

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.01.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.506 of 2015 and

M.P.No.1 of 2015

1.The Collector,
Kancheepuram District, Kancheepuram.

2.The Special Tahsildar (Land Acquisition)
I.T.Expressway Project,
Office of Tahsildar, Tambaram,
Chennai - 600 045.

...Appellants

Vs

1.P.Solomon Francis
2.Fathima Jaya Mary
3.Antony Josephine

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 22.09.2014 made in W.P.No.33683 of 2013.

WP.No.33683 of 2013:Writ Petition filed under Article 226 of the Constitution of India praying for issue a Writ of Mandamus directing the respondents to disburse the sum of Rs.56 06 401/- due to the petitioners under Award No.6/2013 dt 30.4.13 passed by the 1st respondent along with interest and to refer the award to the Jurisdictional Civil Court under Sec 20 (1) of the Taminadu Highways Act.

For Appellants : Ms.A.SriJayanthi
Spl.Govt.Pleader

For Respondents: Mr.AR.L.Sundaresan for
Mr.S.Wilson Associates

J U D G M E N T

(made by K.K.SASIDHARAN, J.)

The learned single Judge in total violation of the provisions of the Tamil Nadu Highways Act, 2001 stipulating the procedure for determination of compensation by the District Collector and the appellate forum to decide the legality and

correctness of the order passed apportioning the compensation allowed the writ petition filed by the respondents and directed the District Collector to pay the entire compensation to them notwithstanding the claim made by the Government that the respondents are encroachers in respect of village site poramboke. Feeling aggrieved by the order directing payment of compensation to the respondents, the appellants have come up with this intra court appeal.

2. The land to an extent of 4.5 acres in S.No.4 part of Karunguzhipallam Village was acquired by the Government under the provisions of Tamil Nadu Highways Act. The District Collector, after conducting enquiry, passed an Award dated 30 April 2013. Since the land was shown as village site and the land owners were not in a position to produce documents relating to title, the compensation amount was not paid. The respondents therefore filed a writ petition before the Writ Court for issuance of a writ of Mandamus directing the first appellant to disburse the entire amount to them under Award No.6/2013 dated 30 April 2013 along with interest and thereafter to refer the matter to the jurisdictional civil court under Sub-Section (1) of Section 20 of the Tamil Nadu Highways At for enhancement of compensation.

3. Before the learned single Judge, counter affidavit was filed by the appellants, wherein, it was contended that the respondents are encroachers and they were in possession of a village site owned by the government. It was further contended that there was no Natham Patta issued by the revenue authorities in favour of the respondents. Therefore, the respondents are not entitled to the compensation determined by the District Collector.

4. The learned single Judge instead of directing the District Collector to decide the question of apportionment of compensation issued a mandamus directing the Collector to disburse the compensation amount to the respondents within a period of three months. सत्यमेव जयते

5. The learned Special Government pleader contended that the land was shown as a village site. The respondents are rank trespassers in respect of a Government land. The District Collector therefore rightly included the Tahsildar as an interested party. According to the learned Special Government Pleader, instead of directing the statutory authority to decide the issue, the learned single Judge on the basis of the self serving affidavit issued a direction to pay compensation amount to the respondents. The order is therefore legally not sustainable.

6. The learned Senior Counsel for the respondents by placing reliance on the interim orders dated 16.02.2017 and 04.04.2017 in the present appeal contended that the land being classified as Grama Natham, those who are in possession are entitled to compensation. The learned Senior Counsel contended that the respondents were treated as interested parties in the Award and as such, the learned single Judge was right in issuing the Writ. It was further contended that in case the matter is referred to the Collector for determination, it would take considerable time and as such, the learned Judge was justified in directing the Collector to pay the compensation amount to the respondents.

7. The District Collector, Kancheepuram, initiated proceedings for acquisition of 27679 sq.mtrs of land in Karunguzhipallam village in the district of Kancheepuram. The land stated to have been purchased by the respondents as per Sale Deed dated 10 November 2008 and situated in S.No.4, Karunguzhipallam Village was part of the land acquired by the District Collector.

8. The Award dated 30 April 2013 indicates that the respondents and the Tahsildar, Chengalpattu were shown as the interested parties in respect of the land in S.No.4/1 part. The Collector found that the land in question was registered as a village site in revenue records. The respondents were treated as encroachers. There was no patta in the name of the encroachers. There was no reference about their possession in the revenue records. The Collector therefore issued notice under Sections 19(5) and 19(7) of the Tamil Nadu Highways Act to the respondents to appear and prove their title to the land in question. Since the respondents have not produced any documentary evidence to substantiate their claim regarding title or possession, the compensation amount was not paid. Since the land was shown as village site in the revenue records, the District Collector included the name of the jurisdictional Tahsildar as an interested party.

9. There was no determination by the District Collector with respect to the person who is entitled to the compensation. The respondents without calling upon the Collector to take a decision in the matter either for payment of compensation or for its apportionment rushed to this court and filed the writ petition for Mandamus. The writ petition was opposed by the Government on the ground that being a government land, the respondents are not entitled to claim compensation.

10. The learned single Judge without any reference to the statutory provisions regarding determination of amount and the appellate remedy to the aggrieved issued a Writ directing the appellants to pay compensation to the respondents.

11. Section 19 of the Tamil Nadu Highways Act, deals with determination of amount. Sections 23 and 24 and other related provisions of the Land Acquisition Act, 1894 subject to modification are made applicable to a proceeding for determination by the District collector under Section 19 of Act. Section 20 of the Act provides for appeal to the Court against a decision made by the District Collector determining the amount payable to the land owners. Section 21 provides for apportionment of compensation. The said provision provides that in case there are rival claims to the amount determined, the Collector shall determine the persons, who, in his opinion, are entitled to receive the amount and the amount payable to each of them. Sub-section (2) of Section 21 provides that in case a dispute arises as to the apportionment of the amount determined under Section 19, still the Collector has to refer the dispute to the Court for its decision.

12. The Tamil Nadu Highways Act, 2001 therefore contained string of provisions with regard to resolution of dispute among the claimants. It is not as if the order passed by the District Collector with regard to apportionment is final. It is always open to the aggrieved to approach the jurisdictional Court challenging the decision taken by the District collector. The provision also indicates that it is open to the Collector to refer the dispute for the decision of the Court. The provision is akin to that of Sections 30 and 31 of the Land Acquisition Act, 1894.

13. The learned single Judge by issuing a writ permitted the respondents to by pass the statutory remedy available to them. When a statute says that a particular thing should be done in a particular manner, it shall be done only in that manner.

14. The issue raised by the respondents, the Government and the Tahsildar with regard to the nature of land and the right to claim compensation cannot be decided on the basis of affidavit. The matter requires evidence. Nothing prevented the respondents from approaching the District Collector to take a decision one way or the other. In case, the decision is

adverse, it is always open to the respondents to take up the issue before the jurisdictional Court. There is no question of entertaining a writ petition in a matter of this nature. The issue regarding grant of compensation and enhancement under the special statute must be decided by the forum constituted by the Legislature. We are therefore of the view that the learned single Judge was not correct in directing the District Collector to pay the compensation to the respondents.

14. The order dated 22 September 2014 is set aside.

15. We direct the District Collector, Kancheepuram to issue notice to the respondents and the jurisdictional Tahsildar and decide the question with regard to apportionment of compensation in accordance with the provisions of Tamil Nadu Highways Act. Such exercise shall be completed within a period of 12 weeks from the date of receipt of a copy of this judgment.

16. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Collector,
Kancheepuram District, Kancheepuram.

2.The Special Tahsildar (Land Acquisition)
I.T.Expressway Project,
Office of Tahsildar, Tambaram,
Chennai - 600 045.

+1 cc to Mr.S.Wilson Advocate sr 3175
+1 cc to Govt Pleader sr 3654

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