

MUNUSAMY

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v.

THE LAND ACQUISITION OFFICER

(Civil Appeal No. 398 of 2010)

SEPTEMBER 29, 2021

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[M. R. SHAH AND A. S. BOPANNA, JJ.]

Land Acquisition Act, 1894: Comparable sale – Land admeasuring 1.80 acres situated in village Anniyalam, Denkanikottai Taluk, District Dharamapuri, Tamil Nadu was proposed for acquisition – s.4 Notification was published on 27.09.1990/11.01.1991 – s.6 declaration was published on 12.12.1991 – Collector assessed compensation of said land at Rs.16000/- per acre – Reference court assessed market value at Rs. 2183.33 per cent relying upon the document/sale deed dated 11.01.1990 executed by the land owner himself by which the land suitable for construction of the houses and situated very close to the village Anniyalam was sold at Rs. 2977 per cent – High Court partly allowed the appeal and assessed compensation at Rs. 232.45 per cent – Aggrieved, original owner/claimant filed instant appeal – Whether the land owners are entitled to the enhanced amount of compensation relying upon the document dated 11.01.1990 executed by the land owner himself by which the land admeasuring 5 ½ cent was sold for Rs.2977 per cent – Held: It is true that sale deed dated 11.01.1990 cannot be discarded solely on the ground that it was executed by the land owner in favour of his relative as nothing is on record that at the time when sale deed dated 11.01.1990 was executed the parties were aware that the land in question was going to be acquired in the nearby future – In absence of any comparable sale instances one has to consider sale deed dated 11.01.1990 – Even otherwise, sale deed dated 11.01.1990 can be said to be comparable instance having regard to the proximity from time angle as well as proximity from situation angle – However, at the same time one cannot lose sight of the fact that the sale deed dated 11.01.1990 was for the small parcel of the land i.e. 5 ½ cent only – In given case even a sale deed of comparable sales of small areas also can be considered by giving suitable deductions while fixing

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- A *market value – Therefore, considering the fact that sale deed dated 11.01.1990 was executed for sale consideration of Rs.16,375/- for 5 ½ cent which comes to Rs.2977 per cent and after deducting 60% (in the peculiar facts and circumstances of the case) the market value can be determined at Rs.1191 per cent – Appellant-original claimant-land owner shall be entitled compensation for the land acquired at Rs.1191 per cent with all other statutory benefits.*

Partly allowing the appeal, the Court

- HELD:** In absence of any comparable sale instances one has to consider the sale deed dated 11.01.1990 Ex.C1. Even C otherwise Ex.C1 the sale deed dated 11.01.1990 can be said to be comparable instance having regard to the proximity from time angle as well as proximity from situation angle. Even the land in question acquired for the housing project. However, at the same time one cannot lose sight of the fact that the sale deed dated 11.01.1990 Ex.C1 was for the small parcel of the land i.e. 5 ½ D cent only. In given case even a sale deed of comparable sales of small areas also can be considered by giving suitable deductions while fixing market value. Therefore, having regard to the peculiar features, facts and circumstances of the case and interest of justice, date of compensation can be fixed considering the sale E deed dated 11.01.1990 Ex.C1 by giving suitable deductions i.e. 60 per cent deduction. Therefore, considering the fact that the F sale deed dated 11.01.1990 Ex.C1 was executed for a sale consideration of Rs.16,375/- for 5 ½ cent which will come to Rs.2977 per cent and after deducting 60 per cent (in the peculiar facts and circumstances of the case) the market value can be determined/assessed at Rs.1191 per cent. [Para 7.2][5-H; 6-A-D]

CIVIL APPELLATE JURISDICTION: Civil Appeal No.398 of 2010.

G From the Judgment and Order dated 30.07.2008 of the High Court of Judicature at Madras in A.S. No.1222 of 2001.

Kumar Dushyant Singh, T. Meikandan, Ms. Pooja Singh, Ms. Subasri Jaganathan, K. K. Mohan, Advs. for the Appellant.

H Amit Anand Tiwari, AAG, D. Kumaran, Sheikh Fakhruddin Kalia, Advs. for the Respondent.

The Judgment of the Court was delivered by

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M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.07.2008 passed by the High Court of Judicature at Madras in AS No.1222 of 2001 by which the High Court has partly allowed the said appeal and has enhanced the amount of compensation to Rs.232.45 per cent for the land acquired, original land owner – claimant has preferred the present appeal.

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1.1 The land admeasuring 0.73.0 hectare (1.80 acres) of land situated in village Anniyalam, Denkanikottai Taluk, District Dharamapuri, Tamil Nadu came to be acquired for the public purpose. Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as ‘the Act’) was published on 27.09.1990/11.01.1991. Declaration under Section 6 of the Act was published on 12.12.1991. The Collector, Land Acquisition vide his award dated 16.03.1993 assessed the compensation of the land acquired at Rs.39,506/- per hectare i.e. Rs.16000/- per acre. At the instance of the land owner a reference was made under Section 18 of the Act to the District Court - Reference Court. The Learned Sub Judge, Hosur by its judgment and order dated 10.11.1997 assessed the market value at Rs.2,18,333/- per acre.

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2. Feeling aggrieved and dissatisfied with the judgment and order passed by the Learned Reference Court assessing the compensation of the land acquired at Rs.2,18,333/- per acre – the Land Acquisition Officer preferred the appeal before the High Court and by impugned judgment and order the High Court has partly allowed the said appeal and assessed/determined the compensation at Rs.232.45 per cent.

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3. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court assessing/determining the compensation for the land acquired at Rs.232.45 per cent, the original owner/claimant has preferred the present appeal.

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4. Learned Counsel appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave error in reducing the amount of compensation awarded by the Learned Reference Court.

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4.1 It is submitted that as such the Learned Reference Court has rightly awarded the enhanced compensation for the land acquired at

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- A Rs.2183.33 per cent relying upon document/sale deed dated 11.01.1990 executed by the land owner himself by which the land suitable for construction of the houses and situated very close to the Village Anniyalam came to be sold at Rs.2977 per cent.
- 4.2 It is further submitted that as such the High Court has wrongly discarded the document/sale deed Ex.C1 which otherwise was reflecting the correct market value and it was a genuine and bona fide transaction. It is further submitted by Learned Counsel appearing for the appellant that as such no cogent reasons have been given by the High Court while reducing the compensation to Rs.232.45 per cent.
- C 5. Learned Counsel appearing on behalf of the respondent – State has vehemently submitted that as such in the facts and circumstances of the case the High Court has rightly discarded the sale deed Ex.C1 executed by the land owner himself very near to the land acquired and the same was executed in favour of his own relative.
- D 5.1 It is submitted that the Land Acquisition Officer as well as the High Court has rightly relied upon the sale instance produced as Ex.R2 – Item No.9 which as such was for the land admeasuring 1 acre in Survey No.359 which was also executed in the month of January, 1990.
- 5.2 It is submitted that even otherwise the document/sale deed produced as Ex.C1 dated 11.01.1990 upon which the reliance has been placed by the land owner cannot be relied upon, firstly on the ground that the same was for a small parcel of land i.e. 5 ½ cent only. It is submitted that against which the document relied upon by the Land Acquisition Officer and the High Court at Ex.R2 Item No.9 is the best sale deed available to assess/determine the market value of the land acquired.
- G 6. We have heard learned counsels for the respective parties at length. At the outset, it is required to be noted that in the present case the Notification under Section 4 of the Act was issued on 27.09.1990/ 11.01.1991 totaling an extent of 0.73 hectares i.e. 1.80 acre. The Land Acquisition Officer determined and awarded the compensation at Rs.160 per cent relying upon and considering the sale instances – sale deed dated 11.01.1990 wherein extent of 1 acre out of survey no.359 was sold for Rs.16,000/- i.e. Rs.160 per cent. However, the Learned Reference Court enhanced the compensation to Rs.2183.33 per cent relying upon and considering the sale instance Ex.C1 dated 11.01.1990

executed by the land owners himself by which land to the extent of 5 ½ cent was sold at 16,375/- i.e. Rs.2977 per cent and after deducting 1/3rd. The Learned Reference Court awarded the compensation at Rs.2183.33 per cent. However, in the appeal preferred by the State the High Court has reduced the amount of compensation at Rs.232.45 per cent.

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7. Having heard the Learned Counsel for the respective parties the question which is posed for consideration before this Court is whether the land owners are entitled to the enhanced amount of compensation relying upon the document at Ex.C1 dated 11.01.1990 executed by the land owner himself by which the land admeasuring 5 ½ cent was sold for Rs.2977 per cent or the amount as determined by the High Court i.e. Rs.232.45 per cent?

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7.1 At the outset, it is required to be noted that having gone through the judgment and order passed by the Reference Court as well as the impugned judgment and order passed by the High Court, we are not at all satisfied with the manner in which both, the Reference Court as well as the High Court have dealt with and decided the matters. However, instead of remanding the matter to the Reference Court/High Court for fresh consideration, we have considered the appeals on merits on the basis of material/evidence on record.

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7.2 Now so far as the reliance placed on the document Ex.C1 sale deed dated 11.01.1990 – executed by the land owner himself in favour of his relative by which 5 ½ cent was sold at Rs.2977 per cent is concerned the same cannot be said to be a comparable sale instance for the reason that it was with respect to the small parcel of the land i.e. 5 ½ cent only. It is true that Ex.C1 cannot be discarded solely on the ground that it was executed by the land owner in favour of his relative as nothing is on record that at the time when the sale deed dated 11.01.1990 Ex.C1 was executed the parties were aware that the land in question is going to be acquired in the nearby future. As observed hereinabove in the present case Section 4 Notification issued and published for the first time on 27.09.1990. It is also required to be noted that in the present case both, the Reference Court as well as the High Court relied upon Ex.C1 sale deed dated 11.01.1990, relied upon by the appellant. However, there are no justification for the High Court to determine/arrive at the market value at Rs.232.45 per cent. As observed hereinabove as such in absence of any comparable sale instances one has to consider the sale deed dated 11.01.1990 Ex.C1. Even otherwise Ex.C1 the sale deed

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- A dated 11.01.1990 can be said to be comparable instance having regard to the proximity from time angle as well as proximity from situation angle. It is also required to be noted that even the land in question acquired for the housing project. However, at the same time one cannot lose sight of the fact that the sale deed dated 11.01.1990 Ex.C1 was for the small parcel of the land i.e. 5 ½ cent only. In given case even a sale deed of comparable sales of small areas also can be considered by giving suitable deductions while fixing market value. Therefore, having regard to the peculiar features, facts and circumstances of the case and interest of justice, we are of the opinion that date of compensation can be fixed considering the sale deed dated 11.01.1990 Ex.C1 by giving suitable
- B deductions i.e. 60 per cent deduction. Therefore, considering the fact that the sale deed dated 11.01.1990Ex.C1 was executed for a sale consideration of Rs.16,375/- for 5 ½ cent which will come to Rs.2977 per cent and after deducting 60 per cent (in the peculiar facts and circumstances of the case) the market value can be determined/assessed at Rs.1191 per cent.
- C D In view of the above and for the reasons stated above, the present appeal is partly allowed, it is held that the appellant - original claimant - land owner shall be entitled compensation for the land acquired at Rs.1191 per cent with all other statutory benefits which may be available under the provisions of Land Acquisition Act. Impugned Judgment and Order dated 30.07.2008 in AS No.1222 of 2001 passed by the High Court is modified to the aforesaid extent. Hence, present appeal is partly allowed to the aforesaid extent.

However, no order as to costs.

Devika Gujral

Appeal partly allowed.