

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.36936 of 2003

1. K.G.Manohari
2. Jaya Sudha
3. Jayalatha
4. Jayamanikandan Prabu

... Petitioners

Vs.

The District Collector,
Dharmapuri District,
Dharmapuri.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondent to make reference under Section 18 of the Land Acquisition Act, 1894 to the competent Civil Court with respect to the acquisition of the lands measuring 1.78.5 hectares situated in Survey No.119/1, Olaipatti Village, Uthankarai Taluk, Dharmapuri District belonging to the first petitioner's husband Late J.Nandagopal within the time that may be fixed by this Court.

For Petitioners: Mr.P.Mani
For Respondent : Mr.Akhil Akbar Ali,
Government Advocate

ORDER

This Writ Petition is filed seeking for issuance of a Writ of Mandamus to direct the respondent to make reference under Section 18 of the Land Acquisition Act, 1894 to the competent Civil Court with respect to the acquisition of the lands measuring 1.78.5 hectares situated in Survey No.119/1, Olaipatti Village, Uthankarai Taluk, Dharmapuri District belonging to the first petitioner's husband Late J.Nandagopal, within the time that may be fixed by this Court.

2. According to the petitioners, dry lands measuring an extent of 1.78.5 hectares situated in Survey No.119/1, Olaipatti Village, Uthankarai Taluk, Dharmapuri District belonged to the first petitioner's husband, J.Nandagopal. Petitioners 2 to 4

are the children of the said J.Nandagopal and the first petitioner. The said lands along with other lands were acquired for the purpose of setting up of an Industrial Complex by Tamil Nadu Corporation for Industrial Infrastructure Development Limited, Madras and a Notification under Section 4(1) of the Land Acquisition Act was published in the Tamil Nadu Government Gazette, dated 18.10.1995. The first petitioner's husband submitted his objections to the Notice issued to him under Rule 3 of the Rules framed under Section 55(1) of the Land Acquisition Act. It is further stated that subsequently, a declaration under Section 6 of the said Act was issued and Award was also passed under Section 12 of the said Act, without notice to the husband of the first petitioner.

3. It is further averred by the petitioners that the first petitioner's husband received the notice dated 04.01.1999 issued under Section 12(2) of the said Act on 18.01.1999 informing that compensation of a sum of Rs.99,428/- fixed for the acquisition of the said lands. Since the compensation amount fixed under Section 12 of the Act is very low, the first petitioner's husband sent a representation dated 14.02.1999 to the Special Tahsildar (Land Acquisition), T.A.C.I.D., Pachampalli, requesting him to refer the matter to Civil Court under Section 18 of the said Act for enhancement of compensation, besides sending a copy of the same to the District Collector, Dharmapuri, the respondent herein. The said representation sent by Registered Post with Acknowledgement Due returned with an endorsement that the Office of the Special Tahsildar (Land Acquisition), T.A.C.I.D., Pachampalli, has been closed. However, the copy sent to the District Collector, Dharmapuri was duly acknowledged on 16.02.1999.

4. The first petitioner's husband received the compensation amount fixed by the respondent herein, by way of a cheque under protest. Hence, according to the petitioners, the respondent herein should have referred the matter to the Sub Court under Section 18 of the Act. In the meantime, the first petitioner's husband passed away on 15.04.2001 leaving behind him the petitioners herein as his legal heirs. Hence, the petitioners sent another representation dated 25.07.2003 to the respondent herein, narrating the entire facts and requesting him to refer the matter to the Sub Court under Section 18 of the Act. Though the petitioners' representation dated 25.07.2003 was duly acknowledged by the respondent herein on 29.07.2003, the respondent did not refer the matter under Section 18 of the Act. Hence, the petitioner has filed this Writ Petition for the relief stated supra.

5. The respondent has filed counter affidavit stating that the Award for the land in question was pronounced by the Special Tahsildar (L.A.), TACID, Pochampalli on 10.08.1998. The land owner J.Nandagopal was served with the notice under Section 12 (2) of the said Act on 18.01.1999. As per the Land Acquisition Act, under Section 18(2)(b), six weeks from the date of receipt of notice under Section 12(2) of the said Act is 28.02.1999 or six months from the date of the Award is 09.02.1999. In the case on hand, the period first expires on 09.02.1999. But, the first petitioner's husband, namely J.Nandagopal has sent a petition on 14.02.1999 to the Special Tahsildar (L.A.), TACID, Pochampalli, which is a belated one as per the provisions of the said Act. It is further stated in the counter that the land owner has filed to file a petition for enhanced compensation in time, i.e. on or before 09.02.1999 to the Collector/Tahsildar.

6. Learned counsel for the petitioner strenuously contended that the respondent herein ought to have made reference under Section 18 of the Land Acquisition Act, when the owner of the land and his legal representatives have been making continuous representations requesting him to refer the matter under Section 18 of the Land Acquisition Act.

7. On the other hand, learned Government Advocate appearing for the respondent submitted that Section 18(2)(b) of the Land Acquisition Act is very clear that an application seeking enhancement of compensation has to be made within six weeks from the date of receipt of notice under Section 12(2) of the said Act or within six months from the date of the Collector's Award, whichever period expires first. It is his contention that an application was made by the petitioners after the expiry of six months period.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. Admittedly, the husband of the first petitioner made an application to the respondent/District Collector seeking enhancement of compensation on 14.02.1999, though they ought to have sent it on or before 09.02.1999 and there is no need for the petitioners to send a further representation to the Special Tahsildar (L.A.), TACID, Pochampalli, as he has no role to play in this matter. For better appreciation of the case, Sections 12 and 18 of the Land Acquisition Act are extracted hereunder:

"Section 12: Award of Collector when to be final:--(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final conclusive evidence, as between the Collector and the persons interested, whether they have

respectively appeared before the Collector or not, of the true area and value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made."

"Section 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."

10. It is seen that the husband of the first petitioner sent representation on 14.02.1999, one to the Special Tahsildar and another to the District Collector, which is stated to have been sent only belatedly. It is to be noted that the expiry of six weeks from the date of receipt of notice under Section 12(2) of the Act, falls on 28.02.1999, as the said notice was served on the land owner on 18.01.1999, which is the first condition as per Section 12(2)(b) and six months from the date of Collector's Award, expire on 09.02.1999 as per the second condition, the Award being dated 10.08.1998 and in this case, six months period has to be taken into account, being the period which first expired, which is 09.02.1999 from the date of the Award as per Section 12(2)(b)-second condition under the Act. The Award is dated 10.08.1998, and the petitioner had knowledge about the Award even on 18.01.1999 itself, on which date the Award copy was served on him. According to the learned Government Advocate, the said proviso under Section 18(2)(b) nowhere states that it

is six weeks from the date of the knowledge of the Award, after the intimation from the District Collector and hence, it is the contention of the respondent that extending the period of six months is not possible in the light of the aforesaid provision extracted supra.

11. In the above context, learned counsel for the petitioner relied on a judgment of the Supreme Court reported in AIR 2010 SC 1532 (Bhagwan Das Vs. State of U.P) to contend that in terms of clause (b) to Section 18(2) of the said Act, the application for reference to Court under Section 18 may be made by the petitioner within six weeks from the date of knowledge of the Award based on the communication received from the Collector. Admittedly, the petitioner was not present when the Award was made and that Section 18(2)(a) will not be applicable to the facts of the present case, which stipulates six weeks from the date of the Collector's Award.

12. It is clear that the date of the Collector's Award referred to in Section 18 of the Act may not be applicable to the facts of the case, as the land owner, the husband of the first petitioner, was not present on the date of making the Award on 10.08.1998, but received the communication only on 18.01.1999 on which date, he was issued with notice under Section 12(2) of the Act. The husband of the petitioner sent representations, dated 14.02.1999, one to the Collector and the other to the Special Tahsildar, in which he has categorically mentioned that he had the knowledge about the Award only on 18.01.1999 on which date he was served with notice under Section 12(2) and that he was not present at the time of passing the Award. Since the Land Acquisition Act is a beneficial Legislation in granting compensation at the time of acquiring the land under the said Act, there is no hard and fast rule that the burden is on the applicant to establish his claim, namely that he was present on the date of passing the Award or that he had knowledge about the Award.

13. Learned Government Advocate appearing for the respondent has admitted that Section 18(2)(a) of the Act may not be applicable to the case, as the land owner, namely the husband of the first petitioner was not present at the time of passing the Award. That being the case, the entire burden shifts on the respondent to establish that the petitioner had knowledge of the Award. The respondent wanted to truncate Section 18(2)(b) and submit that when once the petitioner has knowledge about the date of the Award, by means of communication, automatically, in terms of Section 18(2)(a) or in terms of first par of Section 18(2)(b), the period of limitation will cease on the expiry of six weeks from the date of the Collector's Award as per Section 18(2)(a) or six weeks from the date of receipt of the notice from

the Collector under Section 12(2) as per Section 18(2)(b) first condition. Such an interpretation will run counter to the principles of the Legislation of the Land Acquisition Act and the purpose for which the provisions under the Act have been interpreted in the Act. The respondent tried to distinguish the said decision of the Supreme Court reported in AIR 2010 SC 1532 (cited supra) based on a reading of paragraphs 8 and 9 of the same, which are extracted below:

"8. Clause (b) of the proviso to Section 18 requires a person interested who has not accepted the award, to make an application to the Collector requiring him to refer the matter for determination of the court, 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 first expires, if he or his representative was not present before the Collector at the time of making of the award.

9. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not receive a notice under Section 12(2) of the Act, while providing only six weeks from the date of receipt of notice under Section 12(2) of the Act for making an application for reference where the applicant has received a notice under Section 12(2) of the Act is obvious. When a notice under Section 12(2) of the Act is received, the land owner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or secure copies so that he can ascertain the relevant particulars of the award."

14. Even though there was an amendment to the Land Acquisition Act, more particularly with regard to Section 18 (Tamil Nadu Amendment), the principles have been enunciated by the Apex Court as early as in the decision reported in AIR 1961 SC 1500 (Raja Harish Chandra Raj Singh Vs. Dy. Land Acquisition Officer), which has been referred to and followed by the Supreme Court in the decision reported in AIR 2010 SC 1532 (cited supra). This Court is of the view that the words "date of Collector's Award" if taken as such, would mean that on the expiry of six months from the date of Award, even though the petitioner is not aware of the Award and the petitioner may lose the right of seeking a reference under Section 18, which will lead to arbitrariness and unreasonable discrimination. The

aforesaid words, namely "date of the Collector's Award", falling under Section 18 of the Act would have to be read as that of the date of the knowledge of the contents of the Award and not the actual date of the Award.

15. Admittedly, in the case on hand, the petitioner had knowledge of the Award only on 18.01.1999 when notice under Section 12(2) of the Act was served on him and that within six weeks from the date of the knowledge of the Award, he had made the application/representation for reference under Section 18 of the Act on 14.02.1999. The contention of the respondent that the Award has been passed on 10.08.1998 and the petitioner has got the knowledge on 18.01.1999 and that the period will expire on 09.02.1999, namely six month's period expires from the date of the Award and that the petitioner had knowledge on 18.01.1999 itself, cannot be accepted, as it would run counter to the provisions of Section 18 of the Act, more particularly, Section 18(2) (b).

16. I find much force in the contentions of the learned counsel for the petitioner. Accordingly, the Writ Petition is allowed as prayed for. The respondent-District Collector is directed to make a reference to the competent Court under Section 18 of the Act and the competent Court shall decide the issue within a period of two months from the date of making the reference by the Collector, after affording an opportunity of hearing to the parties concerned. It is now stated that the present Collector is District Collector, Krishnagiri and not Dharmapuri, as impleaded as respondent in this Writ Petition. Accordingly, the District Collector, Krishnagiri is directed to follow the above direction and make a reference under Section 18 within 45 days from the date of receipt of a copy of this order. The further directions as stated above will follow. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

CS

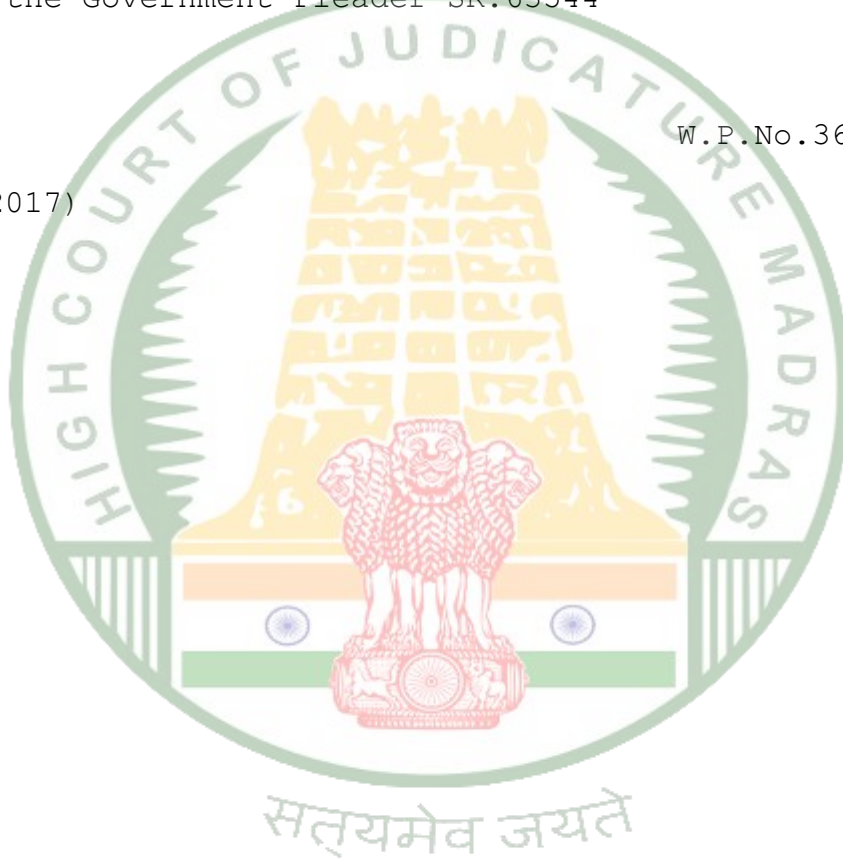
To :

1. The District Collector,
Dharmapuri District, Dharmapuri.
2. The District Collector, Krishnagiri.

+ 1 cc to Mr. Mani, Advocate SR.63080
+ 1 cc to the Government Pleader SR.63544

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