

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2016

Coram :

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.24668 OF 2014

1 V.Ramalingam
2 R.Padmalosani
3 N.Jothi [PETITIONERS]

Vs

1 Government of Puducherry
Rep by its Chief Secretary
Puducherry 605 001.
2 The Collector (Revenue)
Puducherry 605 013
3 The Deputy Collector (Revenue-South) cum LA Officer
Special Economic Zone Project
Villianur, Puducherry State - 605 110.
... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus to direct the respondents herein to refer the demand made by the petitioners in the representation dt 18.2.2013 for enhancement of compensation under section 18 of the Land Acquisition Act, seeking reference, with respect to the petitioners properties acquired under the Award No.2/2008 dt 25.1.2008 for appropriate adjudication to a competent Court of law.

For Petitioners : Mr.R.Venkatachalapathy
for Mr.S.Kadarkarai

For Respondents : Mr.A.Tamilvanan,
Government Advocate(Puducherry)

O R D E R

Heard Mr.R.Venkatachalapathy, learned counsel appearing for the petitioner and Mr.A.Tamilvanan, learned Government Advocate (Puducherry) appearing for the respondents and with their consent, the Writ Petition is taken up for final disposal.

2.The petitioners seek for issuance of a writ of mandamus to direct the respondents to refer the demand made by them in the representation dated 18.02.2013, for enhancement of compensation under section 18 of the Land Acquisition Act, seeking reference, with respect to their properties acquired under the Award No.2/2008 dated 25.01.2008.

3.The facts regarding the acquisition proceedings are not in dispute. The respondents invoked the power under section 17 of the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act'), dispensed with the enquiry to be conducted under section 5A of the Act and issued the declaration under section 6 of the Act. Since Section 17(3A) of the Act provides that before taking possession of any land under sub-section (1) or (2) of Section 17, the Collector shall, without prejudice to the provisions of sub section (3) of Section 17, tender payment of 80% of the compensation for such land as estimated by him to the persons interested entitled thereto and (b) pay it to them, unless prevented by some one or more of the contingencies mentioned in section 31, sub-section (2).

4.The present case is not covered under clause (b) of Section 17(3A) of the Act and clause (a) of Section 17(3A) of the Act, would stand attracted and therefore it was incumbent for the Collector to pay 80% of the compensation prior to taking possession. This was followed by the Collector and the petitioners were paid 80% of compensation on 04.07.2006. On receipt of the said amount, the petitioners immediately submitted objections on 18.07.2006, stating that the compensation awarded to them is inadequate and they wanted enhanced compensation. Therefore, at the earliest point of time, the petitioners have expressed their dissatisfaction with regard to the compensation which was arrived at.

5.For more than 2 1/2 years, there appears to have been no progress in the matter and the petitioners were issued notices under section 12(2) of the Act on 05.02.2008. The petitioners specific case is that the copy of the Award was not communicated when the notice under section 12(2) of the Act were issued, which is mandatory.

6.The respondents in their counter affidavit also do not deny the said fact specifically, but in a reply given under the

Right to Information Act, they have candidly admitted that the copy of the Award has not been communicated to any person. Thus, it is clear that notice under section 12(2) of the Act was not accompanied with the copy of the Award dated 25.01.2008 and the information furnished under Right to Information Act on 11.01.2013, establishes the same. Therefore, there is an inherent defect in the procedure that is required to be followed.

7.It appears that one petitioner participated in the enquiry conducted under section 12(2) of the Act and it is the case of the petitioners that they expressed their dissatisfaction regarding the compensation fixed. However, the matter was not referred to the Civil Court for deciding the claim for enhanced compensation and therefore, the petitioners submitted representations on 18.12.2013 and since there was no positive response, the petitioners have approached this Court.

8.Counter affidavit has been filed by the second respondent, from which it is seen that they have raised two objections. Firstly, while admitting the fact that the petitioners have given objection letters on 18.07.2006, the respondents would state that the said letter was given before the prescribed date. Therefore, it appears that the respondents are not agreeable to take note of the said communication. The second objection is that in terms of section 18(b) of the Act, the petitioners having participated in the enquiry on receipt of notice under section 12(2) of the Act, failed to make the claim for reference for enhanced compensation within six weeks.

9.So far as the first objection is concerned, in order to invoke the urgency provision under section 17 of the Act, there is a specific provision, which provides for payment of 80% of compensation. Thus, in terms of section 17(3-A)(a) of the Act, the Collector without prejudice to the provisions under sub-section (3) of Section 17 of the Act, tender payment of 80% of the compensation for such land as estimated by him to the persons interested entitled thereto.

10.Admittedly, the second respondent has complied with the said requirement and 80% of compensation has been paid to the petitioners. Therefore, the amount which have been paid to the petitioners are towards compensation and those payments would be adjusted/reckoned as against the final payment payable after the Award has been passed. Therefore, to state that the objections given by the petitioners on 18.07.2006 before the prescribed date, cannot be taken into consideration, is an absolute perverse interpretation and the provisions of the Land Acquisition Act are intended to protect the land losers and to ensure that they are given fair and reasonable compensation.

11. Therefore, in my view, the objections which the petitioners have given after receiving 80% of compensation would enure to their benefit, till the Award is passed and an enquiry is conducted based on the Award by issuing notice under section 12(2) of the Act. The second respondent has admitted the receipt of the objection dated 18.07.2006. Therefore, a person who objects regarding the payment of 80% compensation as inadequate, obviously would not be satisfied by receiving the remaining 20%, calculated at the same rate. The interpretation given by the respondents is illogical and does not aid the purposive interpretation of the Statute.

12. The second contention raised by the respondents is that the request for reference ought to have been made within a period of six months from the date on which the petitioners participated in the enquiry under section 12(b) of the Act.

13. The specific case of the petitioner is that the Award made by the Collector was not enclosed along with the notice issued under section 12(2) of the Act. The said averment has not been denied. In fact in the counter affidavit it has been admitted that for certain people soft copies of the Award have been furnished on payment of cost.

14. As noticed above, the reply given under the Right to Information Act clearly admits that the copies of the Award have not been furnished to the petitioners. Be that as it may, the respondent does not specifically state that all the three petitioners have participated in the Award enquiry. The specific case of the petitioners is that all of them have not participated in the enquiry. However, the said aspect of the matter has also not been brought forth in the counter affidavit in a proper manner. Therefore, when there is a defect in the procedure adopted by the second respondent, the second respondent cannot be permitted to take advantage of his own wrong.

15. In the case of STATE OF TAMIL NADU v. T. DHARMAMBAL alias DHARMABAI [2015 (2) CTC 476], a somewhat similar question arose for consideration and the Hon'ble Division Bench held that the period of limitation prescribed under sections 18 and 18(2) of the Act, would be six months from the date of knowledge of the Award, as held by the Hon'ble Supreme Court in the case of PREMJI NATHU v. STATE OF GUJARAT [2012(5) SCC 250] and the State which was the appellant in the said case were not able to prove that the land losers had knowledge of the Award. Therefore, the direction issued by the learned single Judge, directing the petitioners claim to be referred to the Civil Court was confirmed.

16.The facts mentioned in the preceding paragraphs will clearly show that at the first instance the petitioners have expressed their dissatisfaction to the quantum fixed. The lands having been acquired by invoking the provisions under section 17 of the Act, the urgency clause, the objections which were given by the petitioners on 18.07.2006 should enure to their benefit and the period of limitation should be calculated from the said date as the compensation amount of 80% given to the petitioners by the second respondent, which is a pre-condition under section 17(3A) of the Act is towards compensation and the remaining balance is only payable after the Award is passed.

17.In the light of the above, the Writ Petition is allowed and the second respondent is directed to refer the petitioners request to the Civil Court for determining the claim for enhanced compensation. The above direction shall be complied with by the second respondent, within a period of three months from the date of receipt of a copy of this order. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rpa
To

- 1 The Chief Secretary to Government
Government of Puducherry
Puducherry 605 001.
 - 2 The Collector (Revenue)
Puducherry 605 013
 - 3 The Deputy Collector (Revenue-South) cum LA Officer
Special Economic Zone Project
Villianur, Puducherry State - 605 110.
- +1 cc to Mr.S.Kadarkarai Advocate sr.9919
+1 cc to the Government Pleader -cum-Public Prosecutor
(Puducherry) sr.10010

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