

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 10/12/2014

DATED: 18/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.13071 of 2014

1.V.Jayaraj
2.V.Thulasimani
3.Ramasamy Gounder

... Petitioners

Vs.

1. The District Collector,
Erode District,
Perundurai Road, Erode - 638 011.

2. The Special Tahsildar,
Land Acquisition, in charge
Revenue Divisional Officer,
Brough Road, Erode - 638 001.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issnance of a Writ of Mandamus to direct the respondents to refer the proceedings in award No.5/1994, dated 03.08.1994 to competent civil Sub Court at Erode for reference under Section 18 of the Land Acquisition Act, 1894 regarding petitioner's lands situated in S.No.475/5 extent 1.49.0 Hec. and S.No.475/6, extent 0.01.0 Hec. situated at Erode 'C' Village, Erode Taluk, Erode District concerned.

For Petitioners
For Respondents

: Mr.V.Kadhirvelu
: Mr.M.S.Ramesh
Addl. Govt. Pleader

O R D E R

The petitioners submit that an extent of 1.49.0 hectares in R.S.No.475/5 and 0.01.0 hectares in R.S.No.475/6, situated at Erode District absolutely belonged to them. They are in possession and enjoyment of the said lands. The respondents had neither taken possession of the land nor made any development in the said land. The respondents further submit that the acquisition proceedings

have been initiated, notice under Section 4(1) was issued on 03.07.1991 and award is said to have been passed on 03.08.1994 in Award No.5 of 1994. The petitioners further submit that 12(2) notice and award copy has not been served on them. They are not aware of the award proceedings as well as the passing of the Award.

2. The petitioners further submit that aggrieved at the above said acquisition proceedings, they filed a writ petition in W.P.No.13306 of 1994 before this Court to quash the impugned proceedings. This Court was pleased to dismiss the said writ petition on 19.11.1999. They also gave a petition dated 10.10.1991 to the Government Authority to release their land from the said acquisition proceedings, as the nearby lands in Survey No.475/2, 3, 4, 477/6, 477/7, 479/5, are released from the acquisition proceedings. The Government of Tamil Nadu promised them that their land also will be released from the acquisition proceedings, but the Government failed to keep up the said promise.

3. The petitioners further submit that the above said acquisition proceedings and writ petition in W.P.No.13306 of 1994 was looked into by the third petitioner herein viz., Ramasamy Gounder alone. The said Ramasamy Gounder became sick and he was not able to follow the case. The petitioners were under the impression that their lands would be released from the acquisition proceedings. But, till date the said lands are not released from the acquisition proceedings. Only on 04.04.2014, when, petitioners contacted P.Shanmugam who was owning land in S.Nos.476/2 and 476/4, they came to know that he was awarded Rs.20/- per sq.ft. in LAOP No.28/2003 before the Additional District Court and Fast Track Court No.I, Erode, hence, they were unable to file the said fact in the earlier writ petition. They were not negligent or careless in seeking higher compensation. They are small farmers owning small extent of land. Hence, the petitioners have filed the above writ petition.

4. The second respondent has filed a counter statement and resisted the above writ petition. The second respondent submits that an extent of 1.49.0 hectares in S.F.No.475/5 and 0.01.0 hectares in S.F.No.475/6 of the petitioners land at Erode C.Village (Kasipalayam) in Erode Taluk has been acquired for Tamil Nadu Housing Board for the purpose of constructions of houses for the public. The second respondent submits that notification under Section 4(1) of the Land Acquisition Act was approved in G.O.Ms.No.869 Housing and Urban Development Department dated 27.05.1991 and published at Page 2, 3 and 4 of Part II Section 2 of the Tamil Nadu Government Gazette No.25A, dated 03.07.1991 followed by the publication in two Tamil Dailies "Thina Malar" and "Dhinathutu" on 18.07.1991 and in locality was published by beat of Tom Tom on 05.08.1991. The notices under Section 5(A) were issued to all landowners and persons interested and the 5(A) enquiry was conducted on 10.10.1991. The second respondent further submits that draft declaration under Section 6 of Land Acquisition Act was

approved by the Government in their G.O.Ms.No.49, Housing and Urban Development Department. The same was published in Tamil Nadu Government Gazette No.478, dated 04.08.1992 and also published in two Tamil dailies "Makkal Kural" and "Dhinathutu" on 05.08.1992 and also published in the locality on 05.08.1992 by beat of tom tom. The notice under Section 7 of the Land Acquisition Act was approved by the Government on 11.03.1993 and published in th Tamil Nadu Government Gazette dated 31.03.1993. The award enquiry was conducted on 26.07.1994. The petitioners have not attended the award enquiry even after receiving the award enquiry notice. The statements of the landowners who were present for the enquiry were recorded and the award proceedings No.5/94, dated 03.08.1994 was pronounced on 03.08.1994.

5. The second respondent further submits that the notice under Section 12(2) has been issued to the petitioners and their signatures have been obtained on 17.08.1994. But, they have not filed any written petition for seeking enhanced compensation amount within the time stipulated. The second respondent further submits that the petitioners filed W.P.No.13306 of 1994 before this Court requesting to exclude their acquired land from the acquisition. This Court had dismissed the writ petition in its order dated 19.11.1999. The second respondent further submits that at the time of award enquiry, the petitioners have not attended the enquiry and filed W.P.No.13306 of 1994 before this Court requesting exclusion of their land from the acquisition and got dispossession stay. After the lapse of nineteen years, the petitioners have filed the writ petition in W.P.No.13071 of 2014 requesting to direct the Land Acquisition Officer to refer the matter under Section 18 of the Land Acquisition Act to civil Court for seeking enhanced compensation amount. Land Acquisition Act with regard to Reference to Court and Procedure thereon is extracted hereunder:-

"18. Reference to Court: (1) Any persons interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment to the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made:

(a) If the person making it was present or represented before the Collector at the time when he made his award, within six months from the date of the Collector's award.

(b) In other cases within six weeks of the receipt of the notice from the Collector under Section 12, Sub-Section (2), or within six months from the date of the Collector award whichever period shall first expire."

But the Landowners have not filed any written petitions within the time requesting to refer the matter under Section 18 of the Land Acquisition Act to civil Court for seeking enhanced compensation amount as per the Land Acquisition Act.

6. The second respondent further submits that the Tamil Nadu Housing Board, the requisitioning body have filed Review Petition before the Hon'ble Supreme Court of India on 09.05.2014 against the SLP Order in C.C.Nos.5335 and 5336 of 2013, dated 05.07.2013 and is pending in Hon'ble Supreme Court of India. As such, the petitioners are not entitled to seek reference under Section 18 of the Land Acquisition Act, on the Hon'ble Supreme Court order dated 05.07.2013. The second respondent further submits that the landowners have not filed any written application within time for seeking enhanced compensation under Section 18 of the Land Acquisition Act. Hence, the petitioners have not been deprived of their rights to file enhanced compensation amount under Section 18 of the Land Acquisition Act. The second respondent further submits that the notice under Section 12(2) has been issued to the petitioners and their signatures were obtained on 17.08.1994. But, they have not filed any written petition to refer the matter to civil Court under Section 18 of the Land Acquisition Act within time. The second respondent further submits that the petitioners have not attended the award enquiry and not filed any written petition within time to refer the matter to civil Court under Section 18 of the Land Acquisition Act. Hence, the second respondent entreats the Court to dismiss the above writ petition.

7. The highly competent counsel Mr.V.Kadhirvelu appearing for the petitioners submits that the property to an extent of 1.49.0 hectares, comprised in S.No.475/5 and to an extent of 0.01.0 hectares comprised in S.No.475/6, with well, situated at Erode C.Village (Kasipalayam) in Erode Taluk, belonged to the petitioners. They are in possession and enjoying the said property. The respondents had initiated Land Acquisition Proceedings in the year 1991 and the same was completed in the year 1994. The petitioner had challenged the Land Acquisition Proceedings and the same was dismissed. The petitioners made representation to the respondents to release the subject matter of the lands. After receipt of the said representation, the respondents had not passed any orders. The petitioners belong to the small farmers category. Further, the respondents had passed an Award in Award No.5 of 1994, dated 03.08.1994 and the same was not referred to the competent civil Court. Hence, the highly competent counsel entreats the Court to refer the Award Proceedings to the Sub Court at Erode for reference under Section 18 of the Land Acquisition Act, 1894. The petitioner has also made representation on 04.04.2014 and sought adequate compensation to the petitioners lands, wherein 35 coconut trees are standing and sugarcane, paddy crops are being cultivated. The land is being irrigated through use of 5 HP motor pump-set with well. As such, the petitioners are entitled to fair compensation, since valuable properties had been acquired.

8. The highly competent Additional Government Pleader Mr.M.S.Ramesh appearing for the respondents submits that the subject lands has been acquired for Neighbourhood Housing Scheme for public purpose. The notification had been issued in the year 1991 and subsequently, 5A enquiry was conducted and 6 declaration was published. After observing all legal formalities under the Old Act, the land had been acquired and award had been passed on 03.08.1994. Subsequently, the respondents had issued notice under Section 12(2) of the Act. The same was duly served on the petitioners, but they did not file any representation for enhanced compensation. Therefore, the petitioner has challenged the acquisition proceedings before this Court in the year 1994. The same was dismissed. Subsequently, the above writ petition has been filed after a lapse of 19 years.

9. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, it is seen that if the Award No.5 of 1994, dated 03.08.1994 passed by the respondents, pertaining to the subject lands, had not been referred to the concerned Sub-Court, the respondents are directed to refer the said award to the concerned Sub Court. Accordingly, the above writ petition is disposed of. There is no order as to costs.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1.The District Collector,
Erode District,
Perundurai Road, Erode - 638 011.

2.The Special Tahsildar,
Land Acquisition, in charge
Revenue Divisional Officer,
Brough Road, Erode - 638 001.

+1cc to V.Kadhirvelu, Advocate (sr.51766)
+1cc to The Government Pleader (sr.51395)

Pre Delivery Order made in
W.P.No.13071 of 2014

GR(co)

08/10/2015

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