

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.3.2018

CORAM:

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

W.A.No.597 OF 2018

1.The District Collector,
Kanchipuram

2.The Special Tahsildar (L.A.)
Chennai Airport Expansion Scheme,
Sriperumbudur,
Kanchipuram District

...

Appellants

versus

EVP Estates and Properties Development Ltd.,
23, Sir Thiagaraya Road,
Pondy Bazar, T.Nagar, Chennai 17
rep. By its Chairman & Managing Director,
E.V.Perumalsamy Reddy

...

Respondents

Appeal filed under section 15 of letter patent Act against
the order passed by this Court dated 4.1.2017 passed in
W.P.No.21283 of 2015

W.P.No.21283 of 2015:-

This Writ Petition under Article 226 of Constitution of India, praying to call for the records on the file of the 2nd respondent bearing Rc. A. 164/2013 dt 7.1.2014 and quash the same and consequently direct the 1st respondent to refer the Award in favour of petitioner bearing No.8/2009, 10/2009, 14/2009, 15/2009, 16/2009, 17/2009, 20/2009, 21/2011, 24/2012 and 3/2012 to court under section 18 of the Land Acquisition Act 1894 for enhanced compensation solatium and interest

For appellant : Mrs.Narmada Sampath,
Additional Advocate General,
Assisted by Mrs.A.Srijayanthi, Spl.G.P.

For Respondents : Mr.AR.L.Sundaresan, Senior counsel
for Mr.Anandraraj

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

Introductory:-

This is the case of a landowner giving consent to the awards passed under the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, by executing agreements and after receiving the entire compensation of Rs.44,41,74,518/- (Rupees Forty Four Crores Forty One lakhs Seventy Four Thousand Five Hundred and Eighteen only) filing a Writ Petition for reference to the civil court for enhancement of compensation under Section 18(1) of the Land Acquisition Act. The learned Single Judge, without advertting to the question of law as to whether it is open to the landowner to seek reference, after accepting the award and receiving the entire amount, directed the District Collector to refer the issue to the civil court under Section 18(1) of the Land Acquisition Act, treating it as a case of failure to refer the matter on account of limitation.

2. The issue raised by the State in this intra court appeal is covered by the judgment of the Hon'ble Supreme Court in State of Karnataka and Anr. vs. Sangappa Dyavappa Biradar & Ors. (2005 (3) Scale 424), wherein it was held that once award is accepted, no legal right survives for claiming a reference to the Civil Court.

Background facts:-

3 (a) The Government of Tamil Nadu, by order in G.O.Ms.No.108, Transport (1-2) Department dated 9 October 2007 granted administrative sanction for acquisition of 358.76.5 hectares of land in Kolapakkam, Manapakkam, Tharapakkam, Gerugambakkam and Kovoov Villages in Sriperumbudur Taluk, Kanchipuram District, for the expansion of Chennai Airport. To begin with, 126.59 acres of land in Manapakkam and Kolapakkam Village were acquired. The Government issued the notification under Section 3(1) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, (herein after referred to as "Industrial Purposes Act") in G.O.Ms.No.92 to 98, dated 5 June 2008. The Government as per order in G.O.Ms.No.132 dated 29 July 2008, fixed the land value for different kinds of land. This was made for settlement with the landowners and determination of compensation by agreement under Section 7(2) of the Act.

(b) The lands owned by the respondent in Kolapakkam and Manapakkam were acquired vide award No.8/2009, 10/2009, 14/2009, 15/2009, 16/2009, 17/2009, 20/2009, 21/2011, 3/2012 and 24/2012 dated 21 April 2009, 22 September 2009, 10 December 2009, 8 March 2010, 16 April 2010, 23 June 2010, 29 November 2011, 24 December 2011, 9 August 2012 and 9 August 2012 respectively.

(c) The respondent on receipt of a copy of the individual

awards, executed separate agreements, agreeing to receive the compensation in full quit.

(d) The District Collector pursuant to the awards and taking into account the consent agreements, paid compensation to the respondent and obtained receipts.

(e) The appellant after receiving compensation, issued a notice dated 19 December 2013 through his lawyer to the Special Tahsildar, to refer the matter to the civil court for determination of compensation. The Special Tahsildar vide letter dated 7 January 2014, rejected the request for reference on the ground that it was a consent acquisition.

(f) The respondent challenged the communication dated 7 January 2014 before the writ court in W.P.No.21283 of 2015, contending that the District Collector ought to have referred the matter to the civil court for enhancement of compensation.

(g) Before the writ court, the Special Tahsildar (Land Acquisition), filed a counter affidavit, highlighting the fact that it was a consent acquisition and the compensation amount was paid on the basis of the agreement.

(h) The learned Single Judge without discussing the legal effect of the agreement executed by the respondent for accepting the award amount, proceeded as if it was a simple case of failure to refer the matter. The Writ Petition was allowed and a Writ was issued for reference to the civil court.

Submissions in brief:-

4(a) The learned Additional Advocate General by placing reliance on the agreements executed by the respondent agreeing to receive the compensation fixed by the Land Acquisition Officer, contended that the learned Single Judge erred in directing reference notwithstanding the acceptance of the award. The learned Additional Advocate General contended that the learned Single Judge failed to advert to the legal issue raised by the appellants with regard to the maintainability of the claim for reference. The order is therefore bad in law.

(b) The learned Senior Counsel for the respondent contended that the agreements were executed as per the statutory format in Form F1, which has to be made before the award. According to the learned Senior counsel, the agreements executed by the respondent were not in accordance with the Tamil Nadu Acquisition of Land for Industrial Purpose Act and the Rules made thereunder. The respondent was therefore justified in making a claim under Section 18(1) of the Land Acquisition Act for determining the proper compensation.

Discussion:-

5. The Government of Tamil Nadu initiated land acquisition proceedings for expansion of Chennai Airport. The acquisition was under the Tamil Nadu Acquisition of Land for Industrial

Purpose Act, 1997. The statutory notification for acquisition was not challenged by the landowners.

6. Section 7 of the Industrial Purposes Act deals with determination of the amount of compensation. Sub Section (1) of Section 7 gives authority to the Government to fix the compensation. Section 7(2) provides for determination of amount by agreement between the Government and the landowner.

7. The Government with a view to arrive at a settlement with the landowners, published the value of different kinds of land, taking into account its nature and conditions. The notification was issued in G.O.Ms.No.108 dated 9 October 2007.

8. The Land Acquisition Officer after issuing notice to the landowners, including the respondent, passed separate awards. The awards were communicated to the respondent.

9. The respondent, on receipt of awards in the respective acquisition, agreed to receive the compensation determined by the Land Acquisition Officer. The respondent, thereafter executed separate agreements in relation to each of the awards.

10. The respondent received a total amount of Rs.44,41,74,518/- (Rupees Forty Four Crores Forty One lakhs Seventy Four Thousand Five Hundred and Eighteen only) in full and final satisfaction of the claim and issued receipts to the Land Acquisition Officer.

11. The respondent, for reasons best known, took a U turn after receiving the compensation and called upon the Land Acquisition Officer to refer the matter to the civil court. The request was rightly negatived.

12. The Director of E.V.P.Estates and Properties Development Ltd., signatory to the agreement, is not a layman or an illiterate. The Director executed the agreements on behalf of the respondent with eyes open and knowing fully well its consequences.

13. The agreements contained clauses, accepting the compensation and indicating the legal consequences. The relevant clauses taken from a specimen agreement is extracted below.

(2) The Government and the owner/ person interested in the land/lands herein have mutually agreed for an amount of Rs.1,06,00,000/- (Rupees One Crore Six Lakhs only) be fixed towards land value per acre/ ground, which shall be payable by the Government as compensation to the owner/ person interested and the owner/person interested has agreed to receive the compensation as worked out at this rate

towards the land/ lands specified in the schedule above.

(3) The owner/person interested shall not claim any amount in addition to the amount agreed upon as aforesaid as compensation towards land and accept it without any protest.

(4) The owner/person interested shall also not claim any amount in excess over the amount fixed by the Land Acquisition Officer for the trees, structures etc. if any, in the land/lands specified in the schedule above.

(emphasis supplied)

14. The respondent must be under the impression that in case there is no agreement under 7(2) of the Act before passing the award, claim for reference under Section 18 is maintainable even after receiving the compensation without protest. There is no statutory basis for the claim made by the respondent.

15. The Land Acquisition Officer in the respective awards determined the compensation payable to the respondent. The respondent could have accepted the award amount with protest. It was essentially a choice. The respondent agreed to receive the compensation and in token of acceptance of the awards, executed individual agreements. The respondent is bound by the terms of agreement. It cannot unilaterally be cancelled by the respondent.

The binding precedent :-

16. The maintainability of the claim for reference to civil court against consent award was considered by the Supreme Court in State of Karnataka and Anr. vs. Sangappa Dyavappa Biradar & Ors. (2005(3) Scale 424). While setting aside the judgment of the Division Bench of Karnataka High Court, directing reference in a matter covered by the consent agreement, the Supreme Court indicated the legal position in the following words :-

12. A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the civil court. An agreement between the parties as regards the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same

remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say that without questioning the validity thereof, the respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the respondents were for quashing the order dated 23-8-1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the civil court. The High Court while exercising its jurisdiction under Article 226 of the Constitution, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regards the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution or had not been drawn up in the prescribed pro forma.

13. An award under the Act is passed either on consent of the parties or on adjudication of rival claims. For the purpose of passing a consent award, it was not necessary to comply with the provisions of Article 299 of the Constitution. An agreement between the parties need not furthermore be strictly in terms of a prescribed format.

14. The respondents having accepted the award without any demur were estopped and precluded from maintaining an application for reference in terms of Section 18 of the Act. It is also trite that by reason of such agreement, the right to receive amount by way of solatium or interest, etc. can be waived.

17. The condition precedent for making a reference under Section 18 of the Land Acquisition Act is missing in the subject

case. The expression of protest, either express or by implication, is a pre-condition for reference. The expression of consent to the award would preclude the landowner from making a request later for reference. This aspect was not considered by the learned Single Judge, while directing the Land Acquisition Officer to make a reference under Section 18(1) of the Act. The impugned order is therefore factually and legal unsustainable.

18. For the reasons aforesaid, we set aside the order dated 4 January 2017. The Writ Petition in W.P.No.21283 of 2015 is dismissed.

19. The intra court appeal filed by the State is allowed. No costs. Consequently, C.M.P.No.5806 of 2018 is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

+2ccs to Mr.Anandraraj, Advocate, S.R.No.23324
+1cc to the Government Pleader, S.R.No.23953

W.A.No.597 OF 2018

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