

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.01.2018
Pronounced on : 21.03.2018

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

AS.No.202 of 2009
and MP.Nos.1 & 2 of 2009

1. Appavou (Deceased)
2. Nagammal
3. Ayyanar
4. Velmourougane
5. Ramu
6. Selvy
7. Arjunan .. Appellants/Petitioner

Vs.

1. The Union of India, rep.
by the Secretary to Government (Revenue),
Government of Puducherry.
2. The Deputy Collector (Revenue),
North-cum-Land Acquisition Officer,
Puducherry.
3. The Present Trustee,
Arulmigu Sivasubramaniya Swamy Devasthanam,
Lawspet, Pondicherry. .. Respondents/Respondents

PRAYER : Appeal Suit is filed under Section 54 of the Land Acquisition Act, to set aside the award passed in L.A.O.P.No.19 of 2006 dated 28.08.2007 on the file of the Principal District Judge, Puducherry and grant award Rs.88,02,292.50 being 75% of total compensation award amount of Rs.1,17,36,390/- deposited to the credit of L.A.O.P.No.19 of 2006 on the file of the Principal District Judge, Puducherry to the Appellant.

For appellants : Mr.R.Natarajan

For respondents: Mrs.V.Usha, AGP (Puducherry) for R1 & R2
Mrs.Chitra Sampath, Senior Counsel for
M/s.T.S.Baskaran for R3

J U D G M E N T

P. VELMURUGAN, J.

The Government of Pondicherry (herein after referred to as "the Government") has acquired the land owned by the third respondent/ Devasthanam, comprised in R.S.233/3 Nanja wet land measuring of an extent of 0-34-00 hectares in Krishana Nagar,

Saram Revenue Village, Puducherry, for constructing the Girls Students Hostel, Adi Dhruvidar Development Corporation Office and Office building cum Training Centre for Pondicherry backward class and Minorities Development Corporation. The Government issued notification under Section 4(1) of the Land Acquisition Act, 1984, (herein after referred to as "the Act") on 14.01.2003 and it was published in Gazatte No.2. Subsequently, 5(A) enquiry notice dated 18.02.2003 was issued to the appellant and he participated in the enquiry. After 5 (A) enquiry, declaration was made under Section 6(1) of the Act and the same was published in Tamil News Paper Malaimalar dated 21.05.2003, wherein the name of the appellant was described as a lessee. The enquiry notice was issued thereafter and award was passed in Award No.4-A/2005 awarding compensation to the tune of Rs.1,17,36,390/-.

2. The appellant raised objection and claimed that he is the cultivating tenant of the land acquired which was owned by the third respondent/Devasthanam, under the said award and that he is entitled for 3/4 share of the award amount as per the Pondicherry Cultivating Tenants Protection Act, 1970. The land acquisition authority referred the matter to the Civil Court under Section 30 of the Act after depositing the entire award amount in Civil Court, to decide the right of the claimants for disbursing the compensation amount.

3. The reference made by the land acquisition officer was taken on file in L.A.O.P.No.19 of 2006, by the learned Principal District Judge, Puducherry. Before the Civil Court, on the side of the respondents 1 & 2, none has been examined and no document was marked. On the side of the appellants R.W.1 was examined and Ex.B1 to Ex.B16 were marked and on the side of the third respondent, R.W.2 was examined and Ex.B17 and Ex.B18 were marked.

4. The reference court after considering the oral and documentary evidence put forth before it and after hearing the rival submissions made on either side, rejected the claim of the appellant and declared that the third respondent is entitled to receive the entire compensation amount for the acquired land, by order dated 28.08.2007.

5. Aggrieved against the order dated 28.08.2007 in L.A.O.P. No.19/2006, passed by the reference court, the appellant has come forward with the present appeal.

6. During the pendency of the first appeal the appellant Appavou died and his legal heirs have been impleaded as appellants 2 to 7 in the present appeal.

7. The learned counsel for the appellants would submit that the deceased appellant was a cultivating tenant of the property in R.S.No.233/3 at Krishna Nagar, Saram Revenue Village, Oulgaret Taluk, Puducherry, belonging to the third respondent. The deceased/appellant was in possession and enjoyment of the land, since 1976. While that being so, the

first and second respondents acquired the said land and after due enquiry, awarded a sum of Rs.1,17,36,390/- in Award No.4-A/2005. The learned counsel contended that since the deceased first appellant was the cultivating tenant of the land belonging to the third respondent, he is entitled to 75% of the compensation amount in accordance with the Pondicherry Cultivating Tenants Protection Act, 1970. In order to prove the case of the deceased appellant his son was examined as R.W.1 before the reference court and documents Ex.B1 to Ex.B16 were marked, which clearly shows that the deceased appellant was a lessee and he was in possession and enjoyment of the property as a cultivating tenant and he was also cultivating the land and paid the rent to the third respondent periodically. Therefore, the appellants are legally entitled to get compensation out of the award passed by the Government, as per the Pondicherry Cultivating Tenants Protection Act, 1970. According to the learned counsel, the reference court has not considered the fact that the deceased appellant was a cultivating tenant and the appellants are entitled to get compensation. The reasons given by the reference court are without any substance and the same is liable to be set aside.

8. The learned Senior Counsel appearing for the third respondent contended that admittedly the land acquired belongs to the third respondent/Devasthanam. The learned counsel contended that the third respondent never executed any lease deed as stated by the deceased appellant at any point of time. The lease deed produced by the deceased appellant is a forged and fabricated one made up for the purpose of getting the compensation and the same is not binding the third respondent. Since the third respondent is the owner of the property, the Devasthanam is entitled to the entire compensation amount.

9. It is not in dispute that the property situated in R.S.No.233/3 Nanja wet land measuring of an extent of 0-34-00 hectares in Krishna Nagar, Saram Revenue Village, Puducherry, belongs to the third respondent/Devasthanam.

10. On a perusal of the evidence of R.W.2, Jeyabal, who is the Trustee of the third respondent/Devasthanam, it is found that he deposed that the land absolutely belonged to the Devasthanam and they neither executed lease deed in favour of the deceased appellant nor recognized him as a cultivating tenant and never received any rent from him as alleged.

11. According to the learned counsel for the appellants, the deceased appellant was cultivating the land owned by the third respondent/ Devasthanam acquired by the Pondicherry Government. Even though, the land acquisition proceeding, notices were issued to the deceased appellant and he also participated in the enquiries, the reference court has failed to consider the right claimed by him. The learned counsel, by relying on Ex.B2 lease agreement, contended that the appellants are entitled to get compensation. Since the

deceased appellant was the cultivating tenant, the second respondent issued enquiry notice to him to participate in the acquisition proceedings. From the above, it is clear that the appellants are the interested persons in the land, but the reference court failed to consider the fact and negated the claim of the appellants.

12. We have perused the records and it reveals that the deceased appellant has filed a writ petition in W.P.No.17381 of 1995. In that petition it was contended by the deceased appellant that he was only an agreement holder to purchase the acquired property and nowhere it was stated that he is the cultivating tenant. If at all the deceased appellant was a cultivating tenant, he would have stated in the writ petition itself, but it was not stated so. In fact the enquiry notices were issued to the deceased appellant only as per the directions issued by this Court to the land acquisition officer in the writ petition No.43661 of 2004. Therefore the stand taken by the learned counsel for the appellants that the deceased appellant was the interested person and hence he was issued enquiry notices, is not factually correct. Mere issuance of the enquiry notices, does not mean that the respondents have admitted that the deceased appellant is an interested person and he was the cultivating tenant of the acquired land.

13. It is a well settled principle that the claimant in a reference either under Section 18 or 30 of the Land Acquisition Act, is akin to that of a plaintiff in a civil suit. The claimant has to discharge his burden by producing acceptable materials for deciding his claim. In the present case, when the third respondent denied the fact that the deceased appellant was a cultivating tenant, then the burden of proof is on the deceased appellant to prove that he was a cultivating tenant, entitled for 75% of share in the compensation.

14. A Perusal of the records would go to show that the deceased / appellant admitted that the acquired land belong to the third respondent. The deceased appellant did not challenge the land acquisition proceedings. He filed two writ petitions before this Court for different reasons. One of the writ petitions in W.P.No.43661 of 2004 was disposed of by this Court, by directing the land acquisition officer to issue notice of enquiry to the deceased appellant, irrespective of his rights over the property. The deceased appellant has not proved his case before the reference court that he was a cultivating tenant, entitled to the benefits of the Act.

15. The learned counsel for the appellants contended that the deceased appellant was a cultivating tenant and that the third respondent / Devasthanam executed a lease deed in favour of him. The learned counsel for the third

respondent/Devasthanam vehemently denied the claim made by the appellants by stating that the lease deed, tax receipts and the rent receipts produced by the appellants were all forged one and fabricated for the purpose of getting compensation amount. In spite of such challenge to the right, the deceased appellant did not enter into the witness box and give any evidence. There was no reason to show as to why the deceased appellant did not enter into the witness box and let in evidence to prove his case. The son of the deceased appellant only was examined as his power agent. He was examined as R.W.1 and the power of attorney dated 28.10.2006 executed by his father in favour of him was marked as Ex.B1. The person who possess personal knowledge about the particular transaction and document was not examined. Therefore, the evidence of R.W.1 is not acceptable one as the same has no evidentiary value.

16. From a perusal of the alleged lease deed Ex.B2, it is clear that it was signed only by the deceased appellant. None of the trustees or any person on behalf of the third respondent/Devasthanam has signed the lease deed. The rent receipts produced by the deceased appellants would clearly shows that his name was inserted in the receipts. When the third respondent has taken a stand that the rent receipts produced by the deceased appellant were forged and they were originally given to one Dhanalakshmi, lessee of some other land belongs to the Devasthanam, who is none other than the sister of deceased appellant, the deceased appellant Appavou ought to have entered into the witness box and substantiated his claim. But it was not done so by the deceased appellant. This is fatal to the case of the deceased appellant.

17. In view of the above discussion, we are of the considered opinion that the reference court has rightly rejected the claim made by the appellants. There is no illegality or perversity in the order passed by the reference court. The appellants have not made out any valid grounds to interfere with the order passed by the learned Principal District Judge, Puducherry in L.A.O.P.No.19 of 2006 dated 28.08.2007.

18. In the result, the first appeal stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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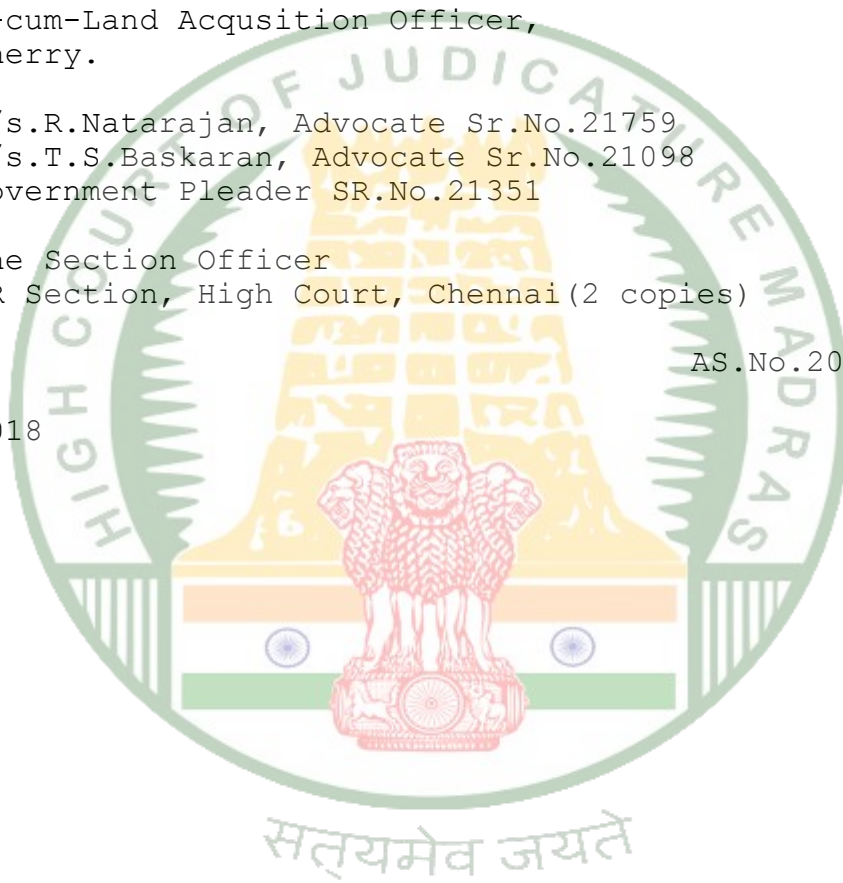
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+1cc to M/s.R.Natarajan, Advocate Sr.No.21759
+1cc to M/s.T.S.Baskaran, Advocate Sr.No.21098
+1cc to Government Pleader SR.No.21351

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