IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :18.06.2025

Pronounced on :30.06.2025

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Appeal Suit No.104 of 2022
and
Appeal Suit No.95 of 2019
and
C.M.P.No.3698 of 2019

Mrs.Thajunnissa,
W/o Mr.R.Abdul Rashid,
No.35B, Jawaharlal Street,
Kanchipuram-2. ..Claimant/Appellant

/versus/

1.The Special Tahsildar,
Land Acquisition,
Broad-gauge Railway Line,
Madurantakam.

2.The Deputy Chief Engineer,
Southern Railway,
Gauge Conversion,
Chetpet, Chennai 600 031. ..Respondents/Respondents

Appeal Suit has been filed under Section 96 r/w Order 41, Rule 1 and r/w Section 54 of the Land Acquisition Act, 1894 praying to set aside the judgment and decree dated 04.07.2017 in L.A.O.P.No.1450 of 2008 on the file of the Sub Court, Kanchipuram.

For Appellant :Mr.R.Mubarak Basha-appellant
For Respondent :Mrs.R.Anitha, Spl.G.P. For R1
Mr.M.T.Arunan,
Special Standing Counsel for R2

Appeal Suit No.95 of 2019:

The Special Tahsildar (Land Acquisition),
Broad Gauge Railway Line,
Madurantakam. .. Appellant

/versus/

1.R.Thajunnissa,
W/o Mr.R.Abdul Rashid,
No.35B, Jawaharlal Street,
Kanchipuram-2.

2.The Deputy Chief Engineer,
Southern Railway,
Gauge Conversion,
Chetpet, Chennai. .. Respondents

Appeal Suit has been filed under Section 54 of the Land Acquisition Act, praying to set aside the judgment decree passed in L.A.O.P.No.1450 of 2008, dated 04.07.2017 on the file of the Subordinate Court, Kanchipuram.

For Appellant :Mrs.R.Anitha,
Spl.Govt.Pleader

For Respondents :Mr.R.Mubarak Basha for R1
Mr.M.T.Arunan,
Special Standing Counsel for R2

COMMON JUDGMENT

The appellant in A.S.No.104 of 2022 is the claimant in L.A.O.P.No.1450 of 2008 before the Subordinate Court, Kanchipuram, in the matter of reference under Section 18 of the Land Acquisition Act, 1894, for enhancement of compensation. The first respondent, Special Tahsildar, is the appellant in A.S.No.95 of 2019.

2. A total extent of 1.90.0 hectare of wet and dry land situated in Konerikuppam village was acquired for formation of Broad Gauge Railway Line, while conversion of the gauge between Chengalpattu and Arakkonam. It was a linear acquisition of the appellant/claimant's land along with other

three joint pattadars in S.No.144/3, S.No.150/2, S.No.144/4, S.No.150/7A and S.No.151/6 measuring to an extent of 1.01 acres. For the acquired land, compensation of Rs.25/- per square feet was awarded. Claiming Rs.400/- per square feet, the reference under Section 18 of the Land Acquisition Act, 1894 was made to the Tribunal.

3. According to the claimant, she along with others jointly own the property with a total measurement of 4.24 acres. In the said land, they formed housing layout in the name of 'Senthamizh Nagar'. They obtained provisional approval from the Kanchipuram Local Town and Country Planning Authority. Thereafter, out of 4.24 acres, for conversion of the meter gauge to broad gauge, land measuring 1.01 acres was taken possession by the Southern Railway on 24.02.1999. At the time of granting approval, 23.76 cents in S.No.150/7 and 0.06 cents in S.No.150/2, totally 29.76 cents have been earmarked for public purpose viz., formation of 'Park'. Though Notification under Section 4(1) of the Land Acquisition Act was for 1.01 acres, out of 4.24 acres, the award was passed on 02.07.2007 at

the rate of Rs.25/- per square feet, only for 71.24 cents of land and not for the remaining 29.76 cents earmarked for park. Further, the land, after improvement, was formed as layout and sold at the rate of Rs.250/- per square feet. While so, price at Rs.25/- per square feet fixed with a deduction 20% of the value towards development charge is unreasonable.

4. Being aggrieved, each one of the owners independently sought reference under Section 18 of the Land Acquisition Act in respect of their 1/4th undivided share, out of the total extent of 1.01 acres with a claim that at the time of acquisition, the actual value of the property was Rs.400/- per sq.ft., and hence, the compensation must be enhanced from Rs.25/- to Rs.400/- for the entire extent of 1.01 acres without deducting the portion of the land earmarked for park and without deducting the development charges.

5. The Court below, considering the documents placed before it, particularly, Ex.C1 to Ex.C6, fixed the value of the land at Rs.110/- per

sq.ft with 20% deduction. In so far as the land earmarked for park measuring to an extent of 29.76 cents, the Court below left open the question till the disposal of the declaration suit filed by the owners and pending before the Additional District Munsif Court, Kanchipuram.

6. In the appeal filed by the land owners/claimants, it is stated that regarding the excluded portion of 29.76 cents earmarked for park, the declaration suit in O.S.No.364 of 2009 instituted by the claimant and others was decreed on 05.08.2010. This is reflected in Ex.C16 (decree) and Ex.C17 (judgment). Despite that, since at that time, the Government has not acted upon the decree, the trial Court has not considered granting compensation to the extent of about 30 cents and wrongly excluded. Subsequently, the Government has recognised the right of the claimants and issued proceedings, which has now been marked as the Additional Document (Ex.C18).

7. In respect of the value of the property, it is contended by the claimants that the lands around the acquired land are classified as residential Type-I plots and the guideline value fixed by the Registration Department is Rs.7000/- per sq.ft., and above. While so, the compensation should be fixed reasonably commensurating the market price. The price reflected in Ex.C7, Ex.C13 and Ex.C14 and the Commissioner Report (Ex.C9).

8.The learned counsel for the claimants further submitted that a copy of the sale deeds marked as Exs.C1, C2, and C3, which are sale deeds for the document of contemporaneous period, situated in and around the acquired land. These documents were not properly considered by the Reference Court.

9. Referring the report of the Advocate Commissioner marked as Ex.C-9, it was submitted on behalf of the claimant/appellant that the land acquired has already been developed in full. Therefore, any deduction towards the development charge, is not fair and reasonable. It is also

contended by the learned counsel appearing for the appellant/claimant that the compensation has not been arrived with cumulative effect of market value, interest and solatium. The claimants are entitled for cumulative assessment as per the dictum laid down by the Hon'ble Supreme Court in ***Ashrafi & others v. State of Haryana reported in [(2013)5 SCC 527]*** which reads as below :-

> ***"44.****Accordingly, inMukesh Kumar's case and the other cases heard along with the said case, we are of the view that while adding 12% annual increase to the value of the lands acquired, the same should be done on a cumulative basis. In Mukesh Kumar's case, the compensation awarded was at the rate of Rs 235 per square yard along with all statutory benefits, as provided under Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act. Having discarded the belting system which has been resorted to, we are of the view that the compensation as awarded at the rate of Rs 235 per square yard, has to be reassessed by applying the cumulative rate of increase at the rate of 12% per annum with the base year being the date of the notification under Section 4 of the Land Acquisition Act, together with the statutory benefits, as indicated hereinabove. The stand taken on behalf of the State of Haryana, regarding the amount of*

escalation fixed at 12% being improper, does not appeal to us having regard to the potentiality of the lands acquired and the sharp increase in the value of the lands in recent times."

10. The appellant/claimant submits that the Reference Court failed to mention the date of determination on the enhancement. It should not be from the date of award (i.e.) 02.07.2007, but from the date of Notification under Section 4(1) (i.e.) 15.11.2004.

11. It is also pointed out by the learned counsel appearing for the appellant that under Section 23(1)(a) of the Land Acquisition Ac, 1984, mandates the payment of additional amount calculated 12% p.a., on the market value of the acquired land for the period between the date of Section 4(1) Notification and the date of award or possession, whichever is earlier. The object of introducing this Section is to mitigate the hardship caused to the owner of the land, who has been deprived of the enjoyment of the land by taking possession from him and using it for the public purpose. In this case, the Court below has awarded 12% p.a., additional amount only from

the date of award (i.e.) 02.07.2007 and not from the date of taking possession (i.e.) 24.02.1999, which is earlier to the date of award or the notification under Section 4(1) of the Act.

12. It is also submitted that under Section 28, after expiry of one year period, the rate of interest has to be enhanced from 9% to 15% till the date of payment, but in this case, the interest on the award amount for the enhanced compensation, after the period of one year, the Court below failed to take note of Section 28 of the Land Acquisition Act and fix at the rate of 15%.

13. **The State, which is the first respondent in A.S.No.104 of 2022, being aggrieved on the fixation of compensation as higher and the deduction towards development charge should have been 50%, instead of 20% had filed A.S.No.95 of 2019.**

14. The learned Special Government Pleader appearing for the State, submitted that the fixation of Rs.88/- per sq.ft., after deducting and development charge, is not in tune with the evidence on record. Though the land acquired is claimed to be a layout, it still requires development. Therefore, a deduction of 50% towards development charge ought to have been made.

15. Insofar as the compensation for the excluded portion of the land measuring about an extent of 30 cents, the learned Special Government Pleader fairly conceded that after decree passed by the competent Court (i.e.) City Civil Court declaring the title in respect of the said portion of the land in favour of the claimant, the claimant is entitled for due compensation for the said land measuring about 30 cents.

16. In respect of fixation of interest, the learned Special Government Pleader, submitted that the provision of Section 23(1)(a) and Section 28 of the Land Acquisition Act, 1894, are mandatory in nature and if any error in

calculating the additional amount and interest, it shall be rectified.

17.The learned Standing Counsel appearing for the Railways submitted that it is true that the possession of the land was taken by the Railways on 24.02.1999. The Notification under Section 4(1) of the Land Acquisition Act was published as below:

> On 09.11.2005 in the Gazzatte; On 13.11.2005 in Tamil daily Makkal Kural; On 13.11.2005 in Tamil daily Dinathanthi and on 16.12.2005 in the locality by wide publicity.

18. After taking possession of 24.02.1999, the land was development by the Railway. Therefore, they need not be any change in the deduction towards development charge.

19. <u>On considering the rival submissions, the point for determination :</u>

Whether the award passed by the Tribunal fixing Rs.110/- per sq.ft., and deducting 20% towards development charge, is in accordance with the evidence and whether there is any violation under Section 23(1)(a) and Section 28 of the Land Acquisition Act, 1894 in awarding the additional amount and interest?

20.The determination of the land value should be pragmatic, fair and just. The Court should take into the account the value on the date of notification and the potential of the land and also the impact of acquisition on the land owners due to deprivation of their property. Admittedly, these lands were purchased by the claimants to promote and sell it as a residential plots and make profit. They have completed the process of forming the layout and provisional permission for sale of the land as residential plots also obtained. The fact that a portion of the land earmarked for park and given to the local authority, substantiates and proves that the land has already been well developed as residential plots and no further development is required. In such circumstances, this Court is of the view that the Trial Court ought to have considered the evidence on a whole and awarded the entire value of the property without deducting 20% towards development charges.

21. Next, the Trial Court, while fixing the value, had, for untenable reasons, not considered all the sale deeds pertaining to the sale of land in and around the acquired land, but, had selected only Ex.C1 and Ex.C2 dated 13.02.2003 and 14.02.2003 respectively. Though the other sale deed (Ex.C3) is also a document of contemporaneous period and falls with on the same survey number, but with difference sub- division number, the same had been rejected. Probably, resorting to a betting system, ignoring the fact that it is a linear acquisition.

22.This Court finds that omission to consider Ex.C3 for fixing the fair price of the land acquired needs interference and the opinion of the Advocate Commissioner (Rs.450/- per sq.ft) and the guideline value of the property (Rs:7000/- per cent) need to be taken into account to consider the potential of the property, that has been acquired.

23.For the said reasons, this Court holds that it is appropriate to fix the value of the land acquired at the rate of Rs.130/- per sq.ft instead of Rs.110/-per sqft. It is also necessary to hold that the deduction of 20% towards development charges is not warranted and unnecessary in this case as there is no evidence to show that the land was uneven or required investment for making it fit, similar to the land taken for price comparison.

24.Regarding non-adherence of Section 23(1)(a) of the Land Acquisition Act, the Court observe apparent omission in awarding 12% interest on the additional amount as per Section 23(1)(a) from the date of taking possession (i.e.) 24.02.1999 and the compensation for the balance land measuring to an extent of 29.76 cents, which has been declared as the land of the claimants by the competent Civil Court in O.S.No.364 of 2009 and admitted by the first respondent by issuing Ex.C18, On this score also the award of the trial Court needs interference.

25.From the records and the decree passed by the Court below based on the pleadings, this Court finds that the 1.01 acres of land acquired for the Railways belongs to four persons. Each one of them have filed separate LAOP's and Appeal Suits as against the jdugment and decree. Each one of them claims 1/4th share each in the 1.01 acres of land acquired.

26. They are all entitled for fair compensation in respect of their respective share as observed above by this Court in the Appeal Suits.

27. Accordingly, the Appeal Suit No.104 of 2022 is partly allowed on the following terms:-

> (i)The value of the land acquired is fixed at Rs.130/- per sq.ft. without any deduction towards development charges.
>
> (ii)The total extent of land to be compensated is 1.01 acres. Out of which the claimant is entitled for 1/4th share.
>
> (iii)For the said amount, the claimant is entitled for solatium at the rate of 30%.

(iv)The interest on the additional amount to be paid at the rate of 12% p.a. from the date of possession (i.e.) 24.02.1999 till 02.07.2007 (the date of award), instead of 15.11.2004 (the date of 4(1) Notification)

(v)The interest on the excess compensation shall be in terms of Section 28 of the Land Acquisition Act, 1894 at the rate of 9% p.a., from the date of possession (i.e.) 24.02.1999.

(vi)In case of any delay for more than one year, the rate of interest shall be calculated at the rate of 15% p.a., thereafter.

(vii)Compensation as above to be paid within 3 months from today.

In consequence, A.S.No.95 of 2019 is to be dismissed.

28. As a result,

(i)The Appeal Suit in A.S.No.104 of 2022 filed by the claimant, Thajunissa is partly allowed.

(ii)The Appeal Suit in A.S.No.95 of 2019 filed by the Special Tahsildar on behalf of the State stands dismissed.

(iii) Consequently, connected Miscellaneous Petition is closed. No order as to costs.

30.06.2025

Index:yes/no
Internet:yes
Speaking order/non speaking order
Neutral citation:yes/no
ari

To

1.The Sub Court, Kanchipuram.

2.The Special Tahsildar, Land Acquisition,
Broad-gauge Railway Line, Madurantakam.

3.The Deputy Chief Engineer, Southern Railway,
Gauge Conversion, Chetpet, Chennai 600 031.

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

DR.G.JAYACHANDRAN,J.

ari

delivery Common Judgment made in
A.S.No.104 of 2022
and
A.S.No.95 of 2019
and
C.M.P.No.3698 of 2019

30.06.2025