

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.01.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

W.P.No.8579 of 2017
and WMP.No.9403 of 2017

Mr.Durai @ Thulasingham

... Petitioner

Versus

The Special Deputy Collector (LA),
Tamil Nadu Urban Development Project-III,
Chennai @ Alandur.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Ceritorari to call for the records relating to the impugned order in Na.ka.85/2007A1 dated 17.02.2017 on the file of the respondent, and quash the same.

For Petitioner : Mr.M.A.R.Pragash

For Respondents : Mr.Akhil Akbar Ali, Government Advocate

ORDER

1.The petitioner has preferred this petition seeking to quash the proceedings of the respondent dated 17.02.2017. The respondent has recalled the award amount paid to the petitioner on the ground that they are rival claimant to the award sum. The case of the petitioner is that: petitioner's father Selvaraj owned a certain piece of land and it was acquired under the provisions of Tamil Nadu Highways Act, 2001. D.Selvaraj died on 10.12.2007 and he left behind him surviving his two sons viz., Chandrasekaran, Thulasingham and two daughters viz., Surya and Vasantha. Before his death, he had executed the registered Will dated 31.10.1987, whereunder, he bequeathed all property in different Schedule to all his four children. As per the said Will, the property acquired by the respondent fall to the share of the petitioner. So far as the property that became the subject matter of the land acquisition, it was dealt in two separate Schedules in the Will, with one portion falling to the share of the petitioner and the other portion falling to the share of Chandrasekaran. On passing of the award, the land acquisition authority has apportioned the compensation and paid the petitioner the compensation payable towards his share. This

the land acquisition authority has now recalled vide his proceedings dated 17.02.2017, which is now impugned.

2.Mr.M.A.R.Pragash, learned counsel for petitioner argued that Chandrasekaran legal heirs are making a claim to the share of the compensation awarded to the petitioner. Inasmuch as, the petitioner has received only his compensation and not a compensation payable to the Chandrasekaran or his legal heirs, the impugned order is bad.

3.Mr.Akhil Akbar Ali, learned Government Advocate has entered appearance for the respondent. The respondent has filed the counter affidavit. In the counter affidavit, it is alleged that the rival claimants namely the heirs of the deceased Chandrasekaran that there was an earlier Will dated 05.11.1938, and that this Will was executed by a certain Chinnappa Giramani, grandfather of petitioner's father Selvaraj which will have an impact on the title of the property concerned. The learned counsel for the petitioner submits that in order to resolve this dispute, it is imperative that the petitioner redeposit the amount with the Collector. It is further alleged in the counter affidavit that the petitioner herein has not disclosed the other heirs and therefore, an enquiry was conducted on 12.08.2016 and on 26.09.2016 with the petitioner and other six legal heirs viz., Tmt.Sooriya, Tmt.Vasantha, Thiru.Balaji, Tmt.Shanthi, Tmt.Sathya and Thiru.Vijayakumar.

4.The learned counsel for the petitioner would now submit that the at no time has the petitioner attempted to hide the names of others heirs of his father Selvaraj and that the Will of Selvaraj itself disclosed his four children and the property that were allocated to each of them. The learned counsel for the petitioner submitted that S.No.47 represents his brother Chandrasekaran share and S.No.48 represents his own share. The daughters are separately given property under the Will and therefore, the respondents had gone wrong in recalling the amount determined and paid to the petitioner.

5. Section 21 of the Tamil Nadu Land Acquisition Act, 2001 reads as follows:

21. Apportionment:- (1) Where several person's claim to be interested in 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.

(2) When the amount has been determined under Section 19, if any dispute arises as to the apportionment of the

same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute for the decision of the Court.

As per the said provisions, whenever a dispute arises, the Collector can either resolve the dispute himself or refer the matter to the Court. Since the claim has now arisen passing of the award, the respondent is only trying to restore the status quo ante and for resolving this dispute before him.

6.A Will, if it is impugned, has to be proved in the manner known to law. In this case, besides the Will of Selvaraj dated 31.10.1987, another Will dated 05.11.1938 executed by Chinnappa Giramani is introduced and hence it is necessary to ascertain the legal consequence of both of them. It is a dispute that Courts alone are competent to decide. Necessarily reference to the concerned Court has to be made. So far as the impugned order is concerned, it does not disclose the decision that the Collector has taken under Section 21 of the Land Acquisition Act, 2001. the same is something which the Sub Court is allowed and competent to decide.

7.Thus, in the opinion of this Court, it can be resolved only by competent Sub Court. The 1st respondent has to refer the matter to the concerned Court under Section 21 (2) of the Highways Act, 2001. On such reference being made, the petitioner shall either deposit that portion of the compensation amount disbursed to him by the land acquisition before the reference Court or shall offer any security as would be valuable enough to meet the requirement hereinabove directed, and the reference Court may resolve the issue in the manner adopted by law.

8.The learned Government Advocate, on instructions, would submit that reference under Section 21 (2) of the Act would be made within two weeks from the date of receipt of a copy of this order. This is recorded.

9.With the above observation, the writ petition stands disposed of. No costs. Consequently connected miscellaneous petition is also closed.

Assistant Registrar

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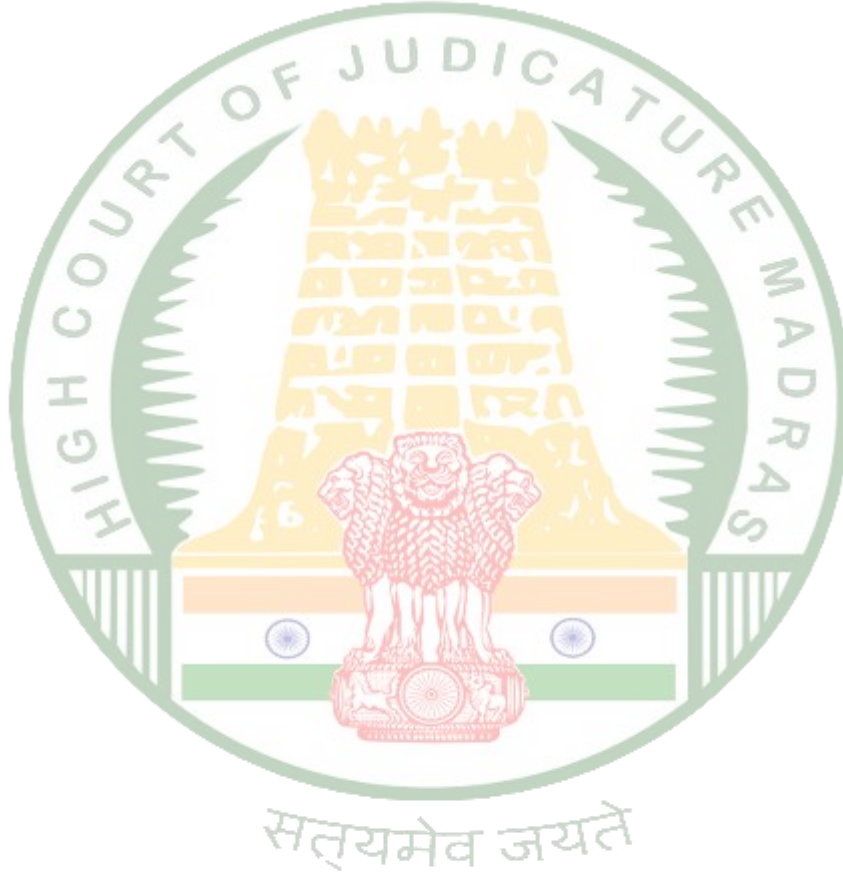
Sub Assistant Registrar

To
The Special Deputy Collector (LA),
Tamil Nadu Urban Development Project-III,
Chennai @ Alandur.

+1 Cc to M/s.MAR.Pragash,advocate,sr.6845

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