

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 30.10.2018

Judgment Delivered on : 26.11.2018

CORAM:

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

W.A.No.1726 of 2018
and
C.M.P.No.13796 of 2018

Ettammal ... Appellant

Vs.

1. Padma
2. Mohan
3. M.Madheswari
4. The Land Acquisition Officer-cum-
Revenue Divisional Officer,
Namakkal.
5. The District Collector,
Namakkal District,
Namakkal. ... Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 21.03.2018 passed by the learned Single Judge in W.P.No.32788 of 2017 on the file of this Court.

W.P.No.32788 of 2017:

Writ Petition filed under Article 226 of the Constitution of India to issuance of a Writ of Mandamus directing the 4th respondent to deposit the compensation amount re-determined as per proceedings in Rc.No.2603/2016/A7 in Award No. 53/2016 dated 05.08.2016 before the competent civil court or defer payment until decision on merits is passed in OS No.116/2017 pending on the file of Addl. District Munsif Namakkal

For appellant :Mr.C.Jagadish

For respondents :Mr.V.K.Vijayaraghavan for RR-1 to 3
Mr.N.Manikandan, Govt.
Advocate for RR-4 and 5

JUDGMENT
R.SUBBIAH, J

This Writ Appeal has been filed by the appellant/first respondent in the Writ Petition, challenging the order dated 21.03.2018 passed by the learned Single Judge in W.P.No.32788 of 2017, whereby and whereunder, the learned Single Judge has disposed of the Writ Petition filed by the first respondent herein/writ petitioner praying for issuance of a Writ of Mandamus to direct the fourth respondent to deposit the compensation amount re-determined as per proceedings in Rc.No.2603/2016/A7 in Award No.53/2016, dated 05.08.2016 before the competent Civil Court or defer payment until decision on merits is passed in O.S.No.116 of 2017 pending on the file of the Additional District Munsif, Namakkal, by observing as follows:

"5.- Therefore, this Court chooses to modify the prayer and direct the petitioner to approach the District Collector with all necessary facts including the one pertaining to the statutory incompetency of the fourth respondent/Revenue Divisional Officer within four weeks from the date of receipt of a copy of this order, whereupon, the Collector shall dispose it on its own merits within a period of eight weeks thereafter, without reference to Limitation, since Ettammal had filed her petition for invoking Section 28-A within time but after hearing the parties, which includes Ettammal and her children, whereinafter he may consider deposit such sum pending since in cases so become payable in O.S.No.116 of 2017 should the said suit till remain on file.

6. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed."

2. The brief facts which are necessary to dispose of the Writ Appeal are as follows:

(a) The first respondent/writ petitioner's father Kalianna Gounder died on 23.09.1988 intestate. Her mother Nallammal was his first wife. The appellant/first respondent is his second wife and she had no issues. The writ petitioner's father, through the writ petitioner's mother, had three issues, namely, the writ petitioner, and respondents 2 and 3. The second respondent is the writ petitioner's brother and the third respondent is her sister. The writ petitioner's mother died 40 years ago. The writ petitioner's father had executed a settlement deed on 30.05.1963 and as per the recitals in the

settlement deed, the appellant was given maintenance or income of S.No.6/2 and she was not given the absolute right in the property that was settled. The subject matter of settlement deed is comprised in S.No.6/2 measuring 0.79 cents in Thummankurichi Village in Namakkal District. As recited in the settlement deed, the lands came to the writ petitioner and respondents 2 and 3 and title got vested with them.

(b) Originally, the land was acquired by the Government for formation of Master Plan Complex to construct Collectorate building and various Government offices. At or about formation of new District of Namakkal, acquisition of larger extent of land took place and after enquiry, the award was passed. In respect of S.No.6/2 situated in Thummankurichi Village of Namakkal District, the award was passed and further proceedings were initiated and conducted in L.A.O.P.No.65 of 1999 on the file of the Sub-Court, Namakkal. In the earlier acquisition, the appellant and second respondent claimed the amount exclusively and accordingly, the judgment and decree came to be passed by the Sub-Court on 29.01.2011 and they were given 50% each and the reference was closed. Hence, the first respondent/writ petitioner filed a suit for partition. The second respondent being the writ petitioner's brother, did not disclose any of the right of the writ petitioner and the right of the third respondent in the compensation that was given. As the writ petitioner and her sister had no knowledge, they could not participate in the proceedings and the appellant and the second respondent maintained secrecy in claiming the compensation.

(c) After coming to know of the fraudulent and unfair conduct of appellant and the second respondent, the first respondent/writ petitioner filed a suit for partition in O.S.No.116 of 2017 on the file of the Additional District Munsif Court, Namakkal and also for payment of amount that has been kept in Court deposit, namely Sub-Court, Namakkal in L.A.O.P.No.65 of 1999. The writ petitioner is claiming 5/16th share in the compensation amount that was deposited into Court in the said L.A.O.P. The District Collector and the Tahsildar, Land Acquisition, are parties to the said suit and are arrayed as defendants 4 and 5 in the said suit.

(d) While so, the fourth respondent had passed an Award under Section 28-A(2) of the Land Acquisition Act of 1894, as amended. Again, re-determination of compensation was made by the fourth respondent and accordingly, he has ordered payment of amount to the counsel for the appellant. The order is dated 05.08.2016. The higher compensation re-determined by the fourth respondent has not been paid till date. After re-determining the amount, the fourth respondent has not ordered to deposit the amount into Court as was done earlier for distribution or division among the sharers. Already, the compensation was given to the appellant and the second respondent in the reference made by the Sub-Court, Namakkal and the judgment was passed on 29.01.2011 in L.A.O.P.No.65 of 1999, which is binding on the

Government. The Land Acquisition Tahsildar was arrayed as a party in the said L.A.O.P.

(e) The fourth respondent is not justified in issuing the proceedings in Award No.53 of 2006, dated 05.08.2016 to pay the amount to the appellant only. The appellant in view of earlier judgment and decree passed in L.A.O.P., was not entitled to claim the compensation awarded to the exclusion of other legal heirs. The fourth respondent, regardless of the earlier proceedings and the judgment and decree dated 29.01.2011, has ordered payment of enhanced amount as determined under Section 28-A of the said Act to the appellant. The entire amount cannot be paid to the appellant. The fourth respondent should have directed deposit of amount determined under Section 28-A of the Act before the concerned Sub-Court for division or distribution among the sharers and he has no jurisdiction to make direct payment to the appellant and hence, the impugned proceedings and Award passed suffer due to legal infirmity. The amount determined under Section 28-A of the Act has not been paid to the appellant or to her counsel. The fourth respondent is not justified in paying the amount to the counsel for the appellant as per the impugned proceedings. The writ petitioner made oral request to re-consider the proceedings before the fourth respondent on 01.12.2017, which was not considered, and hence, the first respondent herein, the writ petitioner, has filed the present Writ Petition for the relief stated supra.

3. Before the Writ Court, there was no representation for the appellant/first respondent and respondents 2 and 3. The learned Single Judge, after hearing the arguments of the learned counsel for the first respondent/writ petitioner and the learned Government Advocate appearing for the respondents 4 and 5, disposed of the Writ Petition by modifying the prayer and directed the writ petitioner to approach the District Collector, as extracted above. Challenging this order passed by the learned Single Judge, the first respondent-Ettammal in the Writ Petition has filed the present Writ Appeal.

4. When the Writ Appeal is taken up for consideration, learned counsel for the appellant/first respondent in the Writ Petition made detailed submissions adverting to the facts of the case. It is his contention that since the appellant and respondents 2 and 3 did not represent their case either in person or through counsel, ultimately, it has led to the passing of the order by the learned Single Judge, in issuing direction as quoted above. Learned counsel for the appellant further submitted that the actual fact is that the appellant is the second wife of Kalianna Gounder. The first respondent/writ petitioner's mother Nallammal is his first wife. The respondents 2 and 3 are born through the second wife of Kalianna Gounder. The husband of the appellant, namely Kalianna Gounder executed a Gift Deed on 30.05.1963 in favour of the appellant granting life estate and also granted absolute right to his son who is the

second respondent. Out of the gifted deed, the land situated in S.No.6/2 of Thummankurichi Village to an extent of 0.32.0 hectares equivalent to 17,214 Sq.Ft., had been acquired by the Government of Tamil Nadu for the purpose of formation of Master Plan Complex to construct Collectorate Building and various Office buildings for the Namakkal District.

5. Learned counsel for the appellant further submitted that though the appellant was in possession of the acquired land in view of life estate granted to her, the second respondent who was having absolute right after the appellant's demise, opposed before the Land Acquisition Officer the payment of the compensation amount to the appellant. Therefore, the Land Acquisition Officer has deposited the compensation amount arrived for apportionment under Sections 30 and 31 of the Land Acquisition Act on the file of Sub-Court, Namakkal. The reference has been numbered as L.A.O.P.No.65 of 1999 and after full trial, the Sub-Judge, Namakkal rendered a judgment on 29.01.2011 holding that the appellant and the second respondent are entitled to half share each in the compensation amount so deposited in the said L.A.O.P.

6. Learned counsel for the appellant also submitted that in respect of the neighbouring land owners who had sought for reference under Section 18 of the Act of 1894, seeking enhanced compensation, the same has been decided by the Additional District Court, Namakkal in L.A.O.P.No.118 of 2007 batch, in its order dated 12.02.2014, which fixed the compensation @ Rs.35/- per Sq.Ft., as the acquired land and land relating to L.A.O.P.No.118 of 2007 are similarly placed and similarly located with similar potentiality. The appellant filed an application on 30.04.2014 under Section 28-A of the Act to re-determine the compensation. Since no order was passed in the said application, the appellant filed W.P.No.14187 of 2016 along with the other land owners to re-determine the market value of the appellant's property, in view of the order passed by the learned Additional District Judge, Namakkal, which has been confirmed by this Court in First Appeal in A.S.No.110 to 278 of 2015, batch, by order dated 17.08.2015, as expeditiously as possible.

7. Learned counsel for the appellant further submitted that based on the direction issued by this Court in W.P.No.14187 of 2016, dated 21.04.2016, the fourth respondent conducted enquiry and passed a re-determination of Award under Section 28-A(2) of the Act under Award No.53 of 2016, dated 05.08.2016, as per which, the appellant is entitled for compensation @ Rs.35/- per Sq.Ft. for the acquired land, but till now, no payment was made. The first respondent/writ petitioner has no right in the enhanced compensation amount so determined. Hence, for all the above reasons, the learned counsel for the appellant prayed for allowing the Writ Appeal.

8. This Court also heard the learned counsel for the respondents 1 to 3 and the learned Government Advocate appearing

for the respondents 4 and 5 on the above aspects.

9. On a perusal of the entire materials available on record, we find that late Kalianna Gounder had executed a gift/settlement deed on 30.05.1963 in favour of the appellant who is his second wife, granting life estate and absolute right to his son, the second respondent. So far as the respondents 1 and 3 in the Writ Petition are concerned, absolutely they have no right in the land in question. Since the second respondent who is the son of the appellant through second wife, was having absolute right, he opposed payment of the compensation amount before the Land Acquisition Officer to the appellant and the Land Acquisition Officer has deposited the compensation amount arrived for apportionment under Sections 30 and 31 of the said Act on the file of the Sub-Court, Namakkal. The reference has been numbered as L.A.O.P.No.65 of 1999 and after full trial, the learned Sub-Judge, Namakkal rendered judgment on 29.01.2011 holding that the appellant and second respondent are entitled to half share each in the compensation amount so deposited in the said L.A.O.P.

10. On coming to know of the reference under Section 18 of the Act, seeking enhancement of compensation amount by the neighbouring land owners, the learned Additional District Judge, Namakkal, in L.A.O.P.No.118 of 2007, batch, by order dated 12.02.2014, fixed the compensation @ Rs.35/- per Sq.Ft., as the acquired land and the land relating to L.A.O.P.No.118 of 2007 are similarly placed, similarly located with similar potentiality. Hence, the appellant filed an application on 30.04.2014 under Section 28-A of the Act to re-determine the compensation. Since no orders are passed on the said application, the appellant filed W.P.No.14187 of 2016 along with the other land owners to re-determine the market value of the property in view of the order passed by the learned Additional District Judge, Namakkal and which has been confirmed by this Court in the First Appeal in A.S.No.110 to 278 of 2015 batch, order dated 17.08.2015 as expeditiously as possible. Further, based on the direction of this Court in the said W.P.No.14187 of 2016, by order dated 21.04.2016, the fourth respondent conducted enquiry and passed a re-determination of Award under Section 28-A(2) of the Act under Award No.53 of 2016, dated 05.08.2016, as discussed above. As per the re-determination Award, the appellant is entitled to compensation @ Rs.35/- per Sq.Ft. for the acquired land. But no payment was made till date. The first respondent/writ petitioner has no right to the enhanced compensation amount so determined. Thereafter, after coming to know of the present Writ Petition and after not being represented in the Writ Petition, the present Writ Appeal is filed by the appellant, who is the first respondent in the Writ Petition.

11. The above facts were not brought out properly before the learned Single Judge. Furthermore, it is also not in dispute that by way of gift/settlement deed, the deceased Kalianna

Gounder has given life estate to the appellant and absolute right to his son, the second respondent. The first respondent/writ petitioner has not chosen to oppose the grant of compensation in the reference under Sections 30 and 31 of the said Act at the relevant point of time. When that being the position, the first respondent/writ petitioner has no right to seek for the prayer sought for in the present Writ Petition.

12. Further, we find that as per G.O.Ms.No.6267, Revenue Department, dated 10.10.1994 passed by the Government of Tamil Nadu, the Land Acquisition Officer should get the prior approval of the Collector/Additional Collector/District Revenue Officer before passing order on re-determination of the Award under Section 28-A(2) of the Land Acquisition Act. Therefore, it cannot be said that the fourth respondent is a statutorily incompetent person to decide the issue. Hence, the learned Single Judge's impugned order directing the first respondent/writ petitioner to approach the District Collector with all necessary facts including the one pertaining to the statutory incompetency of the fourth respondent/RDO, does not arise in this case. Hence, the Writ Petition itself deserves to be dismissed, as there is no merit in the same. Accordingly, the Writ Appeal is allowed, setting aside the impugned order passed by the learned Single Judge. The Writ Petition shall stand dismissed. No costs. Consequently, C.M.P. is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

CS
To

1. The Land Acquisition Officer-cum-
Revenue Divisional Officer,
Namakkal.

2. The District Collector,
Namakkal District,
Namakkal.

+1 CC to Mr.S.Senthil, Advocate sr 80645.

W.A.No.1726 of 2018

KJI (CO)
SP(04/12/2018)