

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22..10..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.11268 of 2013

M.Ramachandran

... Petitioner

-Versus-

1.The Collector,
Kancheepuram District,
Kancheepuram.

2.The Special Tahsildar,
Madras Export Processing Zone,
Land Acquisition,
Tambaram, Chennai 600045.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the proceedings of the 1st respondent in Na.Ka.No.47374/99/F1 dated 29.01.2013 and to quash the same insofar as declining to pass an award in respect of lands comprised in Survey No.116/2B measuring an extent of 0.61 cents, Survey No.56/1B1 measuring an extent of 0.91 cents, Survey NBo.56/2 measuring 0.18 cents within Kadaperi Village, Tambaram Taluk, Kancheepuram District and for a direction to the 1st respondent to re-appreciate the same by enhancing the award in equation to the amount granted in the LAOP proceedings mentioned in the application submitted under Section 28-A of The Land Acquisition Act, 1894.

For Petitioner

: Mr.V.Manohar

For Respondents

: Mr.C.Thirumaran,
Spl. Government Pleader

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ORDER

This writ petition has been filed challenging the order dated 29.01.2013 passed by the 1st respondent - District Collector, Kancheepuram, in Na.Ka.No.47374/99/F1 rejecting the application of the petitioner submitted under Section 28-A of The Land Acquisition Act, 1894 for payment of enhanced compensation.

2. The grievance of the petitioner is that his lands were acquired as earlier as in the year 1985 for a public purpose to wit, for Madras Export Processing Zone by the State Industries Promotion Corporation of Tamil Nadu and an award was also passed in the year 1986. Subsequently, some of the neighboring land owners whose land were also acquired for the same project had sought for reference, on their applications the District Collector referred the matter under Section 18 of the Land Acquisition Act, 1894 [in short, 'the Act'] to the civil court concerned for determination of enhanced compensation. Thereafter, the petitioner had submitted an application under Section 28-A of the Act seeking for enhanced compensation and the same was rejected on the ground that the application was not filed in time. Challenging the same, the petitioner had filed a writ petition in W.P.No.22669 of 2010 before this court and this court by order dated 06.01.2012 set aside the order of the District Collector and directed the respondents therein to consider the application of the petitioner made under Section 28-A of the Act. Thereafter, the order impugned in this writ petition came to be passed by the 1st respondent wherein, the 1st respondent has held that the lands of the petitioner were comprised in four different survey numbers out of which the land comprised in S.No.55/2 alone was similar to that of the land which were covered in the earlier reference and the land comprised in three other survey numbers were nanja lands and the same were not similarly situated lands. It is this order which is now under challenge in his writ petition.

3. The learned Special Government Pleader would submit that as against the order of the 1st respondent under Section 28-A (2) of the Act, the petitioner ought to have sought for reference under Section 28-A(3) of the Act to the jurisdictional civil court and without availing such opportunity, the petitioner cannot straightaway maintain the writ petition.

4. I have considered the rival submission carefully.

5. Admittedly, as against the order passed by the 1st respondent under Section 28-A(2) of the Act, only a reference is maintainable under Section 28-A(3) and the issue should be decided by a reference court. The relevant provisions of the Act read as follows:-

"28-A - Re-determination of the amount of compensation on the basis of the award of the court.-

... ..
... ..

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the collector, require that the matter be referred by the Collector for the determination of the court and the provisions of Section 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Section 18."

6. Even though the petitioner has not filed any separate application seeking for reference since the petitioner objected to the order of the 1st respondent by way of the instant writ petition immediately after the impugned order, the District Collector is directed to refer the matter under Section 28-A(3) of the Act to the competent civil court within a period of four weeks from the date of receipt of a copy of this order and upon such reference, the civil court concerned shall decide the issue involved in the reference on merits and in accordance with law. The petitioner is permitted to raise all the points including the points which are raised in the instant writ petition before the reference court.

7. In the result, the writ petition is disposed of with the above directions. No costs.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Collector,Kancheepuram District, Kancheepuram.

2.The Special Tahsildar, Madras Export Processing Zone, Land Acquisition, Tambaram, Chennai 600 045

+ 1 cc to Mr. V. Manoharan, Advocate Sr.71780

+ 1 cc to Mr. Government Pleader SR.72400

W.P.No.11268 of 2013

KS(CO)

EU(28/11/2018)