

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.1.2016

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

W.P.No.10600 of 2014 and
M.P.No.1 of 2014

1. Kothandam
2. V.Jesuraj
3. Pazhani
4. Murugesu Chettiar
5. T.Nataraj
6. T.Arumugam
7. Syed Mohammed
8. Mariambi Shahjehan
9. A.Jenasenan
10.J.Abishek
11.Shanthi
12.M.Saleem Sulthan ... Petitioners

vs.

The District Collector
Collectorate Office,
Kancheepuram District,
Kancheepuram ... Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondent to refer the matter for the determination of the proper compensation by the civil court in respect of the lands belonging to the petitioners covered in Award No.10 of 2011 dated 30.8.2011.

For Petitioner .. Mr.R.Muthukumaraswamy,
Sr. counsel for
Mr.E.Manoharan
For Respondent .. Mr.S.Gomathinayagam,
Addl. Advocate General, assisted
by Mr.P.Sanjay Gandhi, AGP

ORDER

All the petitioners are land owners, whose lands have been acquired by the Highways Department by passing Government Orders

in G.O.Ms.No.79 Highways (HW.2) Department dated 27.3.2007 and G.O.(Ms).No.78, Highways & Minor Ports (HW2)Department, dated 12.05.2009. Thereafter, an award has been passed on 30.8.2011. It appears that notices determining the amount under Section 19 (3) and 19(6) of the Highways Act were issued on 09.09.2011 and the same were received in next few days by the petitioners. The 9th and 10th petitioners have given their objections as required under Section 20 of the said Highways Act on 02.11.2011 within a period of 60 days mentioned therein. Admittedly, the other petitioners made their applications seeking reference after the expiry of the said 60 days. Thereafter, the present writ petition has been filed seeking direction to respondents to refer the matter for proper compensation to the Civil Court.

2. The learned Senior counsel appearing for the petitioners submitted that what is applicable to 9th and 10th petitioners will be made applicable for other petitioners as well. An award has not been served, but only the notice determining the compensation has been served.

3. The learned Additional Advocate General based upon the counter affidavit and the typed set of papers filed, submitted that all the petitioners have received the amount fixed in the award. Therefore, it is not open to them to contend in contrary. Excepting, 9th and 10th petitioners, admittedly, all other petitioners have made their applications belatedly. Thereafter, no interference is required.

4. The facts are not in dispute. Admittedly, except 9th and 10th petitioners, all the other petitioners made applications belatedly. Therefore, they cannot seek as a matter of right that there will have to be a reference. The period of 60 days mentioned under Section 20 of the Highways Act, is mandatory. Similarly, the submissions made that until and unless full award is furnished, the date for seeking reference would not start, cannot be accepted. Admittedly, the notices dated 09.09.2011 have been served on all the petitioners. The said notices clearly indicate the compensation award fixed for each of the petitioners. Thus, there is sufficient compliance. What is required to be seen is to the point of view of making reference on the quantum fixed. Thus, once the petitioners know the award amount for the lands acquired from them, then from that day onwards, the limitation would start running.

5. The contention raised by the learned senior Additional Advocate General that the 9th and 10 petitioners are also not entitled for the relief since they have received the award amount, is also rejected. Receiving the award amount is one thing and seeking a reference is another thing. Merely because,

the award amount is received, that will not take away the right of the claimant from seeking enhanced compensation which the statute provides so. After all, it is the money which is due to be claimed. Therefore, there is no question of acquiescence or estoppel that would arise contrary to the right guaranteed under the statute.

6. Accordingly, the writ petition stands disposed of by directing the respondents to refer the case of the 9th and 10th petitioners under Section 20 of the Highways Act to the jurisdictional Civil Court for the purpose of determining the just compensation within a period of six weeks from the date of receipt of a copy of this order. Insofar as the other petitioners are concerned, the relief sought for in this writ petition cannot be granted. However, liberty is given to them to work out their remedy under Section 28(A) of the Land Acquisition Act 1894, in view of the applicability of part III of the said enactment to the present Act. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The District Collector
Collectorate Office,
Kancheepuram District,
Kancheepuram.

+1cc to Mr.E.Manoharan, Advocate, S.R.No.5413
+1cc to the Government Pleader, S.R.No.5498

W.P.No.10600 of 2014

rv(CO)
srg(02/02/2016)