

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 29.08.2008

CORAM:

THE HONOURABLE MR. JUSTICE G.RAJASURIA

A.S.No.327 of 1999

The Special Tahsildar (LA)
MMRD Scheme, Saidapet
Madras-15

... Appellant/Referring Officer

Vs.

M.Eswari Ammal

... Respondent/Claimant

Appeal against the judgment and decree of the learned Subordinate Judge, Tiruvallur and passed in LAOP No.101 of 1984 dated 19.08.1992.

For appellant : Mr.V.Ravi
Special Government Pleader (AS)

For respondent : Mr.S.T.Gopinath for
Mr.N.R.Anantha Ramakrishnan

JUDGMENT

This appeal is focussed as against the judgment and decree dated 19.08.1992 passed in LAOP No.101 of 1984 on the file of the learned Subordinate Judge, Tiruvallur. For convenience sake, the parties are referred to here under according to their litigative status before the trial Court.

2. Heard the learned counsel appearing for the parties.

3. A 'resume' of facts, absolutely necessary and germane for the disposal of this appeal would run thus:

The Government vide the Notification dated 19.11.1975 made under Section 4 (1) of the Land Acquisition Act, intended to acquire the land measuring an extent of 0.07-1/2 acres in Survey No.449/3A part in Ponneri Taluk, Chengalpattu District for the purpose of construction of a bridge across the Araniar River, Ponneri of Madras-Pulicat Road. After complying with the procedures, the Land

Acquisition Officer acquired the land and passed an award dated 12.03.1979 assessing the compensation in a sum of Rs.167/- per cent. Being aggrieved by such awarding of the compensation, the LAO got the matter referred to the Sub Court under Section 18 of the Land Acquisition Act.

4. During enquiry, before the trial Court, the claimant Easwari Ammal examined herself as PW1 and exhibits A1 and A2 were marked. On the side of the respondent, one P.Krishnamoorthy was examined as RW1 and no exhibit was marked. Ultimately, the Sub Court enhanced the compensation from Rs.167/- per cent to Rs.1,000/- per cent.

5. Being dissatisfied with such awarding of enhancement, the Land Acquisition Officer has preferred this appeal on various grounds, the pith and marrow of them would run thus:

"The abnormal increase in assessing the value of the land by the Sub Court is, without any basis."

6. The point for consideration is as to whether the Reference Court was justified in enhancing the compensation up to Rs.1,000/- per cent and that too without deducting any amount towards development charges.

7. While preparing the decree, it appears the trial Court had committed an error in specifying as though per cent of land was assessed in a sum of Rs.1,600/-, which is not in commensurate with the judgment and it must be Rs.1,000/- per cent.

8. The learned Special Government Pleader (AS), placing reliance on the grounds of appeal, would develop his argument that in this case without any objectivity the Reference Court simply enhanced the compensation in a sum of Rs.1,000/- per cent and that too, without making any deduction towards development charges.

9. The learned counsel for the land owner would submit that the Reference Court by placing reliance on Ex.A2, correctly and appropriately assessed the compensation in a sum of Rs.1,000/-, as per cent of land was sold for such a sum as per Ex.A2.

9. At this juncture, it has to be seen whether the Sub Court was justified in placing reliance on Ex.A2 ignoring Ex.A1. Ex.A1, the sale deed dated 10.02.1975 is relating to a land in Survey No.451/3, which was sold at Rs.666.60 per cent. It has to be noted that Ex.A1 refers to an agricultural land and not a plot. I would observe here that the catena of decisions of the Hon'ble Apex Court would posit the point that the potentiality of the land being converted as plots should be taken into account, while assessing the

compensation. At this juncture, my mind is redolent with the following Apex Court's decisions:

- (1) AIR (2007) Supreme Court 740 [Deputy Director, Land Acquisition vs. Malla Atchinaidu]
- (2) (2003) 4 SCC 481 [Ravinder Narain and another vs. Union of India]
- (3) (2007) 9 SCC 447 [Nelson Fernandes and others vs. Special Land Acquisition Officer, South Goa and others]
- (4) (2008) 1 SCC 554 [Lucknow Development Authority vs. Krishna Gopal Lahoti and others]
- (5) (1996) 9 SCC 640 [Basavva (smt) and others vs. Special Land Acquisition Officer and others]

10. It is therefore clear that the Sub Court was justified in taking into account the potentiality of the land acquired for which, Ex.A2 has been chosen. In fact, as per Ex.A2 sale deed, 15 cents of land was sold at the rate of Rs.1,000/- per cent. Hence, the Reference Court cannot be found fault with for having chosen Ex.A2.

11. The core question arises as to whether the Sub Court was justified in not deducting any amount towards development charges. The aforesaid decisions cited supra would unambiguously and explicitly make the point pellucidly clear that necessarily, there should be some deductions towards development charges, whenever the potentiality of the land being converted as plot area is involved. In this case, even though the land acquired is an agricultural land, it is not known as to why the Reference Court ignoring the mandates of the Hon'ble Apex Court simply awarded the held the entire value of Rs.1,000/- per cent as compensation. No doubt, deduction could vary from case to case. Normally 1/3 rd has to be deducted towards development charges whenever an agricultural land has to be carved out into plots. But, so far this case is concerned, the land is acquired for constructing a bridge across the river. Hence, I am of the considered opinion that deducting 20% towards development charges would meet the ends of justice.

Value per cent of land	-	Rs.1,000/-
Less:		
20% deduction towards development charges	-	Rs. 200/-

Net value	-	Rs. 800/-
		=====

12. The learned counsel for the land owner made an extempore submission, based on the pure question of law that in this case the solatium awarded was only 15%, whereas as per the Land Acquisition (Amendment) Act 1984, the land owners are entitled to 30% solatium with interest thereon, as per law.

13. At this juncture, the following decisions could be cited in support of his claim for the enhancing solatium and interest.

- (i) 1989(2) SCC 754 - The Union of India vs. Raghubir Singh.
- (ii) 1994(5) SCC 593 - K.S.Paripoornam vs. State of Kerala.

14. The learned counsel for the appellant would submit that since no cross-appeal was filed by the land owner, the additional solatium and the relevant interest portion should not be awarded.

15. I am of the considered opinion that in view of the Honourable Apex Court's judgments there need not be any appeal relating to such claim. Even the Land Acquisition Officer himself is expected to suo motu calculate and deposit the same before the lower Court.

16. Accordingly, I direct the appellant to calculate the compensation on the basis of enhanced solatium of 30% as well as the interest thereon and after deducting the amount already deposited, shall deposit the amount before the Sub Court, within a period of three months from the date of receipt of copy of this order. Accordingly the appeal is partly allowed confirming the judgment and decree of the lower Court, however by modifying the solatium and interest thereon as above. No costs.

Vj2

सत्यमेव जयते

Sd/

Asst.Registrar

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Sub Asst.Registrar

To

1. The Subordinate Judge, Tiruvallur.

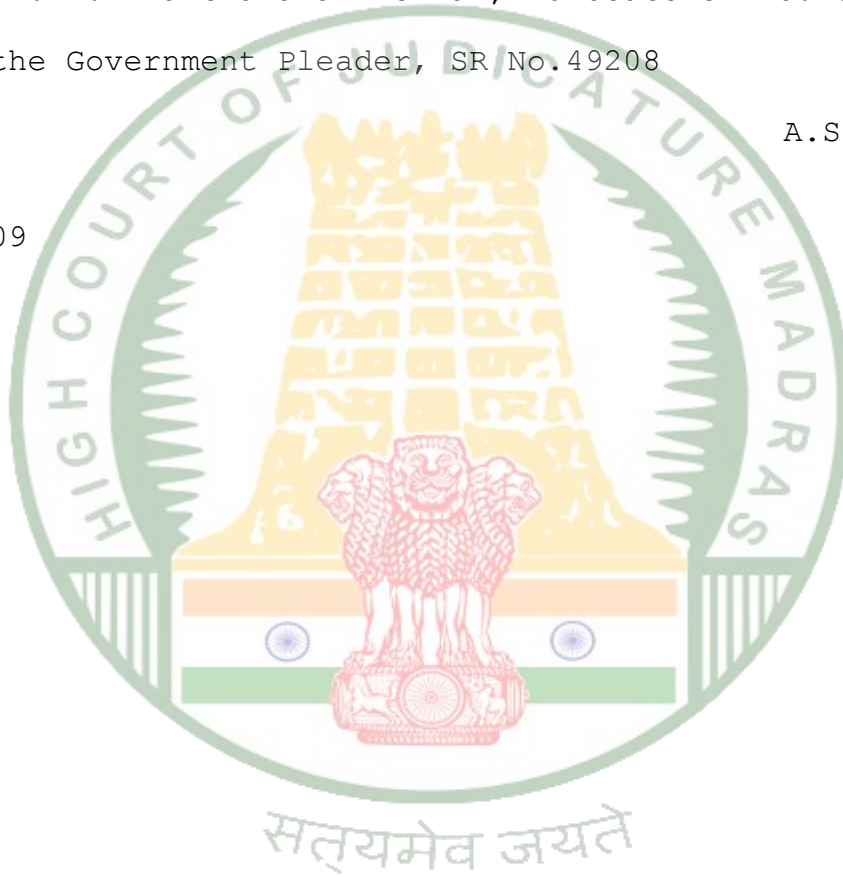
2. The Section Officer, VR Section,
High Court, Chennai 104.

+ 1 cc to Mr. R. Anantharamakrishnan, Advocate SR No.48928

+ 1 cc to the Government Pleader, SR No.49208

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GV (CO)
SR/12.3.2009



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