IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11586 of 2005
and
W.P.M.P.No.12629 of 2005

Sakkubai ..Petitioner

vs

1.The Managing Director
Tamil Nadu Transport Corporation
Dharmapuri
Dharmapuri District.

2.The Land Acquisition Officer
Cum Revenue Divisional Officer
Krishnagiri,
Dharmapuri District. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to pay a sum of Rs.16,84,961/- together with 18% interest on and from 5.10.2004 till the date of repayment.

For Petitioner : Mr.V.Raghavachari

For Respondents : M/s.Narmadha Sampath
Additional Advocate General
Assisted by Mr.M.Elumalai
Government Advocate for R2

Mr.R.Arunmozhi for R1

O R D E R

The relief sought for in the present writ petition is for a direction to direct the 1st respondent to pay a sum of Rs.16,84,961/- together with 18% interest on and from 5.10.2004 till the date of repayment.

2.The learned counsel for the writ petitioner states that the lands belonged to the writ petitioner were acquired for the purpose of developing a Public Bus stand by the 1st respondent / Tamil Nadu State Transport Corporation at Dharmapuri.

3.The land to an extent of 4.04 Acres were acquired. Originally, the lands were agricultural lands and the Land Acquisition Officer had awarded 1.19 lakhs for wet lands and Rs.67,000/- for dry lands per hectare. The petitioner raised protest against the fixation of compensation and sought for an enhancement of compensation. The matter was referred to the Sub Court, Dharmapuri and on the reference, an amount of Rs.63/- per Sq.ft was awarded for the land and accordingly, Rs.99,000/- for the 9 tamarind trees, Karuvelan tree and 3 Bodhi trees. The 2nd respondent filed an appeal before the Hon'ble High Court in A.S.No.1220 of 2003. The appeal was compromised on the following terms and the same, which reads as follows:

> "1.That the compensation for the impugned lands be and hereby is fixed at the rate of Rs.22.50 per sq.ft.
>
> 2.That the respondents 1 to 5/claimants shall be entitled to 12% additional compensation under section 23 (1) (a) of the Land acquisition Act from the date of Sec.4(1) notification till the date of award or taking possession whichever is earlier.
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> 3.That the respondents 1 to 5 / Claimants be and hereby is entitled to solatium at the rate of 30% on the compensation with additional interest at 9% per annum for a period of one year from the date of taking possession and thereafter 15% per annum till the date of payment and
>
> 4.That there be no costs in this appeal."

4.The amount is payable to the writ petitioner for the lands acquired on the date of Section (4) (1) notification. Even as per the undertaking given before the High Court, the 1st respondent had to pay the amount within a period of six weeks from the date of agreement. The High Court passed an order on 30.04.2004 and the period of six weeks expired by 12.06.2004. However, there was a delay in payment and the deposit was made in October 2004. The delay caused by the 1st respondent on account of their fault. Therefore, the writ petitioner cannot made to suffer. The 1st respondent had deducted a substantial amount by way of tax deduction at source. It had relied upon Section 194 LA for the purpose of effecting such deduction. The finance bill of 2004 was implemented with prospective effect from 01.10.2004. The delay in payment by the 1st respondent is their fault and therefore, the writ petitioner cannot made to suffer financially on account of such delay caused by the 1st respondent in depositing the agreed enhanced compensation.

5.The learned counsel for the petitioner states that the compensation was deposited on 05.10.2004 as per the Joint memo filed before the Hon'ble Division Bench. The last date for depositing the compensation amount was 12.06.2004. The delay caused on account of the officials of the 1st respondent and therefore, the writ petitioner is not liable to pay the TDS as the finance bill, came into effect with effect from 01.10.2004. When the last date of deposit falls on 12.06.2004, the amendment to the Income Tax came into force with effect from 01.10.2004, after a lapse of about 4 months from the last date agreed between the parties before the Hon'ble Division Bench in A.S.No.1220/2003.

6.The learned Additional Advocate General appearing on behalf of the respondents opposed the contentions by stating that the amount of compensation was actually deposited on 05.10.2004. However, the delay occurred on account of certain mandatory official procedures and there was no intention on the part of the respondents to delay the deposit as per the agreement entered into between the parties before the Hon'ble Division Bench. Thus, the statutory deductions made in view of the amendment introduced with effect from 01.10.2004, the respondents cannot be made liable.

7.This apart, the learned Additional Advocate General said that the certified copy of the order was delivered on 27.05.2004 by the High Court of Madras and the same was received by the learned Advocate General of Tamil Nadu at his office only on 03.07.2004. Thereafter, the matter was placed before the Board of Directors of the 1st respondent Corporation and they have passed a resolution on 17.07.2004, which is extracted hereunder:

> "...Resolved to approve and authorize the Managing Director to deposit the award amount as per orders of the High Court of Madras dt.30.04.2004 in A.S.No.1220 of 2003 on the appeal preferred by the Revenue Divisional Officer, Krishnagiri against the order of the Subordinate Judge, Dharmapuri in LAOP.No.62/02 dated 17.09.2003 as recommended by the Finance Committee after obtaining approval of the Government."

8.After, passing of the resolution, the 1st respondent Corporation had written a letter to the Government for approval of payment vide Letter dated 28.07.2004. The Government had granted permission in Letter dated 01.10.2004, which reads as under:

> "...Government have examined your proposal in detail and decided to accord permission. Accordingly you are permitted to deposit the award amount of approximately Rs.145.96 Lakhs as per the orders of High Court, Chennai into the Court of Sub-ordinate Judge, Dharmapuri..."

9.Pursuant to the permission granted by the Government with reference to the resolution passed by the 1st respondent Corporation, the compensation amount was deposited before the appropriate Court. Thus, there was no delay on the part of the respondents in depositing the agreed amount and the amendment enacted in between cannot be a ground for the writ petitioner to claim back the TDS amount already deducted in accordance with the provisions of the amended Income Tax Act.

10.The TDS amount of Rs.16,84,961/-(Rupees Sixteen Lakh, Eighty Four Thousand, Nine Hundred and Sixty one only) was deducted for the total amount deposited amount deducted of Rs.1,50,17,479/-(Rupees One Crore, Fifty Lakh, Seventeen Thousand, Four Hundred and Seventy Nine only). Thus, the TDS amount deducted by the respondents is in accordance with the provisions of the Income Tax Act and the writ petitioner has not established that he is eligible to get back the TDS amount.

11.Considering the rival submissions made by the respective learned counsels appearing on behalf of the petitioner and the respondents, this Court is of an opinion that the petitioner lost his right of property on account of the land acquisition proceedings. Undoubtedly, the land acquired was used for the purpose of developing the public Bus stand in Dharmapuri Town.

12.The quantum of compensation fixed by the original authority was disputed by the writ petitioner and the Sub Court has enhanced the compensation. Challenging the said judgment and decree, the Corporation preferred an appeal before the High Court in A.S.No.1220/2003. The parties in A.S.No.1220/2003 had entered into an agreement and based on the agreement, a joint memo was filed by the Hon'ble Division Bench of this Court. Accepting the joint memo, the Hon'ble Division Bench also passed an order. It was categorically agreed by the parties before the

Hon'ble Division Bench that the agreed amount of compensation must be deposited on or before 12.06.2004. However, it is now admitted before this Court that the agreed compensation amount was deposited by the respondent Corporation only on 05.10.2004. There was a delay of about 4 months in depositing the agreed compensation amount. However, the respondents now pleads that the delay is on account of certain official formalities and for which, the respondents cannot be directed to repay the TDS amount already deducted pursuant to the amendment introduced in the Income Tax Act.

13.This Court is of an opinion that the enhanced compensation was agreed between the parties. When the parties entered into an agreement and based on the agreement, a joint memo also had been filed before the Hon'ble Division Bench of this Court, this Court is of an opinion that any further changes or otherwise cannot be effected with reference to the payment of agreed compensation amount. In the present case, the agreed compensation amount was Rs.1,50,17,479/-(Rupees One Crore, Fifty Lakh, Seventeen Thousand, Four Hundred and Seventy Nine only). Thus, the writ petitioner is entitled to get the entire agreed amount without any deduction. No deduction was agreed between the parties. The changes made in the Income Tax Act cannot have any implications in respect of the agreed compensation amount.

14.This being the factum now placed before this Court, this Court is of an opinion that because of the administrative delay caused by the respondent Corporation, the petitioner cannot made to suffer. It is unreasonable on the part of the respondents in delaying the deposit of compensation as agreed before the Hon'ble Division Bench. The petitioner has already suffered the land acquisition and for enhancement, the petitioner fought before the Court of law and finally the respondents agreed to deposit the entire enhanced compensation without any further deduction. Thus, the TDS amount deducted on account of the delay on the part of the respondents cannot be a ground for the purpose of denying the relief to the writ petitioner. Thus, the TDS amount must be paid by the respondents to the Income Tax Department. In other words, the respondents are liable to bear the TDS amount on account of their own delay and the petitioner cannot be penalized for the said administrative delay now explained before this Court by the respondents.

15.The learned counsel for the writ petitioner made a submission that the petitioner has not made any claim for refund of the TDS amount or otherwise before the Income Tax Department.

16.Under these circumstances, the respondents are directed to repay the deducted TDS amount of Rs.16,84,961/-(Rupees Sixteen Lakh, Eighty Four Thousand, Nine Hundred and Sixty one only) to the writ petitioner with interest at the rate of 6% per annum from the date of filing of the writ petition to till the date of actual payment to the writ petitioner.

17.With this direction, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Managing Director
Tamil Nadu Transport Corporation
Dharmapuri
Dharmapuri District.

2.The Land Acquisition Officer
Cum Revenue Divisional Officer
Krishnagiri, Dharmapuri District.

+1 cc to M/s.R.Arunmozhi, Advocate Sr.No.88750
+1 cc to the Government Pleader, Sr.No.89501

W.P.No.11586 of 2005

EV(CO)
CSL/10.01.2019