

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2016

Coram

The Hon'ble Mr. Justice T.S.SIVAGNANAM

Writ Petition No.55 of 2016

R.Bommanna Chettiar

...Petitioner

Vs.

The District Collector,
Salem District,
Salem - 636 001.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the order of the respondent, dated 16.07.2014, in ROC.No.4120/2003/B3, and to quash the same, and consequently, to direct the respondent, to refer the representation of the petitioner, dated 29.10.2008, to the competent Court for the determination of the compensation payable to the petitioner for the acquisition of the petitioner's land in Survey No.139/2A6A, measuring an extent of 0.030 hectares in Jari Kondalampatty, Salem 636 010.

For Petitioner : Mr.K.Selvaraj

For Respondent : Mr.R.Rajeswaran
Special Government Pleader

O R D E R

The challenge in this Writ Petition is to the order, dated 16.07.2014, passed by the respondent/District Collector, Salem, by which, the petitioner's request for making reference under Section 18 of the Land Acquisition Act, (the Act) has been rejected, as having been made beyond the time limit, prescribed under the Act.

2. At the first instance, this Court has to observe that the impugned order is the outcome of the total non application of mind on the part of the respondent/District Collector. This Court is convinced to make such observation, in the light of the facts of the case, as narrated infra.

3. The petitioner, whose lands were acquired, challenged the land acquisition proceedings, by filing Writ Petition, being W.P.No.217 of 2000, and obtained an order of interim stay of dispossession. Ultimately, the Writ Petition was disposed of, by order, dated 21.06.2001, and the operative portion of the order is extracted hereunder:-

"Having regard to the above stated legal position as well as the stand of the stand of the respective parties, namely, the petitioner, fifth respondent and the second respondent, there will be a direction to the first and second respondents to consider the petitioner's representation, dated 21.09.1999, and pass appropriate orders, deleting the portion of the land belonging to the petitioner from the acquisition proceedings, comprised in G.O.Ms.No.81, Transport Department, dated 12.03.1999, to the extent indicated in the fifth respondent's letter as well as the two sketches, dated 21.06.1999, expeditiously. The Writ Petition is ordered on the above terms. "

4. Thus, the direction (quoted above) came to be issued, since the petitioner's request for deletion of the lands in question were pending consideration of the authority. The State Government, which was not inclined to accept the decision rendered in W.P.No.217 of 2000, filed Writ Appeal before the Hon'ble Division Bench, being W.A.No.1632 of 2001, and, in page No.4 of the judgment, dated 05.09.2008, the report of the Railways is referred to, wherein, the Railways agreed that the area can be deleted from the scope of the acquisition for the present, and the petitioner has assured that at the time of construction, the required detailed plan will be submitted, and he has also agreed for acquisition of the land under question, at the time of construction of second line by Railways. On the assurance of the petitioner, it was stated that the Railways can construct the single line track, without acquiring the land with the building at present. Based on such report, the Writ Appeal was disposed of, with the following direction:-

" Para No.5. In view of the above report, we are of the considered opinion that the Railways can construct the single line track without acquiring the land and the building of the first respondent at present. After some time, if the appellants propose to lay the second lane, the first respondent is directed to hand over the land to the Railways without any hesitation.

It is also made clear that, on the basis of undertaking given by the appellant, if anything happens to the building during the course of laying of first line, he cannot claim any compensation from the Department. With this undertaking, the first respondent is allowed to continue till the second line is laid. It is also made clear that for any reason, any damage is caused to the building, the first respondent is not entitled to compensation. With these observations, the Writ Appeal is disposed of."

5. Thus, by virtue of the judgment passed by the Hon'ble Division Bench, the petitioner had to surrender the portion of the land with the building, if single line track is constructed, in the light of the undertaking given by the petitioner. After the certified copy of the judgment passed by the Division Bench was made ready, the petitioner submitted representation, dated 29.10.2008, requesting for enhancement of compensation for acquisition of his land. The copy of such representation has been enclosed at page No.11 of the typed-set of papers, filed in connection with the present Writ Petition, which shows that the petitioner has set out all the facts. In spite of the same, representation was not considered, and the petitioner moved this Court, by filing W.P.No.25670 of 2011, and this Court, by order, dated 22.11.2011, disposed of the said Writ Petition by directing the respondent herein to consider the petitioner's representation, dated 29.10.2008, within a time frame. It appears that, since the compensation awarded by the Land Acquisition Officer, viz., 5,67,943/- was not paid, the petitioner filed Writ Petition, in W.P.No.27964 of 2012, seeking for a direction to dispose of his representation and to pay compensation amount. That W.P.No.27964 of 2012, was also disposed of, by order, dated 17.07.2013, issuing direction to the District Collector/respondent to consider the representation. Since the order passed in W.P.No.25670 of 2011, was not complied with, the petitioner filed Contempt Petition before this Court on 10.06.2014, and it appears that, in the said Contempt Petition notice has been issued in the Sr stage, and when the matter was heard, the impugned order came to be passed, and that is how the petitioner is before this Court for the fourth time.

6. It is with regret, this Court expresses that the respondent has mechanically rejected the petitioner's request without applying his mind to the facts, as narrated supra. For all the above grounds, the impugned order has to be held to be bad in law, and liable to be set aside. Accordingly, the impugned order is set aside, and the matter is remitted to the respondent for fresh consideration, who shall take note of all

the facts, and after affording an opportunity of personal hearing to the petitioner, or his authorized representative, verify the original court records and documents, and then, shall take a reasoned decision on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

7. In the result, the Writ Petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

sd

To

The District Collector,
Salem District,
Salem - 636 001.

+1cc to Mr.R. Lakshmi, Advocate, S.R.No.761
+1cc to Mr.K. Selvaraj, Advocate, S.R.No.744
+1cc to the Government Pleader, S.R.No.8237

KJI (CO)
EU(18/02/2016)

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