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Court : Chennai

Decided On : Apr-22-1987

Reported in : (1987)2MLJ252

Appellant : Periaswami and ors.

Respondent : The Government of Tamil Nadu Represented by the Collector of Salem

Judgement :

S.A. Kader, J.

1. The appeal is against the judgment and decree of the learned Additional Subordinate Judge of Salem in O.S. No. 556 of 1976. The unsuccessful plaintiffs are appellants.

2. The suit was originally instituted by the 1st plaintiff and his three sons who are plaintiffs 2 to 4. Pending suit, the 1st plaintiff died whereupon his daughter and widow have been subsequently impleaded as plaintiffs 5 and 6. The brief facts of the case which is a suit for compensation for land acquisition are these: The property more particularly described in the plaint bearing pymash Number 111/3, Komarapalayam Agraharam village in Trichengode Taluk with an extent measuring 3.09 acres belonged to the 1st plaintiff by purchase under three

registered deeds of sale dated 29.4.1950, 30.7.1950 and 11.10.1950 in favour of the 1st plaintiff. Ever since, the 1st plaintiff had been in possession and enjoyment of, the same. Patta book has been issued in favour of the 1st plaintiff by the Government and kist was being paid by the 1st plaintiff. The 1st plaintiff was also taking water for suit land from the Cauvery river by virtue of the permission given by the Collector. In or about 1972, the Government acquired certain properties in this village for the purpose of forming a by-pass road. Before issuing the Notification for acquisition, the Government took possession of the lands with the consent of the land-owner. An extent of 1.50 acres in the said pymash No. 111/3 out of the total extent of 3.09 acres was taken possession of by the Highways Department with permission of the 1st Plaintiff. The landowners were assured that notifications will be duly issued under the Land Acquisition Act and compensation paid. The promised Notification was published on 24.10.1973. But the said Notification did not contain this land of 1.50 acres in pymash No. 111/3 belonging to the plaintiffs. The plaintiffs understood that this extent of 1.50 acres in pymash No. 111/3 has been left out of acquisition on the ground that this property came under the category of M.C. field. The plaintiffs, in law and equity, are entitled to be paid the value of 1.50 acres of their land taken possession of by the Government. In the acquisition proceedings in respect of other lands in the village for the formation of the by-pass road, the Government has awarded compensation at the rate of Rs. 11,400 per acre. The suit property is also a Nanja land irrigated by Cauvery water and the plaintiffs are entitled to be paid compensation at the same rate of Rs. 11,400 per acre, though in fact the suit property will be worth more than Rs. 20,000 per acre. For the extent of 1.50 acres, the plaintiffs are entitled to compensation of Rs. 17,000. The plaintiffs are also entitled to claim interest on the said amount at 12% p.a. from the date of taking possession. However, they restrict their claim for interest at 6% p.a. from the date of publication of the Section 4(1) Notification on 24.10.1973. In view of the attitude of the Government in denying the plaintiffs the compensation, they have been constrained to file the suit for recovery of compensation of Rs. 20,206. 50P, for the land taken over by the Government, after issuing the staturoy notice under Section 80 of the Civil Procedure Code. The Plaintiffs have claimed Rs. 17000 with interest thereon at 6% p.a. from 24.10.1973 to the date of plaint, in all Rs. 20,206.50 P.

3. The Government raised the following contentions : The suit land is situated in Komarapalayam Agraharam village which has been held by this Court and the Supreme Court to be not an inam village, and it has not therefore been taken over by the Government. The tenure of this village has not been decided so far. The suit land which bears old Pymash No. 111/3 is classified as 'Poramboke' in the Revenue Records namely, Fair Land Register of the village. Since the tenure of the lands in this village has not been decided so far, the title for the land under dispute has to be decided only by Settlement Department after Survey and Settlement is over. It is admitted that the first plaintiff applied to the Collector for permission to take Cauvery water and permission was granted But it was subsequently revoked as the 1st plaintiff violated the conditions of the permission. It is not denied that the 1st plaintiff violated the conditions of the permission. It is not denied that the 1st plaintiff's land has been taken over by the Government for laying the by-pass road. But it is disputed that the extent taken over is 1.50 acres. According to the defendant, the extent of land took possession of by the Government for forming the bypass road was only 1.35 acre as in Pymash No. 111/3. As this land is classified as 'Poramboke' in the village Fair Land Register, it was not notified under Section 4(1) of the Land Acquisition Act and compensation was not paid. According to the defendant, the plaintiffs have to establish and prove their title before the Court and then only they are entitled to compensation and that too only for an extent of 1.35 acres, and that in any event, the compensation claimed at Rs. 11,400 per acre is excessive. The quantum of compensation claimed was disputed. It is denied that the plaintiffs are entitled to a sum of Rs. 20,206.50 p. as claimed in the plaint.

4. On the above pleadings, the following issues were framed for trial:

1. Whether the plaintiff has title to the suit property?
2. Whether the suit property is a proamboke land as contended by defendants?
3. What is the area in the suit survey number acquired by Government for the road?
4. What is the amount of compensation to which the plaintiff is entitled to?

5. To what reliefs, are the plaintiffs entitled?

5. Issue No. 3 related to the extent of land acquired. According to the plaintiffs, the extent acquired was 1.50 acres in Pymash No. 111/3. But the Government contended that the area taken possession of was only 1.35 acres. During the course of the trial in the Court below, learned Counsel for the plaintiffs restricted their claim to 1.35 acres. Consequently, the learned Subordinate Judge on Issue No. 3 found that the area acquired was 1.35 acres. The learned Subordinate Judge elaborately discussed the title of the plaintiffs to get compensation, but did not give any finding thereon. He went on to decide the matter in a tangent, holding that the plaintiffs ought to have asked for a declaration that they are entitled to the compensation amount, and without such a declaration, the suit for compensation was not maintainable. He consequently dismissed the suit with costs. Aggrieved thereby, the plaintiffs have come in appeal.

6. The points which arise for consideration are:

(1) Whether the suit is not maintainable without a prayer for declaration?

(2) Whether the plaintiffs are entitled to the suit property?

(3) To what amount of compensation, if any, are the plaintiffs entitled?

7. Point No. 1 : This is a suit filed by the plaintiffs for compensation for their land which has been taken over by the Government for forming a by-pass road on the promise that it will be duly acquired under the Land Acquisition Act. In order to avoid delay, the Government with the consent of the land owners, have taken possession of several fields in Komarapalayam Agraharam village for forming the by-pass road. The first plaintiff was one of the persons who had consented to the Government taking over the suit land belonging to him. Subsequently the Government published Section 4(1) Notification under Ex. A20 on 24.10.1973. But in the said notification, the suit land was not included. The first plaintiff sent a letter on 17.12.1973 to the District Revenue Officer to which a reply has been received under Ex. A21 dated 15.5.1974. In the said letter, the Government have rejected the claim of the 1st plaintiff and have stated that his claim can be recognised only

after the survey and settlement of the suit village. The plaintiffs were therefore, constrained to file the suit for compensation after issuing the statutory notice under Section 80 of the Civil Procedure Code.

8. The defence to this action is that the plaintiffs must establish their title to the land taken over by the Government before claiming compensation. It is significant to note that the defendant has not raised any plea that the suit is not maintainable. The learned Subordinate Judge has, therefore erred in taking a special pleading and holding that the suit is bad for want of a prayer for declaration. The suit land having been acquired and taken possession of by the Government, there is no question of seeking any declaration. The plaintiffs' land has been taken possession of by the Government and the plaintiffs have come forward with a claim for compensation. Here again, there is no question of seeking any declaration that the plaintiffs are entitled to claim compensation. The very prayer for compensation necessary includes a finding as to whether the plaintiffs are entitled to the suit land. Only if the plaintiffs prove that the suit land belonged to them, they will be entitled to compensation. The finding of the learned Subordinate Judge that the plaintiffs must have separately asked for a declaration of their right to claim compensation is clearly untenable. This point is found against the respondent.

9. Point No. 2 : The suit property forms part of pymash No. 113/3 of Komarapalayam Agraharam village. It seems that the lands in this village have been purchased by some Brahmins from the Maharaja of Mysore, and they have been enjoying the lands by paying kist ever since. When an attempt was made by the Government to take over this village as an Estate under the provision of the Madras Estates Abolition and Conversion into Ryotwari Act 26 of 1948, the owners of these lands have resisted the claim and a Bench of this Court has held that this village is not an estate within the meaning of the said Act. This decision has subsequently been confirmed by the Supreme Court. The result is, this village has not been taken over by the Government, nor have survey and settlement been introduced in this village. The lands are held under the old Pymash numbers, and kist has been paid for the pymash numbers. Exs. A1 to A3 dated 29.4.1950, 30.7.1950 and 11.10.1950 are the registered deeds of sale in favour of the first

plaintiff by and under which he has purchased Pymash No. 111/3 of an extent of 3.09 acres. Even prior to that, the 1st plaintiff had been in possession of these lands as a usufructuary mortgagee under Ex. A-8 dated 5.5.1948. After his purchase, the patta has been issued to him under Ex. A-4 and kist has been collected from the plaintiffs ever since. Exs. A-9 to A-19 are the kist receipts for Faslis 1377 to 1385. It is, therefore, abundantly clear that the 1st plaintiff had purchased the suit land and been in possession and enjoyment thereof ever since till a portion of the survey number had been taken possession of by the Government for the formation of the by-pass road.

10. The contention of the defendant Government is that this land has been described in the village record, namely, the Fair Land Register as 'pramboke' and, and hence the plaintiffs must establish their title. This Fair Land Register has not yet seen the light of the day. There is absolutely no explanation why this Register has not been produced before the Court if as a matter of fact, this land has been described therein as 'poramboke'. There is also no acceptable evidence whatsoever as to how this land came to be treated as poramboke when the lands in this village have been sold by the Maharaja of Mysore to the Brahmins of this village. More than that, there, is the clear evidence of the Karnam (D.W. 1) who has given a clear go by to the defendant's case. It is his clear testimony that the suit land is not classified as 'poromboke' in the revenue records. That explains why the said revenue record is not produced into the Court. According to the Karnam, survey was launched in this village in 1959 for the Mettur Ayicut area and the Government classified the non-ayacut area as M.C. Field No. 569. This covers the area where the Cauvery river flows. It has been admitted by D.W. 1 that all the remaining lands are cultivable lands and the suit land is not at all a 'Poromboke' land. In the light of this admission made by the Karnam as D.W. 1, it is futile on the part of the Government to contend that this land is a 'poromboke' land or that it has been described as 'poromboke' land in the Fair Land Register. It may also be pointed out that the 1st plaintiff has applied to the Government for permission to take water directly from the Cauvery and Ex. A22 is the order passed by the Collector as early as 31.12.1963. In the said order, Pymash No. 111/3 has been described as 'Patta land'. The documents produced into the Court, and the testimony of D.W. 1 establish beyond doubt that the suit land is the private

property of the plaintiffs and that, therefore, they are entitled to compensation for the land taken over by the Government for laying by pass road.

11. Point No. 3 : This relates to the question of quantum of compensation. Admittedly, the near by lands which have already been acquired by the Government for the purpose of laying the bridge on the by-pass road, and compensation has been paid to the owners of these lands at the rate of Rs. 11,500 per acre. D.W. 1 who has been examined on the side of the Government has admitted that at the time of the laying of the by-pass road, the suit land was worth Rs. 15,000 per acre. Hence, the claim of the plaintiffs for compensation at the rate of Rs. 11,400 per acre is not liable to be challenged. The plaintiffs have now restricted their claim only to an extent of 1.35 acres. The compensation therefore will come to Rs. 15,390. The plaintiffs are entitled to recover the amount with interest thereon at 6% per annum from the date of taking of possession. But, however, here again they have restricted their claim only from the date of publication of Section 4(1) Notification on 24.10.1973.

12. In the result, the appeal is allowed. The judgment and decree of the Court below are set aside, and there will be a decree for Rs. 15,390 with interest thereon at 6% per annum from 24.10.1973 till payment, with proportionate costs throughout.