

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2017

CORAM :

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.21283 of 2015

EVP Estates & Properties Development Ltd.,
No.23, Sir Thiyagaraya Road,
Pondy Bazaar, T.Nagar,
Chennai - 600 017

Rep. by its

Chairman & Director

Mr.E.V.Perumalsamy Reddy

.... Petitioner

vs.

1. The District Collector
Collectorate,
Kancheepuram District - 631 501.

2. The Special Tahsildar
Land Acquisition,
Chennai Airport Expansion Scheme,
Sriperumbudur,
Kancheepuram District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus, to call for the records on the file of the second respondent bearing Rc.A.164/2013, dated 07.01.2014 and quash the same and consequently, direct the first respondent to refer the Award in favour of petitioner bearing No.8/2009, 10/2009, 14/2009, 15/2009, 16/2009, 17/2009, 20/2009, 21/2011, 24/2012 and 3/2012 to Court under Section 18 of the Land Acquisition Act, 1894 for enhanced compensation, solatium and interest.

For petitioner : Mr.AR.L.Sundaresan, Senior counsel
for Mr.J.Ravikumar

For respondents: Mr.R.Govindasamy, Spl.G.P

O R D E R

The present writ petition has been directed against the impugned order passed by the Special Tahsildar, Land Acquisition, Chennai Airport Expansion Scheme, Sriperumbudur, Kancheepuram District, bearing Rc.A.164/2013, dated 07.01.2014 in and by which the request of the petitioner to refer the issue under Section 18(1) of the Land Acquisition Act has been refused on two grounds.

2. Firstly there is no deviation of Rules and Regulations in respect of the refusal to refer the case for enhanced compensation under Section 18(1) of the Land Acquisition Act and subsequently, the land owners had accepted the quantum of compensation fixed by the Government and to part with the lands to the Government.

3. Assailing the above two reasons, the learned Senior counsel appearing for the petitioner would submit that when the petitioner is owning huge extent of land namely 7.16 acres covered in Award No.8, dated 21.04.2009 and 1.74 acres covered in Award No.10, dated 22.09.2009 and 8.71.5 hectares covered in Award No.14, dated 10.12.2009, all of a sudden, the Tamil Nadu Government by issuing G.O.Ms.No.108, Transport (I-2) Department, dated 09.10.2007 has notified the acquisition of lands over an extent of 319.31.0 hectares of wet land, 39.45.5 hectares of dry lands totally to an extent of 358.76.5 hectares and for alienation of 53.59.5 hectares of Government lands and also transfer of defence land to an extent of 20.83.5 hectares including the layouts promoted by the petitioner, comprised in Manapakkam, Kolapakkam, Tharapakkam and Gerugampakkam in Kancheepuram District for the expansion of Chennai Airport.

4. Accordingly, the petitioner's land in Manapakkam, Kolapakkam, Tharapakkam and Gerugampakkam in Kancheepuram District were notified by the State Government for compulsory acquisition for expansion of Chennai Airport. They have also published notification on 05.12.2007 for the acquisition of lands in Kolapakkam Village and its neighbour for airport expansion project. Immediately, thereafter, as the petitioner spent huge amount to raise the level of the low lying and uneven barren land and develop the sites with roads and other amenities, objected the compulsory acquisition of land and alternatively demanded adequate compensation at the then prevailing market rate. He has also given several representation during the acquisition process to the first respondent for compensation at open market value of residential lands and pointed out to the respondents that the guideline value of similar properties were in the range of Rs.3300 per sq.ft to

4200 sq.ft. and the market value was around Rs.4500 to 5500 per sq.ft. But in spite of the above objections, the first respondent, the District Collector, Kancheepuram District, fixed the market value at Rs.1500/- per sq.ft for the residential plots for the individual land owners in the same village. As he has failed to fix the value of Rs.1500 or the market rate and adopted the rate applicable for barren and agricultural land to the petitioner's land which was already classified as Primary Residential land by Gazette Notification Nos.37 and 40 of 2004, dated 20.09.2004 and 13.10.2004, the first respondent finally passed the Award No.8, dated 21.04.2009 making a payment of Rs.7,58,96,000/- for 7.16 acres. Again they passed another Award No.10, dated 22.09.2009 to pay a sum of Rs.1,63,54,295/- for 1.74 acres and one another Award No.14, dated 10.12.2009 was also passed granting a sum of Rs.8,14,20,138/- for 8.71-1/2 acres of land. Although these Awards were signed but they were not served till 17.03.2010. After the above said Award Nos.8,10,14, dated 21.04.2009, 22.09.2009 and 10.12.2009 respectively were served upon to the petitioner on 17.03.2010, objecting with regard to the quantum of compensation, a request was made on 08.04.2010 to refer the matter under Section 18 of the Land Acquisition Act within 23 days.

5. Section 18(1) of the Land Acquisition Act specifically indicates that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land or the amount of compensation or the persons to whom it is payable be pleaded.

6. The petitioner immediately after the above said Awards were served on 17.03.2010 made a written request on 08.04.2010. But the respondents without even considering the facts on record that the petitioner has rightly complied with the conditions mentioned under Section 18(1) of the Act, has wrongly refused to refer the case of the petitioner for enhancement of compensation citing the reason that the petitioner at the time of receiving the compensation has consented to accept the Award Nos.8,10 and 14, dated 21.04.2009, 22.09.2009 and 10.12.2009. Therefore, the premise on which the first respondent refused to refer the case of the petitioner under Section 18(1) for higher compensation is wholly misplaced, he pleaded

7. Taking support from the Judgment of the Hon'ble Apex Court in the case Premji Nathu v. State of Gujarat and anr., reported in AIR 2012 SC 1624, the learned Senior counsel appearing for the petitioner would submit that while interpreting Section 18(1) of the Land Acquisition Act, it has clearly mentioned that whether application submitted by the

applicant under Section 18(1) of the Land Acquisition Act, 1894 was barred by time. While answering the said question in paragraph 12 of the Judgment, it has been candidly held that if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. It has further made it clear that the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. On the basis of the ratio laid down by the Hon'ble Apex Court, he has concluded requesting the Court that when the petitioner has complied with the pre-conditions mentioned under Section 18(1) of the Act, namely when the petitioner being landlord has made his written request, dated 08.04.2010 under Section 18(1) requesting the Collector to refer the issue for enhancement of compensation within 23 days from the date of serving of the copy of the Award on 17.03.2010, the first respondent, District Collector, Kancheepuram District has no locus to refuse the request of the petitioner to refer the issue for enhancement of compensation, he argued.

8. A detailed counter affidavit has been filed. Mr.R.Govindasamy, learned Special Government Pleader appearing for the respondents would submit that the writ petition filed by the petitioner is wholly misconceived and therefore, it is liable to be dismissed, since while the lands were acquired for the expansion of the Airport project, all the Rules were thoroughly followed and pursuant to the 4(1) Notification issued on 09.10.2007, the petitioner took part in the Award enquiry. Subsequently, three Awards were passed. Award No.8, dated 21.04.2009 to pay a sum of Rs.7,58,96,000/- for an extent of 7.16 acres of land and second Award No.10, dated 22.09.2009 for a sum of Rs.1,63,54,295/- to an extent of 1.74 acres of land and third Award No.14, dated 10.12.2009 was also passed granting a sum of Rs.8,14,20,138/- for an extent of 8.71-1/2 acres of land belonging to the petitioner. Although they were signed and served upon the petitioner on 17.03.2010, they were very well aware of the passing of the Award and if aggrieved with the quantum of compensation passed by the respondents, should have made an application under Section 18(1) of the Act within 60 days from the date of passing of the Award. But in this case, admittedly the petitioner filed objection on 08.04.2010, which is beyond the period of 60 days. Therefore, the first respondent has rightly rejected the said contention and passed the impugned proceedings and hence, there is no need for any interference. Secondly they have also received the entire amount indicated as above. Therefore, the question of seeking reference under Section 18(1) after receipt of the entire award amount with

clear consent is not maintainable. But this Court hardly finds any merit in any of the contentions.

9. Admittedly huge amount of lands belonging to the petitioner namely 7.16 acres, 1.74 acres and 8.71-1/2 acres were acquired by the respondents for expansion of Airport Project. Of course after issuance of 4(1) Notification on 09.10.2007, the petitioner also took part in the Award enquiry. The Award was also passed in Award No.8, dated 21.04.2009 for a sum of Rs.7,58,96,000/- for an extent of 7.16 acres of land and second Award No.10, dated 22.09.2009 for a sum of Rs.1,63,54,295/- to an extent of 1.74 acres of land and third Award No.14, dated 10.12.2009 was also passed granting a sum of Rs.8,14,20,138/- for an extent of 8.71-1/2 acres of land belonging to the petitioner. But it has not been disputed by the respondents that those three awards mentioned supra were served upon the petitioner / land owner only on 17.03.2010.

10. Therefore, the question is whether the application filed by the petitioner on 08.04.2010 requesting the District Collector, Kancheepuram District to refer the case for enhancement of compensation under Section 18(1) of the Act is barred by time.

11. To answer this question, it is necessary to look into Section 18 of the Act, which is given hereunder :

"18 Reference to Court -

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made, -

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire."

A perusal of the above section vividly shows that any person aggrieved by the quantum of the compensation amount for the land fixed by the Land Acquisition Officer and not accepted the Award is entitled to make a request to the District Collector to refer the case under Section 18(1) for enhancement of compensation within six weeks from the date of Award. As mentioned above, when three Awards mentioned above were served upon the petitioner only on 17.03.2010, the request made by the petitioner on 08.04.2010 falls within 23 days from the date of serving of the Award, therefore the petitioner's case squarely falls within the stipulated time of six weeks from the date of Award as contemplated under Section 18(1) of the Land Acquisition Act, 1894.

12. In this context, it is also useful to refer to the ratio laid down by the Hon'ble Apex Court in Premji Nathu v. State of Gujarat and anr., reported in AIR 2012 SC 1624. Paragraph 12 and 15, which is required to be extracted as follows:

"12. In Harish Chandra Raj Singh v. Land Acquisition Officer, AIR 1961 SC 1500, this Court was called upon to decide whether the expression 'date of award' is to be interpreted with reference to the time when the award is signed by the Collector or from the date the affected party comes to know about the same and held as under:

"Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely by reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words 'the date of the award' occurring in the relevant section would not be appropriate.

There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the Office of the Collector; it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words 'from the date of the Collector's award' used in the proviso to Section 18 in a literal or mechanical way." (emphasis supplied)

15. In the light of the above, it is to be seen whether the conclusion recorded by the Reference Court, which has been approved by the High Court that the application filed by the appellant was barred by time is legally sustainable. A careful reading of the averments contained in paragraph 2 of the application filed by the appellant under Section 18(1) shows that the notice issued by the Collector under Section 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated 8.4.1985 for making a reference to the Court. This implies that copy of the award had not been sent to the appellant along with the notice and without that he could not have effectively made an application for seeking reference. On behalf of the State Government, no evidence was produced before the Reference Court to show that copy of the award was sent to the appellant along with the notice. Unfortunately, while deciding issue No.3, this aspect has been totally ignored by the Reference Court which mechanically concluded that the application filed on 8.4.1985 was beyond the time specified in Section 18(2) (b). The learned Single Judge of the High Court also committed serious error by approving the view taken by the Reference Court, albeit without considering the fact that the notice issued by the Collector under Section 12(2) was not accompanied by a copy of the award which was essential for effective exercise of right vested in the appellant to seek reference under Section 18 (1)."

13. A cursory perusal of the above paragraphs clearly shows that although the knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair play and natural justice the expression 'the date of the award' used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. Therefore, in the present case, all these three Awards, dated 21.04.2009, 22.09.2009 and 10.12.2009 were served upon the petitioner only on 17.03.2010, therefore, written request made by the petitioner on 08.04.2010 itself is well within six weeks, namely 23 days from the date of serving of the copy of the Award, hence, the same cannot be held as

barred by limitation. It may be further mentioned that as per Section 18(2)(a), a person, who was present or represented before the Collector at the time when the Award was passed, has to make an application within six weeks from the date of the Award and in other cases, within six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's Award whichever period shall first expire.

14. Thus in view of the above, the first respondent is directed to refer the case of the petitioner to make a reference under Section 18(1) of the Act to the competent Civil Court within four weeks from the date of receipt of a copy of this order.

15. With the above direction, this writ petition stands allowed, setting aside the impugned order. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Collectorate,
Kancheepuram District - 631 501.
2. The Special Tahsildar
Land Acquisition,
Chennai Airport Expansion Scheme,
Sriperumbudur, Kancheepuram District.

+lcc to Mr.J.Ravikumar, Advocate SR.1142

+lcc to the Government pleader SR.895

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