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In the Madras High Court

Case No : C.R P.NPD No. 1853 of 2005

The Special Tahsildar (LA), Adi Dravidar Welfare APPELLANT

Vs

Murugan RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Citation : (2013) 3 MadWN(Civil) 616

Hon'ble Judges : R. Mala, J.

Bench : Single Bench

Advocate : Venugopal, Special Government Pleader, for the Petitioner (CS); N. Manokaran, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

R. Mala, J.—This Civil Revision Petition has been preferred against the fan and decreetal Order passed by the Principal Sub-Judge, Gobichettipalayam, in LACMA No 17 of 2001 for enhancing the rate fixed by the Land Acquisition Officer from Rs. 15,000/- to Rs. 75,000/- per acre.

2. The Appellant as a Special Tahsildar has passed an Order dated 14.3.2001 in award No 9/2000-2001 for acquiring property situated in Survey No 114/4, 5 and 115 an extent of 0.81.0 Hectare in Periya Kallipatti Village which is belonging to this Respondent. The Respondent has no objection to acquisition, but he prayed for enhancing the amount fixed by the hand Acquisition Officer is very low. Hence, he prayed for enhancement and he preferred LACMA No. 17 of 2001 against the Award.

3. The learned Principal Sub-Judge, Gobichettipalayam, after considering the averment in the Appeal as well as the objection raised by the Respondent and considering the oral evidence of CW1 and RW1 and Ex. CI and Exs. R1 to 17, has fixed land value at Rs. 750/- per cent, i.e. Rs. 75,000/- per acre, against which the present Civil Revision has been filed.

4. Challenging that Order, the learned Counsel appearing for the Appellant would

submit that the Court below erred in not appreciating the fact that the Respondent herein ought to have pay the Court-fee under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act, 1955. But, the Court below in Paragraph 8 of the Judgment, held that there is no need to pay Court-fee under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act. To substantiate his argument, he relied upon the decision reported in The Land Acquisition Officer (Special Tahsildar, Adi Dravidar Welfare), Harur and another v. Radhakrishnan Chetty, 2010 (1) CTC 527; Harur and another v. Radhakrishnan Chetty and another, 2010 (2) CTC 1; The Special Tahsildar, Adi Dravidar Welfare Scheme, Thiruvallur v. M. Gopinathan, 2011 (5) CTC 129; Gurusankar and 3 others v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli, 2011 (5) CTC 129. Hence, he prayed for a direction to the Respondent to pay the Court-fees under Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act.

5. The learned Counsel appearing for the Appellant further submitted that the Award has been passed by the Court below accepting the document Ex. C1 relied upon by the Claimant/Respondent herein and he further submitted as per Ex. C1 value of Rs. 59,602/- per acre without, any basis and assigning any reason the Appellate Court has enhanced the value of the property from Rs. 150/- per cent to Rs. 750/- per cent, which is very excessive. Hence, he prayed for setting aside the same.

6. Resisting the same, the learned Counsel appearing for the Respondent would submit that the Court below ought to have awarded Solatium of 30% which has awarded only 15% which is against statute. He further submitted that the Court below ought to have awarded interest for Solatium. To substantiate the same, he relied upon the decision reported in Chhanga Singh and another v. Union of India and another, 2012 (3) MWN (Civil) 334 (SC) : 2012 (5) SCC 763. He further submitted that even though the Appellate Judge has not assigned any reason for fixing Rs. 750/- per cent, but has mentioned the reason where the property was situated. He further submitted that in the decision reported in A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy, 2010 (6) CTC 327 (SC) : 2010 (9) SCC 118, a new law has been laid down that while fixing the amount to the land owners at the instance of acquisition, the potential of the land to be taken into consideration i.e. the acquired land is surrounded by Schools, Panchayat Union Office, Shops and Residential Buildings. He further submitted that post Notification Sale Deed of adjacent land had been taken into consideration and to substantiate, he relied upon the decision reported in A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy, 2010 (6) CTC 327 (SC) : 2010 (9) SCC 118, and submits the Respondent in the Revision Petition is the land looser, they lost their livelihood that they are the small agriculturist and all these things has to be taken into consideration. He prayed for dismissal of the Revision and also for awarding 30% Solatium and Interest.

7. Considering the rival submissions made by both sides and on a perusal of the records, this Court has to decide-

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1. Whether the Appellate Court has correctly held that the Respondent is not liable to pay the Court-fee under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act ?

2 Whether, the Tribunal is correct in fixing the land value as Rs. 750/- per cent ?

Point No. 1

8. As per the Award the Court below has considered the Sale Deed dated 19.1.1999 which is item 3 in the data Sale Deed i.e. Sale Deed document No 915/99 dated 19.4.1999 in Survey No 94/5 total extent 0.77.0 cent = 1-90 acre sold for Rs. 28,500/- i.e. per acre Rs. 15,000/- But, the Respondent herein has filed Ex.C1 which is item 11 in this data land i.e. Document No. 1618/1999 dated 6.9.1999 in respect of Survey No.94/3 total extent 0.60.5 cent = 1.51 acre sold for Rs. 90,000/- i.e. 1 acre is Rs. 59,602/-. The Appellant herein has given a reasoning stating that the Survey No 94/3 has been away from the property intended to be acquired and also that land, which is having irrigation facilities i.e. Bore Well. So, the value has been fixed at Rs. 59,602/-. Hence, he rejected the document and fixed at Rs. 15,000/- per acre.

9. Against which only LACMA No. 17 of 2001 has been filed. At that time there is an objection raised by the Court for payment of Court-fee. The Additional Sub-Judge has held that the Claimant/Appellant is not liable to pay Court-fees under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act, after considering the various decisions. At this juncture, it is appropriate to consider the decision relied upon by the learned Counsel reported in The Land Acquisition Officer (Special Tahsildar, Adi Dravidar Welfare), Harur and another v. Radhakrishnan Chetty and another, 2010 (1) CTC 527, wherein it was held that while questioning the quantum of Compensation, the Court-fee ought to have been paid under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act. It is appropriate to incorporate Paragraphs 32 and 33 of the Judgment, which reads as under:

"32. 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 leads 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".

33. 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

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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. Ghanshemdas and others v. Collector of Madras, 1987 (1) MLJ 25, wherein 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 appeal 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 tune 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 Code of Civil Procedure but should be an Order relating to Compensation under any Act for the time being m force for the acquisition of property for public purposes..."

10. In the same proposition, there was a decision reported in The Special Tahsildar, Adi Dravidar Welfare Scheme, Thiruvallur v. M. Gopinathan, 2010 (2) CTC 1, in that, it was held that the Award passed under Section 341 of 1978 is to be equated to a decree and Court-fee is payable. It is appropriate to incorporate Paragraphs 19 and 20 of the judgment, which reads as under:

"19. In Gunasekar and others v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli, 2008 (2) CTC 595, referring to Ananthi Ammal''s case, learned Single Judge has taken the view that in an Appeal filed under Section 9 of the Act, Court-fee is payable in terms of Section 51 of Tamil Nadu Court Fees Act. The learned Single Judge has held as under:

"25. In Paragraph 14, the Supreme Court makes a clear distinction between a reference under Section 18 of the Land Acquisition Act, 1894 and the Award/ Order under Section 7 against which an Appeal is prescribed under Section 9 of the Act 31 of 1978. It further held that evidence produced by the person interested before the authority becomes part of the record of the Court in Appeal under Section 9 of die Act 31 of 1978, whereas under the Land Acquisition Act, the compensation has to be established in the Reference Court. The Supreme Court clearly holds that the amount determined under the Act 31 of 1978 is compensation and the determination under Section 7(2) is an award after ful-fledged enquiry. The Rules provide for the procedure for such determination. Rule 4 provides the method for determination of market value of die land Rule 5 provides die procedure for determination of the amount. The land owner has got a right to let in evidence and establish his claim and if aggrieved by the determination. Appeal against the Award granting Compensation for the land acquired. A clear distinction has been drawn between the provisions of the

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Central Act. Land Acquisition Act and Act 31 of 1978, the State Act. The Supreme Court clearly comes to the conclusion that what is filed under Section 9 is an Appeal against the Award. Therefore, the amount determined and payable by the Competent Authority is a Compensation and the Order passed is an Award/Order subject to Appeal at the instance of the aggrieved land owner. In view of the above stated legal position as held by the Apex Court, there can be no hesitation to come to the conclusion that an aggrieved land owner or person interested while filing an Appeal under Section 9 of the Act 31 of 1978, seeking enhancement of the Compensation amount being the difference between the amount determined and the amount claimed in Appeal, is therefore liable to pay Court-fee under Section 51 of the Court Fee Act."

Learned Single Judge has made a clear distinction between the Award passed under the Central Act and determination of the amount under Section 7 of Act 31/1978. Once there is determination of the amount by an Order or Award under Section 7(2) of Act 31 of 1978, while filing Appeal claiming enhanced amount, Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act gets attracted. We uphold the view taken by learned Single Judge in Gunasekar and other v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli, 2008 (2) CTC 595. We hold that for Appeals preferred under Section 9 of the Act 31/1978, Court-Fee is payable in terms of Section 51 of Tamil Nadu Court Fees Act.

20. With due respect, the view taken by Justice S. Nagamuthu, in Ramaiah and others, v. Special Tahsildar. Adi-dravidar Welfare, Cheranmahadevi, Ambasamidram Taluk, Tirunelveli District and others, 2008(1) CTC 316, is not a correct view. The amount determined under Section 7(2) being an amount determined after full fledged enquiry in the Appeal preferred under Section 9 of the Act 31 of 1978, Court Fee is payable. The award passed under Act 31 of 1078 is to be equated to a decree and Court fee is payable."

He also relied upon, the decision reported in Gurusankar and 3 others v. Special Tahsildar, Adi Dravidar Welfare, Tirunelveli, 2011 (5) CTC 129, in that it was held that the Appeal filed against the order passed by the Tamil Nadu Land Acquisition of Land for Harijan Welfare Schemes Act, 1978 would fall under Section 51 of Court Fees Act. In that it was held specifically mentioned the Judgment of Cheranmadevi, is overruled. It is appropriate to incorporate Paragraphs 36 to 39, which reads as under:

"36. Now, the only question that remains to be answered is as to the amount of Court-fee payable on the Memorandum of Appeal filed against an Order relating to Compensation. In this connection, Section 51 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955 is quoted herein below:

"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

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between the amount awarded and the amount claimed by the Appellant."

37. The aforesaid provision makes it clear that in case of an Appeal filed against an Order relating to Compensation for the acquisition of the property, the Court-fee payable shall be computed on the difference between the amount awarded or determined and the amount claimed by the Appellant.

38. A similar provision finds place in Section 8 of the Court Fees Act, 1870 (Central Act), which reads as under:

"8. Fee on Memorandum of Appeal against order relating to compensation - The amount of fee payable under this Act on a Memorandum of Appeal against an Older relating to Compensation under any Act, for the time being in force the acquisition of land for public purposes, shall be computed according to the difference between the amount awarded and the amount claimed by the Appellant."

This Section also relates to the provision with regard to calculation of Court-fee in an Appeal against an order awarding compensation under any Act for the time being in force in respect of acquisition of land for public purposes.

In view of our discussion hereinbefore, we conclude and hold that the law has not been correctly decided in Ramiah and others v. Special Tahsildar Adi Dravidar Welfare, Cheranmadevi, 2008 (1) CTC 316, and the same stands overruled. The reference is answered accordingly Consequently, all these Civil Revision Petitions and review are disposed of. Consequently, connected Miscellaneous Petitions are closed. No costs."

11. As per the above decisions, I am of the view that the award, dated 14.3.2001, rendered by the Respondent-Authority under this Act is equated to decree. So, Court-fee to be paid under Section 51 of the Tamil Nadu Court Fees and Suit Valuation Act. I am of the view that finding of the Court below is illegal. Hence, it is liable to be set aside and the Respondent is liable lo pay the Court-fees under Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act for the enhancement amount. Hence, Point No. 1 is answered against the Respondent and in favour of the Appellant.

Point No. II:

12. It is appropriate to consider the evidence of PW1, who is the Appellant before the Appellate Authority and the Respondent herein. In his evidence, he has stated that his land has been acquired on 20.3.2001. So. he prayed for fixation at Rs. 75,000/- per acre. But, however, the Court below has fixed only a sum of Rs. 15,000/- per acre. The Sale Deed-Ex.C1 his come into existence on 6.9.1999, which is one or two months before Section 4(1) Notification. The property acquired is situated near Water Tank, Bus Stand, Primary Health Centre and also existence of Harijan Colony. Hence, he prayed for enhancement of the amount from Rs. 15,000/- to Rs. 75,000/- per acre and also Interest and Solatium. In the cross-examination, a suggestion was posted that Ex.C1 has

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come into existence with the intention to defraud the Government after fully knowing well that the property is to be acquired by the Land Acquisition Authority RW1 is the Land Acquisition Officer though whom Exs.R1 to R17 were marked. In his cross, he fairly considered that houses are situated 250 meters away from the acquired land and there is a Mill also situated within one kilometre from the property acquired. He further submitted that the land mentioned in Ex.C1 is situated opposite to this acquired land. He admitted that the Water Tank and Primary Health Centre was situated nearer to this acquired land. So considering the evidence and documents, while considering the topography along with the evidence of RW1 it is clear that the property acquired is situated opposite to this data document marked under Ex.C1. The reason assigned by the Authority is unacceptable one. Because as per the decision reported in A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy, 2010(6) CTC 327 (SC) : 2010 (9) SCC 118, while fixing the Compensation for the land, the potential value of land to be taken into account. In that, it was held that it is duty of the both the Land Acquisition Officer as also of the Court to determine the actual Compensation payable for the land acquired by referring to evidence regarding fair and just Compensation near about the proximate date or on the date itself of the publication of the Notification under Section 4. So, it is well settled dictum that just compensation had to be paid to the land owners. As a result of the such acquisition, the market value of the adjacent land would generally, and in most cases, go up and therefore, such post Notification transaction may not be a sound criterion to determine and assess the value of the acquired land as per the dictum of Hasanali Khanbhai and Sons v. State of Gujarat, 1995 (5) SCC 422, wherein, in Paragraph 3, it was held that it is settled law by series of Judgments of this Court that the Court is not like an umpire but is required to determine the correct that it was stated that Court has to award just Compensation considering the relief of relevant situation. So. it is appropriate to incorporate Paragraphs 20 to 23 of the Judgment, which reads as hereunder:

"20. This building potentiality of acquired land must also be taken into consideration while determining Compensation. In P. Ram Reddy v. Hyderabad Urban Development Authority, this Court held as follows: (SCC p. 314, Para S)

"8. Budding potentiality of acquired land- Market Value of land acquired under the LA Act is the main component of the amount of compensation awardable for such land under Section 23(1) of the LA Act. The market value of such land must relate to the last of the dates of publication of Notification or giving of Public Notice of substance of such Motification according to Section 1(1) of the LA Act. Such market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4(1) of the LA Act, but ought to be its value with reference to the better use to which is reasonably capable of being put in the immediate or near fixture. Possibility of the acquired land put to certain use on the date envisaged under Section 4(1) of the LA Act, of becoming available for better use in the immediate

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or near future, is regarded as its potentiality. It is for this reason that the market value of the acquired land when has to be determined with reference to the date envisaged under Section 4(1) of the LA Act, the same has to be done not merely with reference to the use to which it was put on such date, but also on die possibility of it becoming available in the immediate or near future for better use i.e. on its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near-future it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the acquired land has the building potentiality, its value, like the value of any-other potentiality of the land should necessarily be taken into account for determining the market value of such land. Therefore, when a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under Section 4(1) of the LA Act, ought to necessarily include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then becomes its market value envisaged under Section 23(1) of the LA Act. If that be the market value of the acquired land with building potentiality, which acquired land could be regarded to have a building potentiality and how the market value of such acquired land with such building potentiality requires to be measured or determined are matters which remain for our consideration now."

21. This Court in Hasanali Khanbhai and Sons v. State of Gujarat also held that (SCC p.425, Para 3)

"3.....But it is settled law by series of Judgments of this Court that the Court is not like an umpire but is required to determine the correct market value after taking all the relevant circumstances, evinces active participation in adduction of evidence; calls to his aid his judicial experience; evaluate the relevant facts from the evidence on record applying correct principles of law which would be just and proper for the land under acquisition. It is its constitutional, statutory and social duty. The Court should eschew aside feats of imagination but occupy the armchair of a prudent, willing but not too anxious, purchaser and always ask the question as to what are the prevailing conditions and whether a willing purchaser would as a prudent man in the normal market conditions offer to purchase the acquired land at the rates mentioned in the Sale Deeds. After due evaluation taking all relevant and germane facts into consideration, the Court must answer as to what would be the just and fair market value."

22. Therefore, it is clear from the aforementioned decisions of this Court that the potentiality of the acquired land, insofar as it relates to the use to which it is reasonably capable of being put in the immediate or near future, must be given due consideration.

23. The present acquired land has all the potentiality to be used as building sites, even in the immediate future, as it is located at a place in and around which building activity has already started. The evidence on record also clearly indicates that the acquired land is abutting die main road. The acquired land is

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also surrounded by Schools, Panchayat Union Office, Shops and residential buildings on all three sides. The High Court also found, as a matter of fact, that the area where the acquired land is situated is fit for construction of houses. On an overall consideration and appreciation of the records, we feel that the deduction due to the small size of the exemplar land can easily be set off with the corresponding increase in price of the acquired land when compared with the land in Ext.A3 from the point of view of potential value.

13. Considering the above decisions along the facts of the present case, the present acquired land has all the potentiality to be used as building site, even in the immediate future, as it is located at a place in and around such houses, Bus Stand, Primary Health Centre. Water Tank and also existence of Harijan Colony. As per the evidence of RW1, the Mill is situated one kilometre away from the present acquired land Further more, the acquired land is abutting the main road which leads to Puliampatti to Panaiyampalli main road. It was specifically mentioned that it was situated at main road leading to Puliampatti to Panaiyampalli and nearer to Water Tank and further, it was stated that the property is fit for residential purpose. So, considering the above situation along with the facts of this case, even though the price 1 acre has been mentioned at Rs. 59,602/-, 1.51 acre has been sold for Rs. 90.000/-. The Sale Deed date is 9.6.1999, Section 4(1) Notification has been issued on 3.1.2000, one year two months after the Ex.C1 So, the Appellate Authority has fixed at Rs. 750/- per cent is fair Considering the dictum reported in A. Natesam Pillai v. Special Tahsildar, Land Acquisition, Tiruchy, 2010 (6) CTC 327 (SC) : 2010 (9) SCC 118, potential value of the property, I am of the view that the amount fixed by the Appellate Authority at Rs. 750/- per cent instead of Rs. 150/- per cent is reasonable. Hence, it does not warrant any interference.

14. As per Section 7 of the Act, 31 of 1978 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme, the Solatium is only 15%. So, the Solatium awarded by the Tribunal is correct and it does not warrant any interference. The Revision Petitioners are directed to make payment of interest on the Solatium as per law laid down in Gurpreet Singh v. Union of India, 2007 (3) CTC 170 (SC) : 2006 (8) SCC 457, in Paragraph 7. It is appropriate to incorporate Paragraph 7 of the Judgment:

"7. In view of the above, the submissions of the Appellants are worth acceptance. The Appeal is accordingly allowed. The Respondents are directed to make the payment of interest on the solatium as per the law laid down in Gurpreet Singh within a period of three months from today."

Hence, the Respondent is entitled to get interest at the rate of 6% p.a. for the solatium also.

15. In fine:

(i) The Civil Revision Petition is partly allowed without costs.

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(ii) The Compensation awarded by the Appellate Authority i.e. Rs. 750/- per cent is hereby confirmed.

(iii) The Respondent is entitled to interest at the rate of 6% p.a for the Solatium.

(iv) The Respondent/Claimant is directed to pay Court-fee for the Award amount as per Section 51 of the Tamil Nadu Court Fee and Suit Valuation Act.

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