

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1342 of 2017

1.Government of Puducherry,
rep. By its Chief Secretary,
Puducherry 605 001

2.The District Collector, (Revenue)
Puducherry 605 013

3.The Deputy Collector (Revenue)
South cum Land Acquisition Officer,
Special Economic Zone Project,
Villianur, Puducherry 605 110

... Appellants/Respondents

versus

1.Ramalingam
2.Padmalosani
3.N.Jothi

... Respondents/Petitioner

Appeal filed under Clause 15 of Letters patent against the order passed by this Court dated 16.02.2016 passed in W.P.No.24668 of 2014 praying to direct the respondent to refer the demand made by the petitioner's in the representation dated 18/02/2013 directing 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 appellants : Mr.C.T.Ramesh,
Additional Government Pleader (Puducherry)
For Respondents: Mr.R.Venkatachalapathy

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory:-

Whether the application submitted by the land owner while accepting 80% of the total compensation for reference to the Court for enhancement would amount to an application for reference under Section 18 of the Land Acquisition Act is the core issue that arises for consideration in this appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

Brief facts:-

2. The Land Acquisition Officer received a protest letter

from the respondents immediately after the payment of 80% of the compensation and before passing the final award. However, the Land Acquisition Officer failed to refer the matter to the Reference Court under Section 18 of the Land Acquisition Act. The Writ Petition filed by the respondents in W.P.No.24668 of 2014 to direct the Land Acquisition Officer to refer the matter to the Civil Court for enhancing the compensation, was allowed by the learned Single Judge. Feeling aggrieved, the Government of Union Territory of Puducherry is before us.

Submission:-

3. The learned Additional Government Pleader submitted that the respondents failed to submit the application for reference after passing the award and as such, the Land Acquisition Officer was justified in not referring the matter to the Civil Court.

Analysis:-

4. The land owned by the respondents 1 to 3 in R.S.Nos.105/2, 105/5A and 105/6 respectively at Karasur Revenue Village, Puducherry was acquired by the Government of Puducherry for setting up the Special Economic Zone. The Government invoked the urgency provision for acquisition. The Land Acquisition Officer arrived at the compensation and paid 80% of the total amount to the respondents. The Land Acquisition Officer by notice dated 4 July 2006, called upon the respondents to receive 80% of the compensation. The first respondent by letter dated 18 July 2006, informed the Land Acquisition Officer that the compensation fixed is very low and as such, the matter should be referred to the Civil Court under Section 18 of the Land Acquisition Act for deciding the just compensation.

5. The Land Acquisition Officer took possession of the land immediately after paying 80% of the compensation. Thereafter, award was passed on 25 January 2008. There was no reference to the Civil Court under Section 18 of the Land Acquisition Act, for determining the correct amount payable to the respondents. The respondents therefore submitted a representation. Since follow up action was not taken, the respondents filed a Writ Petition in W.P.No.24668 of 2014 for reference. The receipt of the protest letter is admitted in the counter affidavit filed by the Land Acquisition Officer before the writ court.

6. The learned Single Judge opined that 80% of the compensation has been paid to the respondents and it would be deducted while making final payment. According to the learned Single Judge, the Land Acquisition Officer was not legally correct in ignoring the protest letter dated 18 July 2006 on the ground that objection was not taken against valuation after the award. The learned Single Judge issued a Mandamus, directing the appellants to refer the request made by the respondents to the Civil Court for deciding the claim for enhanced compensation.

7. The Land Acquisition Officer determined the compensation amount payable to the respondents even before passing the award. In order to take possession, the Land Acquisition Officer must tender 80% of the compensation. It is the admitted case of the

parties that after determining the compensation, the Land Acquisition Officer paid 80% of the compensation and thereafter, took possession. It was followed by the statutory award. The award is nothing but giving statutory colour to the proceedings relating to acquisition, including valuation. Since 80% of the compensation has already been paid, the Land Acquisition Officer in his award has indicated that the remaining 20% of the amount along with statutory interest, would be paid to the respondents. Therefore, it is clear that determination of the compensation was made even before the award. It is also very clear that only after ascertaining the actual market value determined by the Land Acquisition Officer, the respondents submitted protest letter on 18 July 2006. The appellants would be justified in their contention in case there was no protest letter given by the respondents at any point of time. The protest letter dated 18 July 2006 should be considered as a valid application for reference made after the award. The appellants are therefore not correct in the contention that there was no application filed by the respondents after passing the award for reference.

8. The award No.2/2008 dated 25 January 2008 passed by the Land Acquisition Officer, Villianur contains two components. The Land Acquisition Officer has indicated 80% of the compensation and 20% separately. It was this 80% of the compensation which was paid to the respondents pursuant to the notice dated 4 July 2006. It was specifically mentioned as "80% of the total amount of compensation". Therefore, it is clear that the market value was determined even when 80% of the compensation was paid to the respondents. The 80% was not a rough estimate. It was a determination of market value by the Land Acquisition Officer. There was no need to wait till passing the award to lodge protest or to make a request for reference to the Civil Court.

9. Section 18(a) and (b) of the Land Acquisition Act should be construed as a provision fixing the outer time limit for making a request for reference. The market value determined by the Land Acquisition Officer and the total amount payable to the land owner would be available only in the award in case it is a normal acquisition without invoking urgency clause and as such, limitation would start from the date of award, in case the land owner was present or represented before the Collector when the award was made, and in other cases within six weeks from the date of receipt of notice under Section 12(2) or within six months from the date of award, whichever period would expire first. The notice issued under Section 17(3A) calling upon the landowners to receive 80% of the compensation is in the nature of a notice issued under Section 12(2), the difference being that one was before the award to receive 80% of the compensation and the other is after the award. However, the fact remains that in both the cases, the total compensation has already been determined by the Land Acquisition Officer. The payment of 20% is deferred till the award is made.

<https://hcservices.ecourts.gov.in/hcservices/>

10. However, that would not be the case in case protest petition was not given either at the time of receiving 80% of

the compensation or within the statutory period after passing the award. We make it clear that the order passed by the learned Single Judge would not enure to the benefits of those land owners who have not submitted application for reference while receiving 80% of the compensation or within the statutory period under Section 18 of the Land Acquisition Act. There is no liability to refer such cases to the Reference Court. The Land Acquisition Officer must verify each case independently to ascertain as to whether application for reference was made either at the time of receiving 80% of the compensation or within the outer time limit prescribed under Section 18 of the Land Acquisition Act.

11. We make the position clear that in matters relating to the acquisition by invoking the urgency clause under Section 17 of the Land Acquisition Act, the protest letter submitted while accepting 80% of the total compensation determined by the Land Acquisition Officer would meet the requirement of Section 18 of the Land Acquisition Act.

12. The learned Single Judge allowed the Writ Petition after giving sufficient reasons. We do not find any ground made out by the appellants to take a different view in the matter.

13. In the result, the intra court appeal is dismissed. No costs. Consequently, C.M.P.No.18556 of 2017 is also dismissed.

Sd/-

Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

tar

To

1. The Chief Secretary,
Government of Puducherry,
Puducherry 605 001

2.The District Collector, (Revenue)
Puducherry 605 013

3.The Deputy Collector (Revenue)
South cum Land Acquisition Officer,
Special Economic Zone Project,
Villianur, Puducherry 605 110

+1cc to Mr.S.Kadarkarai, Advocate SR.No.77751

W.A.No.1342 of 2017