

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2017

CORAM

THE HON'BLE Mr. JUSTICE M.M.SUNDRESH

W.P.No.26431 of 2016
W.M.P.No.22642 of 2016

S.Rajivi

..Petitioner

Vs.

1. Government of Puduchery,
Rep.by its Chief Secretary,
Puduchery - 605 001.
2. The Collector (Revenue),
Puduchery-605 001.
3. The Deputy Collector (Revenue),
South cum Land Acquisition Officer,
Special Economic Zone Project,
Karasur, Villianur,
Puduchery - 605001.

...Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorarified mandamus to call for the records relating to the passing of impugned order bearing No.1040/LA/SEZ/Court Case/2009-10 dated 20.05.2010 on the file of the 3rd respondent and quash the same and consequently, direct the respondents to refer the claim of the petitioner seeking enhancement of compensation for the lands acquired under the Award No.2/2008 dated 25.01.2008 as made out in the representation dated 09.02.2007, 28.05.2007 and 16.10.2007 for appropriate adjudication to a competent Court of law.

For Petitioner .. Mr.S.Kadarkarai

For Respondents .. Mr.A.Tamilvanan
Government Advocate (Puduchery)

ORDER

The petitioner's lands were acquired by the third respondent. The petitioner, even during the award enquiry, sought for a reference. In the case on hand, the urgency clause

under Section 17 of the Land Acquisition Act has been invoked. The third respondent has disbursed 80% of the compensation fixed by them even prior to the award. Now the petitioner wants a reference based upon the objections raised on various dates prior to the passing of the award. As the request made is yet to be acceded to, the present writ petition has been filed.

2.Learned counsel appearing for the petitioner would submit that similar matters involving the very same issue were allowed by this Court by treating the objections raised prior to the award to be reasonable after the award is passed and thus, references have been made. Learned counsel has also made reliance upon the order passed by this Court in W.P.No.26993 of 2016 dated 14.03.2017, in which, following the order passed in W.P.No.24668 of 2014 dated 16.02.2016, it has been held as follows:

"10.Admittedly, the second respondent has complied with the said requirement and 80% of compensation has been paid to the petitioners. Therefore, the amount which have been paid to the petitioners are towards compensation and those payments would be adjusted/reckoned as against the final payment payable after the Award has been passed. Therefore, to state that the objections given by the petitioners on 18.07.2006 before the prescribed date, cannot be taken into consideration, is an absolute perverse interpretation and the provisions of the Land Acquisition Act are intended to protect the land losers and to ensure that they are given fair and reasonable compensation.

11.Therefore, in my view, the objections which the petitioners have given after receiving 80% of compensation would enure to their benefit, till the Award is passed and an enquiry is conducted based on the Award by issuing notice under Section 12(2) of the Act. The second respondent has admitted the receipt of the objection dated 18.07.2006. Therefore, a person who objects regarding the payment of 80% compensation as inadequate, obviously would not be satisfied by receiving the remaining 20%, calculated at the same rate. The interpretation given by the respondents is illogical and does not aid the purposive interpretation of the statute.

12.The second contention raised by the respondents is that the request for reference ought to have been made within a period of six

months from the date on which the petitioners participated in the enquiry under Section 12(b) of the Act.

13.The specific case of the petitioner is that the Award made by the Collector was not enclosed along with the notice issued under Section 12(2) of the Act. The said averment has not been denied. In fact in the counter affidavit it has been admitted that for certain people soft copies of the Award have been furnished on payment of cost.

14.As noticed above, the reply given under the Right to Information Act clearly admits that the copies of the Award have not been furnished to the petitioners. Be that as it may, the respondent does not specifically state that all the three petitioners have participated in the Award enquiry. The specific case of the petitioners is that all of them have not participated in the enquiry. However, the said aspect of the matter has also not been brought forth in the counter affidavit in a proper manner. Therefore, when there is a defect in the procedure adopted by the second respondent, the second respondent cannot be permitted to take advantage of his own wrong.

15.In the case of STATE OF TAMIL NADU v. T.DHARMAMBAL alias DHARMABAI [2015 (2) CTC 476], a somewhat similar question arose for consideration and the Hon'ble Division Bench held that the period of limitation prescribed under Sections 18 and 18(2) of the Act, would be six months from the date of knowledge of the Award, as held by the Hon'ble Supreme Court in the case of PREMJI NATHU V. STATE OF GUJARAT [2012(5) SCC 250] and the state which was the appellant in the said case were not able to prove that the land losers had knowledge of the Award. Therefore, the direction issued by the learned single Judge, directing the petitioners claim to be referred to the Civil Court was confirmed.

16.The facts mentioned in the preceding paragraphs will clearly show that at the first instance the petitioners have expressed their dissatisfaction to the quantum fixed. The lands having been acquired by invoking the provisions

under Section 17 of the Act, the urgency clause, the objections which were given by the petitioners on 18.07.2006 should enure to their benefit and the period of limitation should be calculated from the said date as the compensation amount of 80% given to the petitioners by the second respondent, which is a pre-condition under Section 17(3A) of the Act is towards compensation and the remaining balance is only payable after the Award is passed.

17. In the light of the above, the Writ Petition is allowed and the second respondent is directed to refer the petitioners request to the Civil Court for determining the claim for enhanced compensation. The above direction shall be complied with by the second respondent, within a period of three months from the date of receipt of a copy of this order. No costs.

3. In a recent judgment rendered by this Court in W.P.No.43705 of 2016 dated 09.01.2017, after making reliance upon the order referred to above, the writ petition was allowed as it was also pertaining to the same award in Award No.2 of 2008 dated 25.01.2008.

4. The petitioners also seek a relief on the very same ground with respect to the very same award being Award No.2 of 2008. In such view of the matter, this Court is inclined to allow the writ petition as prayed for. Accordingly, the writ petition stands allowed. Consequently, the respondents are directed to refer the demand to the Civil Court for enhancing the compensation with reference to the lands acquired from the petitioners within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Following the same, this writ petition is also allowed and the respondents are directed to refer the demand to the Civil Court for enhancing the compensation with reference to the lands acquired from the petitioner within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

Learned Government Advocate appearing for the respondents submits that the impugned order is of the year 2010 and the writ petition has been filed only now. The question of delay and laches is one of practice and prudence but not of law.

What the petitioner wants is only a reference. Mere delay in approaching the Court will not take away the right of the petitioner to execute the reference. Hence, the objection made in this regard is also rejected.

-s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

To

1. The Chief Secretary to Government,
Puduchery - 605 001.

2. The Collector (Revenue),
Puduchery-605 001.

3. The Deputy Collector (Revenue),
Special Economic Zone Project,
Karasur, Villianur,
Puduchery - 605001.

+1 CC to Govt Pleader (P) Advocate sr 18779

+1 CC to Mr.S.Kadarkarai, Advocate sr 18467

W.P.No.26431 of 2016

RSI (CO)
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