

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.A.No.751/2017 and CMP.No.10318/2017

1.Rajammal

2.Pushpa

3.Savithriammal

..... Appellants/Petitioners

Vs

1. The State of Tamil Nadu,
Rep by its Secretary,
Transport Department,
Fort St.George,
Chennai-600 009.

2. The Land Acquisitioning Officer and
Revenue Divisional Officer,
Krishnagiri,
Dharmapuri District.

..... Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court in W.P.No.14157/2003 dated 19.01.2017 and allow the Writ petitioner.

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to forbear the respondents herein from doing anything in furtherance to the Sec.6 Declaration issued on 06.03.1987 in G.O.Ms.No.502 and Published in Tamil Nadu Government Gazette for acquiring the Petitioners property Situated at Survey No.919/1B1, A2, 919/1B1 A3 and 919/1B1 A4, Palacode Village of Taluk, Dharmapuri District, totally measuring an extent of 0.09.0 hectares since the acquisition has lapsed under Section 11(A) of the Land Acquisition Act.

For Appellant : M/s.G.Vijay Anand Associates
Mr.A.Rajendrakumar

For Respondents : Mr.R.Vijayakumar,
Additional Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioners claims that they are the owners of the property situated at Survey Nos.919 1B1 A2,A3 and A4 situated at Palacode Village and Dharmapuri District, admeasuring to an extent of 0.09.0 hectares and the said land are utilized by them for seeking out their livelihood.

2. The said land of the petitioners sought to be acquired for the public purpose, namely establishment of Post Office and accordingly, notification under Section 4[1] of the Land Acquisition Act, 1894 [Central Act I of 1894] was approved under G.O.Ms.No.1422 dated 16.12.1985 and it was published in the Tamil Nadu Government Gazette, paper Publication, Locality publication was also effected. Thereafter, enquiry under Section 5[A] of the said Act was conducted, wherein all of them were participated in the said enquiry. Thereafter, declaration under Section 6 of the said Act was approved in G.O.Ms.No.502 of the same department dated 06.03.1987 and the publication was also effected in the Tamil Nadu Government Gazette.

3. The petitioners on an earlier occasion made a challenge to Section 6 declaration by filing WP.No.2049/1989 before this Court and it was entertained and interim order were granted on 20.02.1989. Ultimately, the said Writ Petition was dismissed on 13.03.1998 and interim order granted therein was vacated. The petitioner were issued notice under Section 9[1] and 10 of the said Act and Publication was also effected and they were also served with notice under Sections 9[3] and 10 of the said Act and the land in question was also inspected on 02.02.1989 and after conducting enquiry, an award came to be passed on 17.02.1989.

4. The Learned counsel appearing for the petitioner has drawn the attention of this Court to the counter affidavit filed in support of this writ petition and would submit that though the writ petition was dismissed as early as on 13.03.1998 and even prior to that award was passed on 17.02.1989, the compensation was deposited very belatedly on 17.11.1989 under the jurisdiction of the Sub-Court, Krishnagiri and since, the procedure contemplated under the Act, have not been strictly

followed, the Land Acquisition Proceedings will automatically lapse and the said material aspects have not been properly considered by the Single Judge, while, dismissing the writ petition and therefore, prays for interference in this appeal.

5. Per contra, Mr.R.Vijayakumar, learned Additional Government Pleader, has invited the attention of this Court to the Counter Affidavit filed on behalf of respondent in W.P.No.14157/2013 and would submit that through-out the course of land acquisition proceedings, with sufficient and reasonable opportunity in accordance with law has been afforded and the reason for belated deposit of the compensation was due to the fact that the requisite body had provided fund only on 30.08.2001 and the belated deposit of the compensation amount would not per se lead to interference, for the reason that the petitioner have been sufficiently compensated in the form of interest/Additional interest/Solatium and the possession of the property has also been taken for public purpose and prays for dismissal of the writ petition.

6. This Court heard the rival submissions and also perused the materials placed before it.

7. The fact remains that the petitioner made a challenge to the impugned Declaration issued under Section 6 of the Land Acquisition Act by filing W.P.No.2049/1989 and it was entertained and interim order was granted on 20.02.1989 and on account of dismissal of the writ petition on 13.03.1989, it was vacated. It is the stand of the respondents that even prior to the obtaining of interim order in W.P.No.2049/1989, award was passed on 17.02.1989 and since, the petitioner had participated in the enquiry under Section 5A, they are very well aware of the same, even otherwise, for belated deposit of compensation, they will be suitably compensated and prays for dismissal of the writ appeal and thereby, confirming the order of dismissal passed in the writ petition.

8 It is relevant to extract Section 23 of the said Act :-
Section 23:- Matters to be considered in determining compensation:

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration.....

[(1-A) In addition to the market value of the land, as above provided, the Court shall, in every case, award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of publication of the notification under Section 4, sub-section [1], in respect of such

land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded].

[2] In addition to the market value of the land, as above provided, the Court shall, in every case, award a sum of [thirty per centum] on such market value, in consideration of the compulsory nature of the acquisition.

9. It is the primordial submission of the learned counsel appearing for the petitioner that on account of belated deposit, the land acquisition proceedings would get lapsed, automatically, on account of non following of the procedure contemplated in the said Act. In the considered opinion of this Court, the said submission lacks merits, for the reason that under the rule, for non deposit of compensation on time, it cannot be deemed to be lapsed automatically, for the reason that the above said statutory provision takes care of the same.

10. It is also the submission of the learned counsel appearing for the petitioners that the possession of the land are still with them and they are eking out their livelihood by doing agricultural activities and for the public purpose, the acquisition was done and it has not been implemented. This Court is of the view that if actual possession of the land is not taken, they are always at liberty to work out their remedy in accordance with law, if they are so advised and this Court is not commenting upon the same.

11. The petitioner had participated in the enquiry, conducted under Section 5[A] of the Act. Even after becoming aware of the award, they did not sought reference under Section 80 of the Act for enhancement of compensation.

12 A challenge was made by the petitioner to Section 6 - declaration in W.P.No.2049/1989 and it was also ended in failure in the form of dismissal of the same on 13.03.1989.

13 The counter affidavit filed by the respondents in the writ petition would also disclose that the substance of the said Section 6 notification was published in the news daily on 08.03.1987 and the award came to be passed on 17.02.1989 within two years. The Learned Single Judge has also taken note of the same and found that the grounds urged by the petitioner lack merits and substance.

14 This Court on an independent application of mind to the entire materials is of the considered view that there are no errors, infirmity in the reasons assigned by the Learned Single Judge in dismissing the writ petition and finds no merits in this Writ Appeal. Therefore, the writ appeal is dismissed confirming the order dated 19.01.2017 in W.P.No.14157/2003. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Transport Department,
Fort St.George,
Chennai-600 009.
2. The Land Acquisitioning Officer and
Revenue Divisional Officer,
Krishnagiri,
Dharmapuri District.

+lcc to M/s.G.Vijay Anand Associates, Advocate, S.R.No.48116
+lcc to the Government Pleader, S.R.No.47987

W.A.No.751/2017

SS(CO)
CS/03/08/17

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