

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29.08.2018

Judgment Delivered on : 04.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.No.1778 of 2018
and
C.M.P.No.14362 of 2018

The Deputy Collector (Revenue) South-
cum-Land Acquisition Officer,
Special Economic Zone Project,
Villianur,
Puducherry-605 110. ... Appellant

Vs.

M/s.Sundaram Finance Limited,
Represented by its Senior Manager (Legal)
Mr.N.Madhusudhanan,
No.21, Pattulos Road,
Chennai-600 002.

... Respondent

Writ Appeal filed under Clause 15 of the Letters Patent
against the order dated 06.02.2018 passed by the learned Single
Judge in W.P.No.9451 of 2017 on the file of this Court.

WP.9451/2017:

Writ Petition filed under Article 226 of the Constitution of
India for issuance of Writ of Certiorarified Mandamus, calling
for the records of the respondent and to quash the order No.435/
DCRS/ LA/ SEZ/ DT/ 2017 Villianur dated 09.02.2017 and further
direct the Respondent to refer the claim of the petitioner to
Civil court under section 18(2) (b) of the Land Acquisition Act
1984 having competent jurisdiction.

For appellant : Mr.A.Gandhi Raj, Govt. Pleader (Pondicherry)
For respondent (Caveator) : Mr.S.Vasudevan

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed by the Deputy Collector (Revenue) South-cum-Land Acquisition Officer, Special Economic Zone Project, Villianur, Puducherry, as against the order dated 06.02.2018 passed by the learned Single Judge in W.P.No.9451 of 2017, in and by which, the learned Single Judge has directed as follows:

"6. Accordingly, this writ petition is allowed and the respondent is directed to refer the matter to the concerned Civil Court and the petitioner's request for Referring the matter under Sec.18 of the Land Acquisition Act, within four weeks from the date of receipt of a copy of this order, and on receipt, the Reference Court shall treat the same as if it was made on time, and shall grant all statutory benefits that the petitioner, would be entitled to in the same way as if the Reference was made in time. No costs. Consequently, connected miscellaneous petition is closed."

2. The brief facts of the case are as follows:

The respondent/writ petitioner-Company is a non-banking finance company engaged in the business of extending loan/hire purchase/hypothecation facility to the intending customers. While so, one M/s.Balaji Industrial Corporation Limited (BICL), has availed of hire purchase finance facilities from the respondent-writ petitioner. The respondent-Company is a mortgagee of 68.22 acres spread over several survey numbers. While that being so, the said property was acquired by the appellant-Deputy Collector (Revenue) South-cum-Land Acquisition Officer by invoking Section 17 of the Land Acquisition Act, for the purpose of setting up of Special Economic Zone to a total extent of 309.64.27 hectares at Sedarapet and Karasur Revenue Villages under the urgency provision of the Land Acquisition Act. As per Section 17(3) of the said Act, 80% of the compensation payable was disbursed to the respondent-writ petitioner on 12.07.2006, which was received by the respondent-writ petitioner under protest. Thereafter, the award was passed on 25.01.2008. After passing of the award, the balance 20% of the compensation was also received by the respondent-writ petitioner. Since the respondent-writ petitioner-Company was not satisfied with the compensation amount, they made representations on 24.11.2011, 17.04.2012, 24.02.2012, 05.12.2012 and 16.01.2017 for referring the matter under Section 18 of the said Act to the concerned Civil Court. But the

reference was not made by the appellant-Deputy Collector. Hence, the respondent has filed the Writ Petition.

3. The case of the respondent-writ petitioner was denied by the appellant-Deputy Collector by filing counter affidavit stating that as per the mandatory condition specified under Section 18(2)(b) of the Act, an application for reference shall be made within six weeks from the date of receipt of notice under Section 12(2) or within six months from the date of award of the Collector. In the instant case, the award was passed on 25.01.2008 and the six months period expired on 25.07.2008. The notice under Section 12(2) of the Act was received on 05.02.2008 and the six weeks period from 05.02.2008 expired on 15.03.2008. Thus, it is the stand of the appellant-Deputy Collector that the respondent-writ petitioner has not filed any application under Section 18 within the period specified under Section 18(2)(b) of the Act. The respondent-writ petitioner has chosen to make a representation only on 24.11.2011. Therefore, there is failure on the part of the writ petitioner in making the representation within six months from the date of award, i.e. 25.01.2008. Thus, the appellant-Deputy Collector sought for dismissal of the Writ Petition.

4. The learned Single Judge has negatived the claim of the appellant/Deputy Collector. Challenging the same, the appellant has filed the present Writ Appeal.

5. Learned Government Pleader (Pondicherry) appearing for the appellant/Deputy Collector submitted that as per Section 18(2)(b) of the Act, the application for reference shall be made within six weeks from the date of receipt of notice under Section 12(2) or within six months from the date of award passed by the Collector. So far as the present case is concerned, the award was passed on 25.01.2008, but the respondent-writ petitioner has not filed any application as required under Section 18(2)(b) of the Act. The respondent-writ petitioner has made application after a lapse of two years, and therefore, there is failure on the part of the writ petitioner in making the representation within six months from the date of award. In such circumstances, the learned Single Judge ought to have dismissed the Writ Petition. On the other hand, the learned Single Judge did not take note of the fact that the mandatory condition prescribed in Section 18(2)(b) was not complied with.

6. Learned Government Pleader (Pondicherry) further submitted that the provisions of Section 18(2)(a) of the Act was also not complied with by the respondent-writ petitioner. But the learned Single Judge, by considering the protest made by the writ petitioner at the time of receiving 80% of the compensation on 12.07.2006, had come to the conclusion that the protest was made by the writ petitioner at the time of receiving 80% of the compensation on 12.07.2006 itself, which is adequate enough notice for the authorities to act and refer the matter under Section 18 of the Act. In this regard, learned Government Pleader submitted that the said reasoning assigned by the

learned Single Judge is erroneous, because, after receiving the compensation, the writ petitioner has to make separate application under Section 18(2), either within six months from the date of the award of the Collector or within six weeks from the date of receipt of notice under Section 12(2) of the Act.

7. In the above context, learned Government Pleader relied on a judgment of the Supreme Court reported in 2013 (10) SCC 765 (Popat Bahiru Govardhane Vs. Land Acquisition Officer), wherein the Apex Court held as follows:

"16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." (see *Martin Burn Ltd. Vs. Corpn. of Calcutta* - AIR 1966 SC 529, AIR p.535, para 14 and *Rohitash Kumar Vs. Om Prakash Sharma* - 2012 (13) SCC 792 : AIR 2013 SC 30)."

8. For the abovesaid proposition, learned Government Pleader also relied on the decision of the Supreme Court reported in AIR 1975 SC 2054 (*Ernakulam Mills Ltd. Vs. State of Kerala*), wherein the Apex Court held that the land owner could not be allowed to take advantage of his own lapse.

9. Countering the above submissions, learned counsel appearing for the respondent-writ petitioner submitted that the judgment relied on by the learned Government Pleader appearing for the appellant-Deputy Collector, reported in 2013 (10) SCC 765 (cited supra), has not been rendered under Section 18 of the Land Acquisition Act and it is under Section 28-A of the Act. So far as the present case is concerned, at the time of receiving 80% of the compensation, the writ petitioner made protest, indicating the intention to seek enhancement of compensation. Therefore, by considering the said protest, the learned Single

Judge has directed the authority to refer the matter under Section 18 of the Act. The said finding of the learned Single Judge is supported by the orders passed by the Division Benches of this Court in W.A.No.1342 of 2017 (Government of Puducherry, rep. by its Chief Secretary and others Vs. Ramalingam and others), dated 02.11.2017 and also in W.A.No.1352 of 2018 (Government of Puducherry, rep. by its Chief Secretary and others Vs. S.G.Rajulu and others), dated 09.07.2018. Hence, learned counsel for the respondent-writ petitioner prayed for dismissal of the Writ Appeal.

10. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have carefully perused the materials available on record.

11. The appellant-Deputy Collector has acquired the land in question by invoking the urgency clause under Section 17 of the Act and that Section 17(3-A)(a) of the Act, provides for payment of 80% of compensation for the land. But this compensation is not final. Hence, according to the learned Government Pleader appearing for the appellant, any representation for enhancement of the compensation before passing of the award, is premature, as the award becomes final under Section 12 of the Act. Further, according to the learned Government Pleader, as per Second Proviso to Section 31(2) of the Act, no person who has received the amount otherwise than under protest, shall be entitled to make any application under Section 18 of the Act, which is a mandatory provision, which debars the person from making the application, if he receives the compensation under protest.

12. Per contra, it is the submission of the learned counsel for the respondent-writ petitioner that at the time of receiving 80% compensation itself, the writ petitioner made protest by expressing his intention seeking enhancement of compensation. On a careful perusal of the records, we find that Rs.5,15,37,760/- was paid as 80% of the compensation at the initial stage, and after the award is passed, remaining 20% of the amount along with statutory interest, will be paid. Therefore, determination of compensation was made even before the award.

13. Only after considering the above aspects, the learned Single Judge has held that the protest made by the writ petitioner at the time of receiving 80% of the compensation, be treated as representation made on time for enhancing the compensation. Further, the learned Single Judge has directed to grant the statutory benefits by directing the authority to make a reference.

14. In fact, in identical cases cited supra, the Division Benches of this Court in W.A.No.1342 of 2017, dated 02.11.2017 and also in W.A.No.1352 of 2018, dated 09.07.2018, held that in matters relating to the acquisition by invoking the urgency clause under Section 17 of the Land Acquisition Act, the protest made at the time of accepting 80% of the total compensation determined by the Land Acquisition Officer, would meet the

requirement of Section 18 of the Act.

15. Therefore, it is clear that the learned Single Judge has allowed the Writ Petition, which is only in consonance with the abovesaid orders passed by the Division Benches of this Court. Further, the judgment of the Supreme Court reported in 2013 (10) SCC 765 (cited supra) relied on by the learned Government Pleader appearing for the appellant, is not applicable to the facts of the present case, since in the instant case, already the writ petitioner has made protest at the time of receiving 80% of the compensation.

16. Hence, we find no infirmity in the impugned order passed by the learned Single Judge. The Writ Appeal is accordingly dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

CS

To

The Deputy Collector (Revenue) South-
cum-Land Acquisition Officer,
Special Economic Zone Project,
Villianur, Puducherry-605 110.

+2cc to Mr.S.Vasudevan, Advocate sr.no.60919

+1cc to Government Pleader sr.no.60960

Judgment
in

W.A.No.1778 of 2018

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