

(2009) 12 MAD CK 0085

In the Madras High Court

Case No : S.A. No. 1003 of 2008 and W.P. No. 12424 of 2008

The Land Acquisition Officer and The District Collector

APPELLANT

Vs

Radhakrishnan Chetty and Another
A. Singaram Vs
The State of Tamil Nadu, The Land Acquisition Officer cum The
Special Tahsildar and The District Collector

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(14)
Land Acquisition Act, 1894 — Section 23(1), 4(1), 5(1), 5(1)
Tamil Nadu Court Fees and Suits Valuation Act, 1955 — Section 51

Citation : (2010) 1 CTC 527

Hon'ble Judges : F.M. Ibrahim Kalifulla, J; B. Rajendran, J

Bench : Division Bench

Advocate : S. Veeraraghavan, A.A.G. Assisted by Mrs. Bhavani Subbarayan, Special Government Pleader and Mr. V.R. Shanmuganathan in S.A. No. 1003 and 1004 of 2008, for the Appellant; V.R. Shanmuganathan, Advocate in C.R.P. Nos. 1766 and 1974 of 2008, Mr. V.R. Shanmuganathan, Advocate in W.P. Nos. 12424 and 14814 of 2008 and Mr. Veeraraghavan, Additional Advocate General Assisted by Mrs. Bhavani Subbarayan, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—Second Appeal Nos. 1003 and 1004 of 2008 arise out of the Judgment and Decree made in C.M.A. (L.A.) Nos. 1 and 2 of 2002 dated 08.03.2004 on the file of the Principal Sub-Courts, Krishnagiri. C.R.P. Nos. 1766 and 1974 of 2008 arise out of the order dated 23.4.2008 made in REP No. 73 and 74 of 2005 in C.M.A. Nos. 1 and 2 of 2002 on the file of Sub-Courts, Krishnagiri.

2. Writ Petition Nos. 12424 and 14814 of 2008 have been filed challenging the orders passed by the Government on 3.4.2008 and 6.6.2008 withdrawing the very acquisition proceeding itself.

3. Since all the matters are inter-connected and relate to the very same

acquisition proceedings, by consent of both sides, all the cases are taken up together and disposed of by this common judgment.

4. We have heard the counsel for both sides and perused the material records placed. At the outset, the learned counsel for both sides fairly submitted that subsequent to the filing of the Writ Petitions, the Government passed G.O. (3P) No. 15, dated 1.9.2009 cancelling the earlier two Government Orders dated 3.4.2008 and 6.6.2008, which are challenged in the above Writ Petitions. Therefore, the relief sought for in the Writ Petitions have become infructuous and hence, the Writ Petitions are dismissed as infructuous. No costs.

5. As far as the Revision Petitions are concerned, the Reference Courts passed orders in C.M.A. Nos. 1 and 2 of 2002, filed by the claimants, fixing the valuation of the land at Rs. 47/- per sq. ft., in respect of the lands acquired at Sunnalampatty Village and Rs. 13/- per sq. ft., in respect of the lands acquired at Thandiappanoor Village. Thereafter, the claimants have filed R.E.P. No. 73 of 2005 in C.M.A. No. 1 of 2002 and R.E.P. No. 74 of 2005 in C.M.A. No. 2 of 2002 to execute the decrees. The Executing Courts has also passed orders of attachment. Challenging the same, the present Revision Petitions have been filed by the Government.

6. At the time of admission of the Revision Petitions, this Courts granted interim stay on 8.5.2008 and the same was in force till 25.06.2008 and thereafter, the interim stay was not extended. On 25.06.2008, both the Civil Revision Petitions were ordered to be posted along with the Second Appeals. According to the claimants, even before the granting of interim stay, orders for attachment was passed and effected. Therefore, the issue involved in the Civil Revisions can be decided based on the outcome of the Second Appeal Nos. 1003 and 1004 of 2008.

7. The following common substantial questions of law arises for determination in the above Second Appeals:

(i) Whether the reliance placed by the Courts below on Ex. A1 is not in contravention of judgment of the Apex Court reported in K. Vasundara Devi Vs. Revenue Divisional Officer (LAO), where the Apex Court has prescribed the guideline that small extent of land cannot be relied upon for determination of compensation for large extent of land.

(ii) Whether the Courts below had erred in not making necessary deduction towards development charges especially in view of law laid down by the Apex Court in the judgment reported in The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, whereunder the Apex Court prescribed the percentage of deduction at 53% ?

(iii) Whether the Courts below had erred in not appreciating the provision of Section 8 of the Act 31/1978 which clearly stipulate the nature and classification of land under acquisition as on date of 4(1) notification is the criteria for fixation

of market value and not the probable usage of the said land?

(iv) Whether the Courts below had failed to appreciate that the respondent/claimant ought to have paid advoluerum Courts fee as prescribed u/s 51 of the Tamil Nadu Courts Fee and Suit Valuation Act, 1955 and not a nominal fee u/s 3(1)(B) of Schedule II of the said Act.

8. As far as S.A. No. 1003 of 2008 is concerned, the Government proposed to acquire the lands in Sunnalampatty Village, Uthankarai Taluk by invoking the provisions of Harijan Welfare Act, 1978 for the purpose of allotting housing sites to Adi Dravidas. Accordingly, the notification u/s 4(1) of the Act was issued on 7.11.1997 and the enquiry u/s 5(1) of the Act was conducted on 2.12.1997 for acquisition of the lands of the first respondent namely Radhakrishnan Chetty in Sunnalampatty Village in S. No. 16/1 to an extent of 0.89.0 Hectares and the lands of the second respondent in the very same Sunnalampatty Village in S. No. 22/1 to an extent of 2.09.0 Hectares. After complying with the formalities, the Land Acquisition Officer passed an Award in No. 5/1997-1998 determining the value of the acquired lands at Rs. 1,23,500/- per hectare or Rs. 50,000/- per acre.

9. As per the award, the Land Acquisition Officer has taken into consideration data sale statistics in respect of 151 sale deeds in and around the area, which were registered three years prior to the issuance of notification u/s 4(1) of the Act i.e., between 6.10.1994 to 7.11.1997, considered the value reflected therein, rejected 136 sale deeds on the basis of quality and location, rejected 11 sale deeds on the ground that they were sold as house sites and also situate more than 2 kilometers away from the acquired lands. Ultimately, taking into consideration the sale deed u/s No. 131, which is in respect of lands comprised in Survey No. 21/2 having an extent of 0.06. acres and it was sold for a sum of Rs. 30,000/- by means of a sale deed dated 2.2.1995 registered as document No. 173, the Land Acquisition Officer fixed the value for the acquired lands at Rs. 50,000/- per acre or Rs. 1,23,500/- per hectare together with 15% solatium. Ultimately, the first respondent namely Radhakrishnan was given a compensation of Rs. 1,26,402/- and the second respondent Loganathan @ Logadhasan was given a compensation of Rs. 2,96,832/- for having acquired their land to a total extent of 7.36 acres. Aggrieved against the meager compensation, the respondents herein have filed C.M.A. (LA) Nos. 1 of 2002 before the Principal Subordinate Judge, Krishnagiri.

10. Before the Appellate Courts, the claimants contended that the acquired lands are situate within the Uthangarai Town Panchayat 6th ward, very near to Sri Vidya Mandir School near Salem-Vellore Road, the entire area is a fast developing one and it has got the potential for rapid improvement in future. Furthermore, the acquired lands are situate just 500 meters away from the main bus stand. The area in which the acquired lands are situate is having all the amenities such as roads, drainage, water and electricity. According to the claimants, the sale price of the lands in the area ranges from Rs. 50/- to Rs. 60/-

per sq. ft., besides that the lands are sold as housing plots. Therefore, the Land Acquisition Officer ought not to have arrived at the value of the acquired lands on hectare or acre basis.

11. Before the Appellate Courts, the appellants have taken a stand that acquired lands are only manavari punja lands, it is not a cultivable land, the income that would fetch from the acquired lands is less than Rs. 2,000/- per year. Contra, the data lands are situate just 50 meters away from the acquired lands. Therefore, the claim of the claimants to treat the acquired lands as housing plots and to award a sum of Rs. 50 to Rs. 60/- per square feet is baseless and the acquired lands cannot be equated with that of the housing sites.

12. Before the Appellate Courts, the claimants herein have produced three sale deeds, which were marked as Ex. C2 dated 16.07.1997, Ex. C3 dated 27.03.1997 and Ex. C4 dated 26.2.1997 in which the lands are sold as house sites at the rate of Rs. 53/-, Rs. 47/- and Rs. 45/- per square feet respectively. According to the claimants, in as much as the above sale deeds are much prior to the notification issued u/s 4(1) of the Land Acquisition Act and that too they were sold on square feet basis, they were rightly considered by the Appellate Courts and the value has been arrived at. In such circumstance, the value arrived at by the Courts below is valid and proper.

13. The learned Additional Advocate General appearing for the appellants submitted that the Courts below simply accepted the documents produced by the claimants and fixed the value at Rs. 47/- per square feet without assigning any valid reasons and also without giving any deduction. Further, the Courts below has not given any reasons for arriving at the value at Rs. 47/- per square feet. The Courts below failed to take into consideration that the lands acquired from the claimants are vast lands to an extent of 7.36 acres and they are admittedly classified as Manavari Punja lands. It is common knowledge that when government acquires such huge extent of land for the purpose of providing house sites to houseless persons, definitely huge expenditure would be incurred for providing roads, drainage, water, electricity and other amenities. The Courts below, without taking into consideration these aspects, which requires deduction to be given, simply arrived at the value at Rs. 47/- per square feet which is legally not sustainable. Even otherwise, the value cannot be compared with that of the smaller extent of land, that too when they were sold as house sites. The Courts below fixed the value based on the documents produced by the claimants where under smaller extent of lands have been sold. Furthermore, there is no basis at all for the Courts below to fix the value at such exorbitant rate and enhancing it from Rs. 50,000/- per acre to Rs. 47/- per square feet, which would come to Rs. 22,08,100/- per acre which is unimaginable. As per the evidence of the claimants before the Courts below, there are house sites near the acquired lands and therefore the properties are being sold at Rs. 50/- to Rs. 60/- per sq. ft., especially when the acquired lands are situate within 500 meters away from the bus stand, which is factually incorrect. It was further contended by the

claimants that even though the acquired lands are agricultural lands, they have the potential for conversion into house sites and therefore prayed for enhanced compensation. Contra, the learned Additional Advocate General stated that the acquired lands are Manavari Punja lands even as per the evidence of the claimants, therefore, the value fixed by the Courts below is excessive.

14. We have carefully considered the submission of the counsel for both sides. In the cross-examination of PW1, Radhakrishnan, he would

data land is situate adjoining to the acquired lands and that the acquired lands are classified as Manavari Punja lands. It was further admitted in the cross-examination that even after cultivation, he may get only Rs. 3,000/- per acre per year from the acquired lands. Whereas, in the evidence of RW1, the Officer examined on behalf of the appellant, it was categorically stated that the distance between the acquired lands and the bus stand is more than 1 kilo meter.

15. Now we consider the documents produced by the claimants. Under Ex. C2. Sale deed dated 16.07.1997 the lands to an extent of 1533 sq. ft., in Survey No. 34/1A was sold for Rs. 82,500/-. Under Ex. C3, Sale Deed dated 27.03.1997, the lands to an extent of 1690 sq. ft., in Survey No. 42/2 has been sold for Rs. 80,000/-. Under Ex. C4, Sale Deed dated 26.02.1997, the lands to an (sic) of 1188 sq. ft., in S. No. 45/1B has been sold for a sum of Rs. 49,500/-. On consideration of the above documents, it would clearly prove that the lands under Exs. C2, C3 and C4 were sold as house sites and the extent of the area conveyed is smaller. Therefore, the above said sale deeds cannot be compared for arriving at the correct value for the acquired lands. Moreover, the acquired lands are admittedly Manavari Punja lands and therefore, Exs. C2 to C4, under which the lands were sold as house sites, cannot be taken for comparison with that of the acquired lands. Above all, the Courts below has not given necessary deductions. The reasons for not giving any deduction or how the value of Rs. 47/- per sq. ft., for the acquired lands has been arrived at has not been mentioned in the impugned judgment of the Courts below. As stated supra, after acquisition of the lands, the Government has to incur expenditures for providing roads, drainage, electricity, water amenity and public space for convenient enjoyment of the property by the people for whom the housing plots are to be allotted. In this connection, necessarily, deductions have to be given, but the Courts below mechanically arrived at the sum of Rs. 47/- per sq. ft., for the acquired lands without any basis.

16. The Honourable Supreme Court in the decision reported in Special Land Acquisition Officer, Bangalore Vs. V.T. Velu and Others, held that for determining the compensation of acquisition of larger extent of lands (1 acres and 6 gunthas), awarding compensation at square foot basis is not proper. Further, when agricultural lands are converted, definitely deductions must be given. In that case, the Honourable Supreme Court granted 53% deduction towards development charges. In Para No. 5 of the said judgment, it was held as follows:

5.....Determination of market value on square foot basis would be arbitrary and is an irrational principle of law. It is now settled by a series of judgments of this Courts that determination of the compensation on square feet basis is a wrong principle of law, particularly when large extents of lands are sought to be acquired for public purpose. Therefore, the High Court has proceeded on a wrong premises to determine the compensation on the basis of square foot.

17. The Honourable Supreme Court in the decision reported in K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, , held that when the lands are situated in a developing area, but no development has taken place as on the notification u/s 4(1) of the Act in the acquired lands or in that area, even though the land possessed of the potential value for building purpose, but not capable of putting it into immediate use for building purpose, definitely, deductions for development charges depends upon the development needed in each case. In that case, the Honourable Supreme Court categorically held that deduction of 53% under the building Rules and further deduction towards development Charges at 33 1/3 % ordered by the High Courts are found to be correct. In Para No. 8 and 10 of the said judgment, it was held as follows:

8. Shri. Javali contended that since acquisition was only for the purpose of bus stand, the High Courts has committed grievous error in deducting 53% for developmental charges. The High Courts has noted that if the lands are to be used for building purposes necessarily under the Building Rules the land owner has to leave out 53% area for roads, open space and other public amenities. In addition, the owner is required to expend money for development and construction of the roads, water supply mains and electrical lines, etc., and that this requires considerable expansion and improvement. If the compensation is determined on the basis of yardage, the owner cannot put the entire land to use unless he leaves out the land for the above purposes and also expend money for developmental purpose. Merely because land is acquired for establishment of bus stand, that use is irrelevant in determining market value.

10. It is then contended that 53% is not automatic but depends upon the nature of the development and the stage of development. We are inclined to agree with the learned counsel that the extent of deduction depends upon development need in each case. Under the Building Rules 53% of land is required to be left out. This Courts has laid as a general rule that for laying the roads and other amenities 33-1/3% is required to be deducted. Where the development has already taken place, appropriate deduction needs to be made. In this case, we do not find any development had taken place as on that date. When we are determining compensation u/s 23(1), as on the date of notification u/s 4(1), we have to consider the situation of the land development, if already made, and other relevant facts as on that date. No doubt, the land possessed potential value, but no development had taken place as on the date. In view of the obligation on the part of the owner to hand over the land to the City

Improvement Trust for roads and for other amenities and his requirement to expend money for laying the roads, water supply mains, electricity, etc., the deduction of 53% and further deduction towards development charges @ 33-1/3% as ordered by the High Courts was not illegal.

18. The Honourable Supreme Court in the decision reported in Smt. Basavva and others Vs. Special Land Acquisition Officer and others, , held that if the value is fixed on the basis of sale deed of smaller extent of land situated at a distance of more than one kilometer, deduction between 33 to 53% from the market value for development charges and additional deduction of 12% given by the High Courts, totalling 65% was held to be proper and correct. The said Judgment was rendered following the decision rendered in K. Vasundara Devi Vs. Revenue Divisional Officer (LAO),

19. A Division Bench of this Courts in the decision reported in The Special Tahsildar, Neighbourhood Scheme Vs. Jaganathan Gounder and The Executive Engineer and Administrative Officer, Erode Housing Scheme, after referring to various decisions of the Honourable Supreme Court as well as this Honourable Courts held that if the value of the acquired lands has been arrived at without giving any deduction towards development charges, 40% of deduction on the value of the acquired lands can be given. Further, if the value has been arrived at based on the smaller extent of lands, a further deduction of 20% can be given, thus, totalling 60% deduction can be given. In Para Nos. 27, 28, 35, 36, 37 and 38, it was held as follows:

27. Even though as per Exhibit C-8 dated 08.02.1991, the property was sold at the rate of Rs. 30/- per sq. ft., the said transaction relates to a smaller extent. However as per the subject notification larger extent of property was acquired and as such the value as shown in Exhibit C-8 cannot be taken in its entirety for arriving at the market value. The Housing Board has to develop the property for housing purposes. It is in evidence that the acquired property was only an agricultural property and it has no potential as a housing site. No evidence was placed on the side of the claimants to show that they have been getting substantial income from the property or it has got high potential as a house-site. Therefore, we are of the view that necessary deduction has to be made towards development charges.

Deduction Towards Development charges:

28. While fixing the market value, it is permissible for the Land Acquisition Officer to give necessary deduction towards development charges. In such cases, the Land Acquisition Officer must record reasons about the disadvantage of the land acquired and the purpose for which the land was sought to be acquired as well as the percentage of land necessary for providing developments like provision of roads, electricity, water and sewerage and other facilities. The extent of deduction cannot be put in a straitjacket formula and it varies from case to case. The Hon'ble Supreme Court had time and again indicated the factors to be

considered by the Land Acquisition Officer for making deduction towards development charges as well as percentage of deduction. Such deduction is also not automatic unless there is a factual finding that deduction was absolutely necessary in the facts of the case by taking into consideration the ground situation. In case the property has already been developed, there would be no requirement of deduction towards development.

35. While fixing the market rate, very often, documents of smaller extent would be taken as the basis. The normal rule in fixing compensation for large extent of land with reference to the value shown in the sale document of lesser extent is that there must be suitable deduction. It is common knowledge that larger extent of property invariably fetch less when compared to lesser extent. No prudent buyer would buy large extent of land by quoting the price prevailing in the market for a small piece of land.

36. The Hon''ble Supreme Court in *Atma Singh v. State of Haryana* (supra), by placing reliance on some of the earlier judgments regarding deduction in the case of smaller extent when compared to the larger extent acquired, explained the legal position thus:

13. The reasons given for the principle that price fetched for small plots cannot form safe basis for valuation of large tracts of land, according to cases referred to above, are that substantial area is used for development of sites like laying out roads, drains sewers, water and electricity lines and other civic amenities. Expenses are also incurred in providing these basic amenities. That apart it takes considerable period in carving out the roads making sewers and drains and waiting for the purchasers. Meanwhile the invested money is blocked up and the return on the investment flows after a considerable period of time. In order to make up for the area of land which is used in providing civic amenities and the waiting period during which the capital of the entrepreneur gets locked up a deduction from 20% onwards depending upon the facts of each case, is made

37. The document in Exhibit C-8 in respect of a property having only 1200 sq. ft., However as per the present notification, large extent of property was acquired. Therefore, we are of the considered opinion that necessary deduction on account of small size of the property retained for fixing market value has to be given. On an overall consideration of the matter, we fix the deduction on account of small size of the plot taken as the basic document at 20%.

38. Taking an overall view of the matter, we are of the opinion that 40% deduction should be made towards development costs and 20% on account of small size of the plot taken as the basis to arrive at the market value. Accordingly, while retaining Exhibit C-8 dated 8.2.1991 (Rate Rs. 30/- per sq. ft.,) as the basic document for arriving at the market rate, we deduct 40% by way of development charges and 20% by way of small size of the plot and arrive at the market rate at Rs. 5,22,720/- per acre.

20. The learned counsel appearing for the respondents/claimants relied on the

decision of the Honourable Supreme Court reported in Atma Singh (died) through LRs. and Others Vs. State of Haryana and Another, for the proposition that if there is no other documentary evidence, except the exemplar document produced by the claimants, the Courts can rely upon such documents, of course after giving necessary deductions. In such event, there cannot be an embargo for relying upon the documents in respect of smaller extent of lands.

21. The learned counsel for the respondents/claimants also relied on the decision reported in The Land Acquisition Officer, Kammarapally Village, Nizamabad District, Andhra Pradesh Vs. Nookala Rajamallu and Others, for the proposition that when there is considerable evidence that the adjoining area are utilised as house sites, necessary deductions can be granted for formation of roads, amenities, etc., and after giving such deduction, the value can be fixed. It is clear from the above said judgment that in that case, the acquired lands were agricultural lands and for conversion of the same into house sites, those lands were acquired. The Honourable Supreme Court, in that case approved the deductions given by the High Courts at 53% towards development charges.

22. The learned counsel for the respondents/claimants has also relied on the decision of the Honourable Supreme Court reported in The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, to say that when sale transactions relating to smaller extent of lands is produced, after giving necessary deductions towards development charges, the Courts can take into consideration of those documents. In that case, the Honourable Supreme Court has given deductions at 40%.

23. On careful consideration of the submission of the learned Additional Advocate General appearing for the appellants as well as the counsel for the respondents, it is clear that the lands were acquired for the purpose of allotment of house sites and the acquired lands are admittedly manavari punja lands. In the evidence of the claimants, it is stated that there is a workshop near the acquired lands and that the acquired lands are situated just one kilometer away from the national highway. Merely because there is a highway one kilometer away from the acquired lands, that by itself will not be sufficient to prove that the entire area has been developed. It is common knowledge that when a land is acquired for the purpose of putting up building for accommodating Adi Dravidars, the Government has to necessarily incur huge expenditure for the purpose of levelling of the roads, carving roads, providing drainage facilities, water facilities, electricity amenities, etc., especially when the agricultural lands are converted 53% of the land will be lost as per the Building Rules. As per the decision of the Honourable Supreme Court in K.S. Shivadevamma and others Vs. Assistant Commissioner and Land Acquisition Officer and another, , mentioned supra, the Courts has to necessarily take into consideration not only this deduction, but deduction towards development charges even regarding smaller extent of land at 33%, totalling upto 86% when lands are acquired for such purpose. In the case

on hand, admittedly the acquired lands are manavari punja lands, but the Courts below failed to take into consideration any of these development charges or building rules or development in that area.

24. The acquired lands are admittedly manavari punja lands. Even as per the evidence of the claimants, no development has taken place in the area where the acquired land are situate. Therefore, taking into consideration the decisions of the Honourable Supreme Court as well as the Division Bench of this Courts mentioned supra, we feel 53% deduction can be given towards development charges in this case. Further, taking into consideration that the valuation has been arrived at on the basis of smaller extent of lands, further deduction of 25% can be given. In all, if 78% of deduction is given, the value fixed by the Courts below would come down from Rs. 47/- per sq. ft., to Rs. 11.34 per sq. ft., rounded off to Rs. 11/- per sq. ft., which will be the correct reasonable and proper value for the acquired lands.

25. In so far as the A.S. No. 1004 of 2008 is concerned, the notification u/s 4(1) of the Act was issued on 28.6.1997 by invoking the provisions of Harijan Welfare Act, 1978 for acquiring the lands for the purpose of providing house sites to Adi Dravidars in Thandiappanoor Village, Uthankarai Taluk. The lands of the claimant Singaram was also sought to be acquired in Survey No. 51/1B to an extent of 0.33.5 Hectares and S. No. 52/1 to an extent of 0.73.0 Hectares. The enquiry u/s 5 (1) of the Act was conducted on 30.09.1997 and ultimately, an award in No. 3/1997-1998 was passed on 15.10.1997. The Land Acquisition Officer, taking into consideration 14 sale deeds relating to the period from 27.05.1996 to 28.06.1997, rejected six sale deeds on the ground that those sale deeds are in respect of housing sites, yet another 4 sale deeds were rejected on the ground that they are situate more than 2 to 3 kilometers away from the acquired lands. Ultimately, the Land Acquisition Officer, taking into consideration the sale deed dated 22.1.1997, registered as document No. 43, whereunder the lands in Survey No. 52/3D to an extent of 0.42.5 hectares, which is equivalent to 1.05 acres, was sold for Rs. 36,750/-. According to the Land Acquisition Officer, the said land is of the same the ram and the soil quality is also one and the same. Furthermore, the acquired lands are situate just adjoining the said data land. Ultimately, the Land Acquisition Officer fixed the value of the acquired lands at Rs. 35,000/- per acre or Rs. 86,450/- per hectare. Aggrieved by the compensation amount determined by the Land Acquisition Officer, the claimant has filed C.M.A. No. 2 of 2002 before the Principal Sub-Courts, Krishnagiri.

26. Before the Appellate Courts, the respondent/claimant contended that the acquired lands are situate near the Government Bus Stand/Bus Depot, there are co-operative spinning mills nearby the acquired lands, besides there is a marriage hall just adjacent to the acquired lands and therefore the acquired lands would fetch a huge value. It is his contention that even during the relevant period, as per the sale transaction took place in that area, the sale price ranges from Rs. 15/- to Rs. 20/- per sq. ft., It was further contended that as per sale

deed dated 11.04.1997, the lands were sold at Rs. 13/- per sq. ft., and therefore determining the value of the acquired lands at Rs. 13/- per sq. ft., will be proper.

27. Contra, on behalf of the Land Acquisition Officer, it was contended that the acquired lands are situate very near to data land, the bus stand is situate more than 1 kilometer from the acquired lands, the acquired lands are only classified as Manavari Punja lands, even if any cultivation is made, it would fetch only Rs. 2,000/- per year and therefore, the valuation fixed by the Land Acquisition Officer is proper and reasonable.

28. The Courts below, taking into consideration the documents produced by the claimant has mechanically fixed the value of the acquired lands at Rs. 13/- per sq. ft., and such value is legally not sustainable. In the evidence, the claimant himself has accepted that the acquired lands are treated only as agricultural lands, but it was only contended that it is not a manavari land, but fertile land. Whereas, the evidence of RW1, the officer who deposed before the Courts below, would categorically prove that the lands in question are treated only as manavari lands and not converted into house sites. The claimants have produced the sale deed dated 11.4.1997 before the Courts below in which 1800 square feet of land bearing Plot No. 23 was sold for Rs. 21,500/-. Another sale deed dated 2.5.1997 was produced under which 900 sq. ft., of Plot No. 11 has been sold for Rs. 11,500/-. Therefore, according to the claimant, based on the two sale deeds, the value of the property in question can be fixed at Rs. 13/- per sq. ft., which was rightly done by the Courts below.

29. As stated above, the land in question is only an agricultural land and it has not been converted into a house site. The Courts below has not given any deduction at all towards development charges. The value fixed by the Courts below, without giving any deduction, is not legally sustainable. As per the decisions of the Honourable Supreme Court as well as this Courts, discussed in the earlier paragraphs, during conversion of the lands into a house site, the Government has to incur expenditure for providing various amenities for which deduction has to be necessarily given and the Honourable Supreme Court held that 53% deduction and another 33% towards development charges. Further, as per the decision of the Division Bench of this Court reported in The Special Tahsildar, Neighbourhood Scheme Vs. Jaganathan Gounder and The Executive Engineer and Administrative Officer, Erode Housing Scheme, , if the value of the lands is arrived at based on smaller extent of land, further deduction of 20% can be given. Considering the facts and circumstance of the present case, inasmuch as the area has not been developed even as per the evidence of the claimants, we feel that 70% deduction can be given. Therefore, taking into consideration of the above said decisions if 50% deduction is given towards development charges and another 20% deduction is given for having relied on the smaller extent of lands, totalling 70%, the value of the acquired lands can be fixed at Rs. 4.90 per sq. ft., rounding it off to Rs. 5/- per square feet.

30. In view of our aforesaid conclusion, the substantial questions of law Nos. 1 to

3 are answered in favour of the appellant and against the respondents.

31. As far as the 4th substantial question of law is concerned, though no argument was advanced by both sides, as it is a question of law, we are inclined to deal with the same. A reading of Section 51 of Tamil Nadu Court Fees and Suit Valuation Act, coupled with Section 3(1)(B) of Schedule II of the said Act would make it clear that this Question of Law has to be answered in the affirmative. Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act reads as follows:

51. Fee on Memorandum of Appeal against order relating to compensation. -- The fee payable under this Act on a memorandum of Appeal against an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellant.

32. Section 51 of the Act imposes a mandatory levy on claimant for payment of Court fee. In so far as land acquisition cases are concerned, the aggrieved party, whether the claimant or the Government, has to pay the ad valorem Court fee on difference in the compensation amount. In this case, the Schedule, which governs the Civil Miscellaneous Appeal relating to payment of Court fee, indicates that a fixed Courts of Rs. 10/- was paid by the claimants which is contrary to the provisions of Section 51 of the Act. Our conclusion is also fortified by a decision of the Honourable Supreme Court reported in C.G. Ghanshamdas and Others Vs. Collector of Madras, wherein in Para No. 19, it was held as follows:

19. It is relevant to note that in Section 51 of the Act which arises for consideration before us, the word "order" does not appear in isolation. The Section states that the fee payable under the Act on a memorandum of Appeal against an order relating to compensation in any Act for the time being in force for the acquisition of property for public purposes shall be computed on the difference between the amount awarded and the amount claimed by the appellants. The "order" referred to in Section 51 of the Act need not therefore be an order of a Civil Courts as defined in Section 2(14) of the CPC but should be an order relating to compensation under any Act for the time being in force for the acquisition of property for public purposes....

33. Therefore, the fourth substantial question of law is answered in favour of the appellant and against the respondents.

34. As we have fixed the value of the acquired lands higher than the one fixed by the Land Acquisition Officer, the claimants/respondents are directed to pay the difference in Court fee on the enhanced amount fixed by us, within a period of eight weeks from the date of receipt of a copy of this judgment.

35. To sum up in the result, both the Appeals are partly allowed as indicated below:

(a) S.A. No. 1003 of 2008 is partly allowed reducing the value of the acquired lands from Rs. 47/- per square feet to Rs. 11/- per square feet with 15%

solatium;

(b) S.A. No. 1004 of 2008 is partly allowed reducing the value of the lands fixed by the Courts below from Rs. 13/- per sq. ft., to Rs. 5/- per sq. ft., with 15% solatium;

(c) The claimants are entitled to an additional amount of 12% per annum, from the date of notification issued u/s 4(1) of the Land Acquisition Act, till the date of Award of the Referring Officer, or taking possession of the land, whichever is earlier;

(d) The claimants are entitled to 9% interest for the first year from the date of taking possession of the lands and 15% for every subsequent year, on the amount calculated as market value till the date of deposit;

(e) Any excess amount deposited, after satisfying the above award, is permitted to be withdrawn by the appellant in the Appeals;

(f) there shall be no order as to costs;

(g) Consequently, connected

In view of our decision in S.A. Nos. 1003 and 1004 of 2008, C.R.P. Nos. 1766 and 1974 of 2008 are disposed of. No costs. Consequently, all the Connected Miscellaneous Petitions are closed.