

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.A.No.1568 of 2016

and CMP No.19527 of 2016

1. The District Collector,
Puducherry District,
Puducherry.

2. The Deputy Collector (Revenue),
North-cum-Land Acquisition Officer,
Puducherry.

... Appellants/ Respondents

versus

1. S.Ezhumalai

2. Tmt.E.Jothi @ Oli

... Respondents/Petitioners

Writ Appeal filed under clause of 15 of Letter Fadeut against the order dated 07.03.2016 in W.P.No.27431 of 2015.

W.P.No.27431 of 2015 :

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in his proceedings No. 1525/DC (R) N/LA/2014 dt 8.10.2014 and quash the same and further directing the 2nd respondent to refer the petition once again before the Civil Court for deciding the enhancement of compensation under Sec.18 of the Land Acquisition Act 1894.

For Appellant : Mr.J.Kumaran
Government Advocate (Pondicherry)

For Respondents : Mr.C.Samivel

JUDGMENT

(Order of the Court was made by **S.MANIKUMAR, J.**)

Challenge in this writ appeal is to an order made in W.P.No.27431 of 2015 dated 07.03.2016, by which, the writ court, while setting aside the order dated 08.10.2014 of the Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry, directed the writ petitioners to refer the matter to the Civil Court for claiming enhanced compensation within eight weeks from the date of receipt of the order made in the writ petition.

2. Facts leading to the writ appeal are that in the year 1993, Government of Pondicherry decided to acquire lands for widening East Coast Road. Objections were raised by the land owners. In pursuance of an enquiry held on 16.03.1994, under Section 17(3A) of the Land Acquisition Act, 1894, the Deputy Collector (Land Acquisition), Government of Puducherry, has fixed compensation and vide letter dated 01.08.1994, sent a letter to Mr.R.Subarayan, owner of the lands, that 80% of the total compensation works out to Rs.6,165/- for the lands in R.S.No.188/3W/2. He has further informed that on submission of original documents and NIL Encumbrance certificate for 30 years, the amount could be claimed. On receipt of the same, Mr.R.Subbarayan, landowner has sent a letter dated 18.08.1994, to the Deputy Collector, Pondicherry, seeking additional compensation and also employment. Subsequently, on 22.12.1995, an award has been passed. Thereafter, on 15.10.1996, Mr.R.Subarayan, died. Subsequently, in 2002 S.Elumalai, son of Mr.R.Subarayan (deceased) and E.Jothi, joined together and filed W.P.No.43337 of 2002 for a mandamus directing the respondents therein to pay a sum of Rs.10,00,000/-, as compensation for the demolition of the dwelling house situated on East Cost Road, near Pillaichavadi, Pondicherry-14.

3. Upon hearing the learned counsel for the parties, vide order dated 23.01.2003, in W.P.No.43337 of 2002, this Court granted liberty to the petitioners to approach the civil Court to vindicate their grievance by placing oral and documentary evidence.

4. Material on record, further discloses that when the respondents initiated steps to claim compensation, a dispute had arisen as to whether the respondents are entitled to receive compensation, pursuant to the award. The land acquisition officer has filed objections before the Civil Court in 2005 only, in LAOP No.3 of 2005. The matter stood pending in the Civil Court till 12.07.2013. The Civil Court declared that the respondents are entitled to receive compensation of Rs.6,165/-. Thereafter, the writ petitioners have made a representation on 03.03.2014 to the Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry, seeking for enhanced compensation and requested the said authority to refer the matter, for adjudication to the Civil Court. Adverting to the above litigation in LAOP No.3 of 2005, pending in the Civil Court for 8 years, writ Court declined to accept the objections, raised by the writ petitioners as regards inordinate delay in

approaching the District Collector for enhanced compensation. At paragraph Nos.6 and 7, in W.P.No.27431 of 2015 dated 07.03.2016 ordered, as hereunder.

"6. Given the above facts and circumstances of the case, this Court is of the view that the case of a person who has lost a meagre extent of land as well as his business, apart from losing the breadwinner of the family, has to be considered more reasonably and the petition given by him on 18.08.1994 could very well be taken as an objection not only to the acquisition but also to the inadequacy of the compensation. This request was reiterated before this Court when the petitioners filed earlier writ petition, namely, W.P.No.43337 of 2002, wherein this Court granted liberty to the petitioner to approach the Civil Court. This liberty stood preserved and was granted after hearing the learned Government Pleader appearing for the respondents. Thereafter, the petition was entangled in a legal muddle at the instance of the Land Acquisition Officer, who filed the petition before the Civil Court under Section 30 of the Act and allowed it to lie over for almost ten years and there could be no better case in which the respondents should take a pragmatic view in the matter and refer the matter to a Civil Court, for claiming enhanced compensation. One more reason to pass such an order is on account of the liberty granted by this Court in the earlier writ petition, which has to be honoured and shall accrue in favour of the writ petitioner.

7. For all the above reasons, this Writ Petition is allowed and the impugned order is quashed. The respondents are directed to refer the matter to the Civil Court, for claiming enhanced compensation with eight weeks from the date of receipt of this order. No costs. Consequently, the connected M.P.No.1 of 2015 is closed."

5. Though, Mr.J.Kumaran, learned Government Advocate (Pondy), reiterated the abovesaid ground of delay contending that when the award was passed on 22.12.1995, the respondents ought to have made representation within six weeks from the date of award in terms of Section 18 of the Land Acquisition Act and that the writ Court had failed to consider the same in proper perspective, we are not inclined to accept the said contentions for the reason that very entitlement of the respondents to receive compensation amount was pending litigation in LAOP No.3 of 2005, for eight years. On conclusion of the same, the respondents have pursued their claim for enhanced compensation. However, from the material on record, it could be deduced that even prior to the award dated 22.12.1995, the erstwhile landowner Mr.R.Subarayan had objected to the lesser compensation and sought for additional compensation. Writ Court has considered the delay aspect and assigned reasons. Respondents are entitled to seek for reference before the Civil Court for enhanced

compensation. We find no material irregularity in the impugned order warranting interference. Therefore, the writ appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

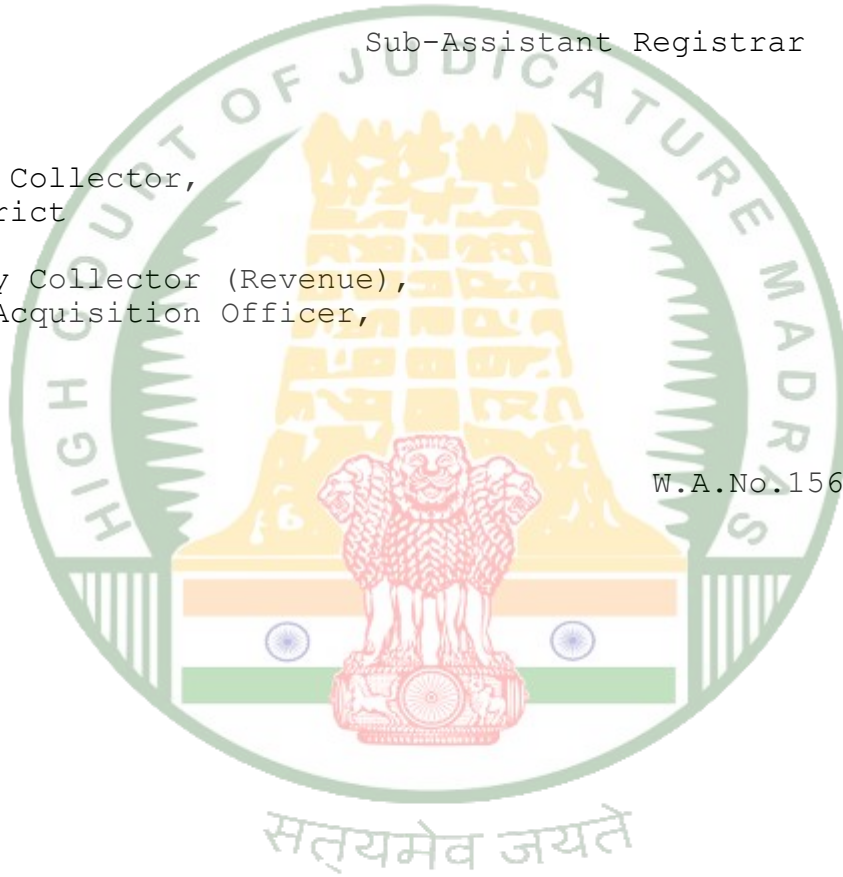
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CNR [CO]

MSI 03/01/2017



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