the Government fixing the value of the land at 2,909 per Are on 13.10.2003 itself and the same is taken as the value of the land and an award is passed on 12.10.2005. This in our considered opinion is not in compliance with the requirements of Section 11



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of the Act. Section 11 sets out a scheme for an enquiry and an award. An enquiry needs to be conducted by the Collector on the valuation of the land in the presence of the land owners and thereafter, an award should be passed.

13. Section 11 of the Act, mandates that notice is to be issued to the land owners and their objections are to be taken and after considering the objections, the value of the land should be fixed. In the case on hand, we find that the cart has been put before the horse by the land acquisition Collector. He has fixed the compensation and got it approved by the Government even on 14.10.2003 and has passed an award subsequently on 12.10.2005. This in our considered opinion is highly improper and the same cannot be approved by us.

14. While passing an award determining the compensation, the Collector is required to consider the materials before him or her, analyse the same and then pass an award fixing the compensation. The learned Additional Government Pleader would however contend that notes of



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inspection was made by the Collector immediately after the inspection that was done before the award enquiry and that notes of inspection would form the basis for the grant of compensation. We do not think that we could approve such a procedure adopted by the Collector in fixing the compensation.

15. Once we find that the requirements of Section 11 of the Act, has not been satisfied and the Collector has not assessed the compensation after conducting an enquiry under Section 11, the award has to necessarily be set-aside. Unfortunately, the reference Court has not gone into the said aspect, it has only upheld the compensation granted by the Collector because the claimants are unable to prove that the land would fetch higher value. A reading of Section 28 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*, would show that a slightly different procedure is prescribed for ascertaining the compensation of land which is considered to be an Archaeological site or an Ancient monument. The assistance of qualified assessors nominated by the Central Government has to be taken by the Collector in fixing the value. The learned Additional Government Pleader



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would however contend that proviso will come into operation only when there is a dispute. Since there is no dispute, there is no question of applying the proviso. We are unable to agree with the said contention. We have extracted Section 28 above, Sub Section (1) of Section 28 mandates the compensation to be ascertained in the manner provided under the provisions of the land acquisition Act and the words occurring where any dispute arises in Sub Section 1 of Section 28 of the Act, would only mean where there is a dispute regarding valuation before the acquisition i.e when the parties are unable to reach an understanding regarding the compensation to be paid. Once the Government decides to invoke the provisions of Land Acquisition Act, 1894 to acquire the land, the procedure set out there in has to be followed. The proviso to Section 28(1) makes it clear that the Collector shall be assisted by two assessors in fixing the value of such land. This provision has been made to safeguard the owners of the land which could be classified as an Archaeological site and ensure that they get a fair compensation and importance of the land is also taken into account while deciding the compensation. We therefore find that the award suffers from severe irregularity, particularly in the matter of determination of



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compensation. The provisions of Section 11 have not been adhered to. We are therefore constrained to set aside the award and require the Collector to redetermine the compensation in terms of Section 11 of the Act and pass a reasoned award disclosing the basis on which the compensation is arrived at. In doing so, the Collector will also follow the special provision viz., the Proviso to Section 28 of the *Ancient Monuments and Archaeological Sites and Remains Act, 1958*. The order of reference Court as well as the award dated 12.10.2005 are set-aside. There shall be a direction to the Collector /Land Acquisition Officer to redetermine the compensation strictly in terms of Section 11 of the Land Acquisition Act and with reference to Section 28 of Ancient Monuments and Archaeological Sites and Remains Act, 1958. It shall be ensured that re-determination process is completed within a period of one year from the date of receipt of the copy of this order. This exercise is however restricted to the land only belonging to the appellant.

16. In view of the above, the appeal is allowed and the matter is remitted to the Collector for re-determination of the compensation as indicated above. Since we have remitted the matter, the appellant will be



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entitled to refund of the court fee paid on the memorandum of appeal in
terms of Section 56 of the Puducherry Court fees and Suits Valuation
Act,1972. No costs.

(R.S.M., J.) (C.K., J.)
19.11.2024

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

To
II Additional District Judge, Pondicherry.



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

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