

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 31.10.2017

Delivered on: 7.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.2675 OF 2012

1.The Government of Tamil Nadu,
rep. By Asst. Divisional Engineer (Highways)
Chennai Metropolitan Development Plan,
Sub Division IV, Thirumangalam,
Chennai 40.

2.The Government of Tamil Nadu,
rep. By Special Deputy Collector,
(Land Acquisition)
Tamil Nadu Urban Development Project III,
Poonamallee, Chennai 56 ... Appellants/Respondents
versus
G.Chandran ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated
2.8.2012 passed in W.P.No.19082 of 2012.

PRAYER IN WP.19082/12:

Writ of Certiorarified mandamus Calling for the entire
records relating to the order dated 25.05.2012 issued by the
Second Respondent in respect of the land comprised in Old Survey
No.1122/2 (part) and quash the same and consequentially direct
the Respondents, their men, servants, agents or anybody claiming
under them from interfering with the Petitioner peaceful
possession and enjoyment of the lands comprised in Old Survey
No.1122/2 (part), measuring an extent of 58 cents comprised in
Town Survey No.1, now Sub-divided as T.S.No.1/2 situate at Ward
D, Block No.115, Madhavaram Village, Madhavaram Taluk,
Thiruvallur District

For appellants : Mr.V.Anandamurthy,
Additional Government Pleader

For Respondent : Mr.J.Sivanandaraaj

J U D G M E N T

K.K.SASIDHARAN, J.

The learned Single Judge, without there being any challenge to the statutory notification issued under Section 15(1) of the Tamil Nadu Highways Act, 2001, directed the appellants to pass a supplementary award and redetermine the compensation on equitable grounds. The order is under challenge at the instance of the Highways Department on the ground that there is no provision for passing a supplementary award, without setting aside the statutory award determining the compensation payable to the land owner.

The facts:-

2. The land owned by the respondent in T.S.No.1/2 situate at Madhavaram Village, Tiruvallur District was acquired by the Tamil Nadu Highways Department for construction of Grade Separator at the intersection of GNT Road @ km 8/6 of Moolakadai Junction. The extent of land acquired from the respondent was shown as 0.0207 sq.mts in the notification. The statutory authority issued notice to the respondent under Section 15(2) of the Tamil Nadu Highways Act, 2001. Thereafter, notification was issued under Section 15(1) of the Tamil Nadu Act 34 of 2002. The Competent Authority determined the amount payable to the respondent. Notice was issued to the respondent under Section 18 of the Tamil Nadu Highways Act, 2001, informing him about the award.

3. The mother of the respondent earlier filed a Writ Petition for compensation, after passing the award. The said Writ Petition was allowed and a direction was issued to the Competent Authority to pass a supplementary award. The said order was implemented by the appellants under the threat of contempt. The respondent taking advantage of the order passed by the Court in favour of his mother and the subsequent implementation of the said order, filed a Writ Petition in W.P.No.19082 of 2010 challenging the award dated 25 May 2012. The award was challenged on the ground that a mistake has crept in with regard to the total extent acquired and as such, the award is bad in law.

4. The learned Single Judge by following the earlier order in W.P.No.30107 of 2010, allowed the Writ Petition. The said order is under challenge at the instance of the State.

Rival contentions:-

5. The learned Additional Government Pleader contended that there was no defect in the procedure adopted by the appellants either in describing the land acquired from the respondent or valuation. According to the learned Additional Government Pleader, the land was acquired taking the total extent as 207 sq.mts. The respondent took advantage of an incorrect description, to contend that compensation was not awarded, taking into account the actual extent acquired. According to the learned Additional Government Pleader, a perusal of the award would indicate that the respondent was paid compensation for the entire extent of 207 sq.m and as such, the learned Single Judge was not correct in directing the appellants to pass a supplementary award.

6. The learned counsel for the respondent on the other hand contended that the case of the respondent is similar to the one in W.P.No.30107 of 2010. The learned Single Judge was therefore correct in directing the appellants to pass a supplementary award to pay the correct amount payable to the respondent.

Analysis :-

7. The respondent filed a Writ Petition in W.P.No.19082 of 2012 to quash the award dated 25 May 2012 and to preserve the possession of his land acquired by the Highways Department. The order passed by the writ Court in the Writ Petition filed by the mother of the respondent in W.P.No.30107 of 2010 to pass a supplementary award, notwithstanding the finality attached to the entire issue, appears to be the reason which prompted the respondent to file the Writ Petition for similar relief.

8. The land owned by the respondent was acquired by the Highways Department for construction of Grade Separator at the intersection of GNT Road. In the initial notification, the extent was mentioned as 0.0207 sq.m. The Competent Authority issued notice to the respondent under Section 15(2) of the Act and thereafter, notification was issued under Section 15(1) of the Act. There is no challenge to the statutory notification issued under Section 15(1) of the Act.

9. The challenge in the Writ Petition is only to the award dated 25 May 2012 determining the compensation payable to the respondent. The respondent proceeded under the premise that the extent shown in the notification under Section 15(1) differs in material particulars and as such, he was not given compensation for the entire land. There is absolutely no merit in the said contention.

10. The award dated 25 May 2012 clearly indicates that the valuation was made taking into account the total land acquired from the respondent. The extent was taken as 207 sq.m and compensation was given @ Rs.600 per sq.ft., which would come to Rs.6458 per sq.m. Therefore, it is clear that compensation was given for the entire extent acquired from the respondent. The respondent has no case that more extent was taken by him, than the extent shown in the award.

11. The learned Single Judge rendered a finding that there was no challenge to the notification under Section 15(1) of the Tamil Nadu Highways Act. The learned Judge also observed that the respondent participated in the award proceedings. The learned Judge was carried away by the contention taken by the respondent that an error crept in the records, which is liable to be corrected. There is absolutely no such error which requires to be corrected. The respondent is entitled to compensation for the entire extent of 207 sq.m. The Competent Authority has awarded compensation for the entire area of 207 sq.m and as such, nothing remains either for correction of record or for passing a supplementary award. There is no provision in the Tamil Nadu Highways Act for passing a supplementary award. In case the land owner is aggrieved, his remedy is only to invoke Section 20 of the Act for reference to the appropriate Court for determining the correct amount payable to him.

12. When there is no challenge to the statutory notification under Section 15(1) of the Act, the learned Single Judge was not correct in directing the appellants to pass a supplementary award and redetermining the compensation. When it is made out that compensation was made to the entire extent of 207 sq.m., there is absolutely no need for correction of the extent and recalculation of amount payable to the respondent. In any case, the remedy is only to approach the Collector for making a reference under Section 20 of the Act.

13. The order passed in W.P.No.30107 of 2010 is not an authority for the proposition that in case there is a mistake in the award, a supplementary award should be passed to redetermine the compensation even when there is no challenge to the notification under Section 15(1) of the Tamil Nadu Highways Act, 2001. The fact that the respondent in W.P.No.30107 of 2010 filed a contempt petition and got the order executed under threat of contempt would not make it a judgment having precedential value to follow in all other cases. We are therefore of the view that the learned single Judge was not correct in directing the appellants to pass a supplementary award.

14. The learned Additional Government Pleader incidentally contended that the respondent has not made any application under Section 20 of the Act for reference claiming enhanced

compensation. The learned counsel for the respondent on the other hand contended that it is only after passing a supplementary award, the respondent would be in a position to seek reference under Section 20 of the Act. Since we are allowing this appeal by setting aside the direction to pass a supplementary award, liberty is given to the respondent to approach the Collector for making a reference under Section 20 of the Tamil Nadu Highways Act. The Collector must consider the request for reference taking into account the pendency of the Writ Petition before this Court.

15. In the result, the order dated 2 August 2012 is set aside. The Writ Petition in W.P.No.19082 of 2012 is dismissed.

16. In the upshot, we allow the intra court appeal. No costs. Consequently, connected M.P.No.1 of 2012 is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Asst. Divisional Engineer (Highways)
Chennai Metropolitan Development Plan,
Sub Division IV, Thirumangalam,
Chennai 40.

2.The Special Deputy Collector,
(Land Acquisition)
Tamil Nadu Urban Development Project III,
Poonamallee, Chennai 56 सत्यमेव जयते

3.The District Collector,
Chennai.

+1cc to the Government Pleader , S.R.No. 78989/17

+1cc to Mr.J.SIVANANDARAJ Advocate, S.R.No. 78749/17

P.D. Judgment in
W.A.No.2675 OF 2012

SJ (CO)
TR(29/11/2017)