

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2002

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THE HONOURABLE MR.JUSTICE V.KANAGARAJ

APPEAL SUIT No.1013 of 1994 and APPEAL SUIT No.1042 of 1994
and APPEAL SUIT NOS. 365 of 1995

AND

CROSS OBJECTION Nos.34 of 1999,119 & 133 of 2001

The Special Tahsildar(LA.)
Chettinaickenpatti Scheme,
Dindigul ... Appellant/Referring Officer in
all the appeal suits

-vs-

M.Suruttaian ... Respondent/claimant in ASNo.
1013 of 1994
Ponnusamy ... Respondent/claimant in ASNo.
1042 of 1994
K.Maharajan ... Respondent/claimant in ASNo.
365 of 1995/
Cross Objectors in all the
appeal suits respectively

These appeal suits have been filed against the judgment and
decree of the learned Additional Subordinate Judge of Dindigul in LAOPNos.2
3,42 and 26 of 1988 dated 17.11.1992 as stated therein.

!For appellant ... Mrs.Rani Selvaraj-GA

^For respondents... Mr.M.V.Krishnan

:COMMON JUDGMENT

All the above appeal suits are directed against the judgment
and decree of the learned Additional Subordinate Judge of Dindigul delivered
in L.A.O.P. Nos.23,42 and 26 of 1988 all dated 17.11.1992.

2.These appeal suits have been preferred by the Land
Acquisition Officer, representing the Government as against the enhancement of
the land value fixed by the Reference Court thereby praying to set aside the
judgment and decree delivered by the Court of Reference.

3.Likewise, the claimants have also preferred cross objections
claiming a sum of Rs.4.50p. Per sq.foot to be fixed as the value of the land
acquired from them.

4.Tracing the history of the case, it comes to be known that the properties comprised in S.No.456/1 to an extent of 1.06 acres in LAOP. No.23/88(A.S.No.1013 of 1994),an extent of 1.84 acres comprised in S.No.453;0.37 cents in S.No.454; 4.66 acres in S.No.455 and 2.68 acres in S.No.459 in L.A.O.P.No.42/88(A.S.No.1042 of 1994) and an extent of 1.06 acres in S.No.456/1 have been acquired by the Government for the purpose of the Housing Board to construct Collector's Office and Government Staff Quarters in Chettinaickenpatti, Dindigul under the Neighbourhood Scheme; that the Notification under Section 4(1) of the Land Acquisition Act,1894 has been published on 6.9.1985; that the Land Acquisition Officer having considered the value of the land and also having a comparative study of the lands in question with the date lands and other lands which were sold out recently in and around the same area had passed an award in Award No.2/87 dated 12.11.1987 thereby fixing the value of the rainfed dry lands at the rate of Rs.55/- per cent and Rs.100/- per cent for the well irrigated dry lands.

5.On a reference made under Section 18 of the Land Acquisition Act, the Court of Reference held a full enquiry, in which, on the part of the claimants in LAOP. No.42/88 (A.S.No.1042 of 1994), Ponnusamy, the claimant has been examined as PW1 and one Sheik Ali has also been examined as PW2 and Exs.P1 to P5 have been marked as documents on his side and on the otherside, Vanniarajan has been examined as DW1 and Exs.B1 to B4 have been marked on the side of the respondent and Exs.C1 to C3 have also been marked as court documents. No one has been examined nor any documents has been marked in LAOP.Nos.26/88 (A.S.No.365 of 1995) and 23/88 (A.S.No.1013 of 1994).

6.In consideration of the oral and documentary evidence, the Court of Reference having framed proper points for determination of the market value and having had its own discussion on the facts and circumstances of the case as pleaded by parties, in the context of the oral and documentary evidence made available, had ultimately arrived at the conclusion to fix the value of the lands at Rs.1,000/- per cent in all the above cases.

7.Aggrieved, the Government have preferred the above appeal suits on certain grounds as brought forth in the grounds of memorandum of appeals. Moreover, the claimants have also filed cross objections claiming a sum of Rs.4.50 per sq.ft for the lands acquired from them.

8.In the above circumstances, the only point that arises for determination is whether the orders passed by the lower court are liable to be set aside and whether the claim of the respondents/cross objectors could be allowed?

9.During arguments, the learned Government Advocate besides submitting that notification under Section 4(1) of the Act in this case had been published on 6.9.1985 and the award has been made in Award No.2 of 1987 dated 12.11.1987. Offering the corresponding L.A.O.P.Nos for all the appeal suits respectively as L.A.O.P.Nos.23,42 and 26 of 108 8, the learned Government Advocate would apprise the court that the total extent acquired is 62.40 acres and the purpose of acquisition is for the construction of the Collectorate at Chettinaickenpatti village, Dindigul Taluk that the land acquisition officer classified these lands into two categories; the first one

as rainfed dry lands, fixing the market value as Rs.55/- per cent and the other category as irrigated dry lands would fix the market value of these lands at Rs.100/- per cent. But the Court of Reference treating these lands under one and the same category would award a compensation of Rs.1,000/- per cent.

10.Learned Government Advocate would further apprise the court that the Court of Reference to arrive at the conclusion as relied upon Ex.A.5, whereunder only 10 cents of lands have been sold at Rs.10,000/- and thereby fixing the market value of these lands acquired also at Rs.1,000/- per cent. Learned Government Advocate would also inform to the court that Ex.B1 is Topo sketch, Exs.B2,B3 and B4 are all sale deeds, but these documents have not been properly appreciated by the Court of Reference while prior to arriving at conclusion to fix the value of the lands acquired at Rs.1,000/- per cent. The Government Advocate would on such arguments pray to allow the appeal setting aside the award and decree passed by the Court of Reference.

11.On the other hand, the learned counsel appearing on behalf of the respondents/cross objectors citing Ex.C1 would point out that under this sale deed an extent of 70 cents of land in S.No.777/1 has been sold as early as on 31.3.1982 at Rs.3,04,920/-, that is at Rs.4,371/- per cent; that under Ex.C-2 dated 15.7.1985 a sum of Rs.2,000/- per sq.ft., had been sold for a sum of Rs.24,000/- which would come around a sum of Rs.4,35,600/- per acre; that under Ex.C-3 dated 1.3.1986, 2 400 sq.ft of land has been sold at Rs.4,35,600/- per acre; that under Ex.C4, judgment in A.S.No.127 of 1987, the Division Bench has awarded Rs.2/- per sq.ft wherein the notification under Section 4(1) of the Act was dated 12.1.1977; that Ex.C5 has been relied on by the court, which is dated 9.4.1985 wherein S.No.456/2, land has been sold at Rs.1,000/- per cent; that the lands concerned with Exs.C1 to C4 are very close to the lands acquired in the cases in hand, whereas the land in concerned with Ex.C-5 is far off.

12.The learned counsel would further submit that according to the above documents, the lands have been sold even prior to the date of notification under Section 4(1) of the Act, in this regard more than Rs.4,00,000/- per acre; that the documents relied on by the Government in Exs.B2 and B3 are minors' properties, it should not have been relied upon by the court at all, since those sale deeds are not valid in law. In reply, the learned Government Advocate would only say that the Government acquired cultivable lands, whereas the lower court relied on house sites.

13. In consideration of the facts and circumstances pleaded by parties, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is, no doubt the violation at the market rates as fixed for the lands acquired by the Government for the purpose of construction of the Collectorate for many persons including the petitioners was very meagre and comparatively lower than what the acquired properties were really worth in the market. At any rate, it could not even be imagined during the year 1955 to purchase any land at the rate of Rs.55/- or Rs.100/- per cent within the periphery of a commercially important town like Dindigul. In fact the very purpose of acquisition of these lands being for the formation of the collectorate, needless to mention

that the lands should have been located at strategic place in and around the Dindigul town and therefore,, the potential value of these lands in future as decided by the Apex Court is very high. Moreover, the fixation of the market value of the lands as it is argued on the part of the learned counsel for respondents/objectors based on Exs.B2 and B3 wherein the parties are minors, since being unreliable and invalid documents on the face of them, the rates adopted by the Land Acquisition Officer cannot be relied upon and therefore, either the reasons assigned on the part of the Land Acquisition Officer or the market value fixed by him is unacceptable and therefore, the same is rejected.

14.Coming to the fixation of the market value by the Court of Reference fixing the value of the property at Rs.1,000/- per acre, the lower court has adopted Ex.A5 whereunder 10 cents of lands have been sold at Rs.10,000/- and therefore, the court has fixed the value of land at Rs.1,000/- per cent. Besides being the small bit having been sold, in this case when larger extents are acquired, relying on the only document leaving the other documents, since the court has fixed the market value with the method of fixation of the market rate also does not seem to be quite correct.

15. On the contrary, the documents under Exs.C1 to C4, larger extents have been purchased well before the time of notification under Section 4(1) of the Act for fabulous crises, which are nearer to the lands acquired in the cases in hand and therefore, an average of the same could have been arrived at as the land cost to be the market value that was prevalent at the time of the notification under Section 4(1) of the Act. On the part of the respondents/objectors, they would put up a strong case not only through Exs.C1 to C4, but also from the very decision of this court in A.S.No.127 of 1987, the Division Bench seems to have awarded a sum of Rs.2/-per sq.ft., which would almost come around a sum of Rs.88,000/- per acre and therefore, on an overall consideration of all these factors put together, the court could have arrived at reasonable fixation of the market value in further consideration of the fact that the lands have been acquired not in sq.ft., but in acreage and hence, strongly, the Division Bench judgment need not be adopted. However, altogether the said judgment cannot also be rejected, though not this court is inclined to adopt the value fixed therein as it is.

16.The Court of Reference has fixed the statutory benefit, such as solatium at 30% on the enhanced compensation amount and "interest" which is to be read as "additional amount" at 12% per annum from the date of notification under Section 4(1) of the Act, till the date of taking possession of land, which need no modification. The lower court has also granted interest at 9% per annum to be paid in favour of the claimants which needs interference by this court. Therefore, it is hereby ordered that the claimants are entitled to get interest at 9% per annum for the first year,

from the date of taking possession of the land and 15% per annum thereafter for every subsequent year, on the amount calculated as the market value of the land, till the date of realisation.

17.The Apex Court, in its recent judgment delivered in Sundar Vs. Union of India reported in VI (2001) SLT 641 has held that the claimants

from whom the lands have been acquired by the Government for public purpose against which compensation has been granted, with interest and solatium, are also entitled for interest on the solatium so granted. Their Lordships have held as follows:

"In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium."

In view of the law laid down by the Apex Court, the claimants are also entitled to the grant of interest on solatium.

18.To sum up wholly all the above discussions held, the evidence appreciated in the context of the facts and circumstances of the case, this court is of the firm decision that the value of the lands acquired from the respondents/cross objectors could be fixed at Rs.25,000 /- per acre, which would sufficiently meet the ends of justice and the same is fixed accordingly.

19.In result,

(i)there is absolutely no justification on the part of the appellant in all the above appeal suits who have prayed for setting aside the award and decree dated 17.11.1992 passed by the Additional Subordinate Judge, Dindigul in L.A.O.P.Nos.23,42 and 26 of 1988 on ground that it is higher amount awarded and therefore, Appeal Suit Nos.1013 and 1042 of 1994 and Appeal Suit No.365 of 1995 fail and they are dismissed as without merit;

(ii)eventhough as afore mentioned that this court has not set aside the award and decree dated 17.11.1992 passed by the Additional Subordinate Judge, Dindigul in L.A.O.P.Nos.23,42 and 26 of 1988, still for the purpose of the above suit, they are set aside;

(iii)the cross objection Nos.34 of 1999, 119 and 133 of 2001 are allowed to the extent of enhancing the award and decree made by the Court of Reference from Rs.1,000/- per cent to Rs.2,500/- per cent; thus modifying the decree to this extent only; and

(iv)however, in the circumstances of the case there shall be no order as to costs.

V.KANAGARAJ,J.

30-4-2002

Index: Yes

Website:Yes

tsv.

To

The Additional Subordinate Judge,
Dindigul.

A.S.Nos.1013&1042 of 1994
and 365 of 1995 &
Cross Objection Nos.

34/1999, 119 & 133 of 2001