

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 27.07.2018

ORDER PRONOUNCED ON : 11.08.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.3303 of 2009

1. Lakshmanan
2. Choodappa ... Petitioners
Vs.

1. The District Collector,
Krishnagiri.
2. The Special Tahsildar,
Neighbourhood Scheme,
Land Acquisition, Hosur. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the respondents to refer the award proceedings No.12/1994 passed in June, 1994 to the Civil Court under Section 18 of the Land Acquisition Act in sofaras the land belonging to the petitioner at survey number 895/2 measuring an extent 0.24.0, Hosur Village and Taluk, Krishnagiri District.

For Petitioners: Mr.Sharath Chandran
for Mr.V.Raghavachari

For Respondents: Mr.M.Sricharan Rangarajan
Additional Government Pleader

O R D E R

The facts that leading to the filing of this Writ Petition are as follows:-

(a) The land belonging to the petitioners at Survey No.895/2 measuring an extent 0.24.0 hecares, at Hosur Village and Taluk, Krishnagiri District, was acquired by the State Government under the Land Acquisition Act, 1894 (hereinafter referred to as the 'Act').

(b) Award proceedings No.12 of 1994 was initiated and an award was passed in the month of June, 1994. In the operative portion of the award, the Collector notes that the petitioners herein were dissatisfied with the amount of compensation awarded, and stated that the matter would be referred to the reference court as contemplated under Section 18 of the Act.

The translated portion of the Award reads as under:-

The pattadar Mr.Muniyappa requested for a enhanced amount of compensation at Rs.15,00,000/- per acre. But he did not produce any material records to ascertain his claim. As muniyappa did not produce any records regarding his share in the patta land, the compensation amount for the land will be deposited in Court, according to Section 30 of Land Acquisition Act. Regarding the enhanced amount of compensation claimed by the said Muniyappa, the claim will be referred to the Subordinate Court of Krishnagiri according to Section 18 of Land Acquisition Act.

(c) However, no such reference was made to the reference court.

2. The petitioners have now approached this Court seeking a Writ of Mandamus, directing the Collector to refer the matter to a reference Court for enhancement of compensation.

3. The grievance of the petitioners is that despite the order of the Collector virtually assuring them that the matter would be referred to a reference court, the acquisition proceedings were not so referred. On the other hand, the respondents have contended that the petitioners herein never made any application under Section 18 of the Act, in the absence of which, the Collector cannot make a reference to a reference Court. In order to appreciate this controversy better, Section 18 of the Act is reproduced as under:-

18.Reference to Court:- (1) Any person interested who has not accepted the award may, be written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the appropriate of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made,- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

4. The learned counsel appearing for State would contend that for a reference to be made under Section 18 an application must be made by the land owner and without an application by the land owner there cannot be any reference.

5. From a bare perusal of the Section, it is clear that the Section contemplates that a person aggrieved by an award passed by the Collector, may make an application to the Collector to refer the matter to a reference Court. The role of the person is only to make a written application for the reference of the acquisition proceedings to the court, whereas the Collector is the person who makes the actual reference.

6. The substantial question of law that arises in the instant case is whether the making of a written application is mandatory, where the Collector himself has stated in the award that a reference to the Court shall be made.

7. Heard the learned counsel appearing for both the parties.

8. The petitioners have placed reliance on the judgment of this Court in the case of Palani, M.P. Vs. State of Tamil Nadu, reported in 1999 (3) CTC 133, wherein this Court held as under:-

5. In view of Sections 12(2) and 13 (2) of the Land Acquisition Act, 1894 and in the light of the specific assertion in the affidavit objecting the fixation of lesser price for their lands and in the absence of any information by any of the respondents, I hold that unless the notice of award is accompanied by a copy of the award, it would not be effective notice within the meaning of Section 12(2) of the Act. Likewise, if any statement is made during the award enquiry asking for higher compensation, the same may be treated as a application for reference. I also hold that if compensation is received under protest in such case also it is to be treated as an application for reference. In all these cases, undoubtedly, duty is cast on the Collector to refer the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 for adjudication. In this view of the matter, there will be a direction to the respondents to make a reference under Section 18 of the Land Acquisition Act, 1894 in so far as the petitioners are concerned in respect of subject Award No.4 of 1987 dated 26.04.1989 within a period of three months from the date of receipt of a copy of this Order. Writ Petition is allowed in the above terms. No costs.

9. In the case of Angammal V. The Special Tahsildar, Land Acquisition, reported in 2004 (1) LW 702, while referring the matter to the reference Court, this Court has held as under:-

6.....As said earlier, I am aware of the language used in sub-section (1) of Section 18 of the Act. In the light of the factual position, as evidenced from the award proceedings that both the petitioners have raised their objection regarding the quantum of compensation and received the amount under protest, the Officer concerned himself has expressed that necessary reference will be made to the Sub Court under Section 18. I am unable to appreciate the objection of the learned Special Government Pleader.

7. In the light of what is stated above, I accept the case of the petitioners. Accordingly, the first respondent herein is directed to make a reference under Section 18 of the Act with reference to the lands of the petitioners acquired which form part of Award No.5 of 88 dated 14.09.88 and 01.09.88 respectively to the concerned Sub Court within a period of four weeks from the date of receipt of a copy of this order. Writ Petitions are allowed. No costs.

10. Similarly in the case of the Managing Director, Tamil Nadu Housing Board Vs. Chinnasamy and Ors., and other connected matters, reported in 2006 (4) MLJ 254, this Court has held as under:-

8. In the case on hand, though no separate application was filed by the land owners, it is clear from the awards that they protested against the quantum determined and, on their request, the land Acquisition Officer himself had assured and made it clear that he would forward all the records to the Civil Court under Section 18 of the Land Acquisition Act. When there is an assertion by the Land Acquisition Officer, it cannot be contended that without a formal application, reference cannot be made to the Civil Court.

11. In the case of Steel Authority of India Limited, Vs. The Salem Urukhalai Thittathal Nilam Ilanthor Sangam and Ors., reported in 2006 (1) LW 347, this Court has noted as under:-

21. Having regard to this settled legal position laid down by the Apex Court as well as various High Court it is clear that mere protest or expression of dissatisfaction to the award of compensation without there being anything in writing may be sufficient and that

the authority concerned is under an obligation to refer the matter to the court in accordance with Section 18(2) of the Act. In view of this legal position various vategories as indicated hereinabove, expressing their protest and filing their applications for reference and some having not even received notices under Section 12(2) of the Act, cannot be denied the right to refer their cases to the Court under Section 18(2) of the Act, and therefore, we do not find any ground to interfere with the judgment of the learned single Judge. Writ Appeal is, therefore, dismissed with no order as to costs.

12. Moreover, in the case of Sail V. Sutni Sangam, reported in (2009) 16 SCC 1 : the Hon'ble Supreme Court, while dealing with the appeal arising out of the judgment reported in 2006(1) LW 347, has held as under:-

79. The appeals preferred by the Tamil Nadu Housing Board, however, stand on a different footing. Therein, the Writ Petition was allowed by a learned Single Judge of the High Court. Pursuant thereto or in furtherance thereof, reference was made. A finding of fact had been arrived at. A prayer was also made for reference to the Civil Court. The Land Acquisition Officer assured them that a reference shall be made. The promise, however, was not kept. In the aforementioned situation, the writ petition was filed.

80. The judgment of the Single Judge having been acted upon and Tamil Nadu Housing Board, having participated in the proceedings without any demur whatsoever, cannot be permitted to turn round and contend that the proceedings was illegal. They not only participated in the proceedings but also questioned the adduction of evidence in regard to the quantum of compensation and preferred appeals against the judgment and award of the Reference Judge. The said proceedings having attained finality, the Writ Appeals preferred by them should not have been entertained.

81. In a case of this nature, in the absence of any material brought on record by the State and/or the appellant, we may assume that the Land Acquisition Officer is a Collector within the meaning of Section 3(c) of the Act. He was, therefore, bound by his promise.

82. In the aforementioned situation, it would not be a case where a statutory authority has been asked by a higher authority to perform

his jurisdiction in a particular manner. No form of protest, as indicated hereinafter, is prescribed under the Act. No form of application in writing has also been prescribed. In a given case, keeping in view the object and purport the statute seeks to achieve, a Collector being a statutory authority and having the jurisdiction to make a reference can waive the same.

83. We may consider it from another angle. Had a reference been made pursuant to the request made by the awardees, could it be held to be wholly illegal or without jurisdiction only because the protest made in regard to the quantum of compensation under the award is oral and not in writing? The answer to the said question must be rendered in the negative. The form, mode and manner of protest are procedural in nature. The statute does not provide for a thing to be done in a particular manner.

84. Submission of Mr. Krishnamurthy that the doctrine that where a statute proscribes a thing to be done in a manner as prescribed or not at all is applicable where a statutory authority is to perform his function in terms of the provisions of the statute. It is not meant to be applied to a litigant. A procedure, as is well known, is the handmaid of justice. A substantive provision providing for substantive right or a statutory provision providing for a substantive right shall prevail over the procedural aspect of the matter. In a situation of this nature, therefore, the Land Acquisition Collector could have been having regard to the principles of promissory estoppel, held bound to fulfil his promise.

The Hon'ble Supreme Court, therefore, has upheld the judgment of this Court in the case of the Managing Director, Tamil Nadu Housing Board Vs. Chinnasamy and Ors., (supra).

13. Learned counsel for the State Government have on the other hand placed reliance on a decision of the full bench of this Court, where the correctness of the decision of this Court in the case of Chinnaswamy (supra) was doubted in the case of N. Rajaraman and Ors. Vs. The Special Tahsildar, Manu/TN/7874/2007. In the operative portion of the order in the case, the full bench remarked:

10. In view of the foregoing discussion, we hold that for making a reference under Section 18 of the Act, a written application after the award is passed is mandatory and such application is required to be made within the period of limitation prescribed under Section 18 of the Act. The reference is answered

accordingly. The Registry is directed to place the papers before the Division Bench for disposal of the matters in accordance with law.

Though the reference stated the correctness of the decision of this Court in Chinnaswamy was being tested, the full bench did not set aside the ratio of this Court in the case of Chinnaswamy (supra) and offered no comment on its applicability. On the facts of the case before it, the full bench took the view that the application in writing was mandatory, but did not contemplate a situation where the Collector himself had undertaken to refer the matter to the reference Court, as was the case in Chinnaswamy (supra). The decision of the full bench, therefore will not come to the aid of the respondent authorities herein.

14. In the case of C.Arunachalam, Lakshmi and Arukkani Vs. the Special Tahsildar C.R.P.(NPD)No. 3666 of 2008, Manu/TN/0622/2011 this Court has followed the decision of the Full Bench in N.Rajaraman (Supra), to hold that where no written representation is filed under Section 18 of the Act, the reference is not maintainable. On the fact of that case, the Tahsildar noted the objections of land owners, and referred the matter the reference court. The High court following the decision of the Full Bench, held that such reference was not valid in law, and set aside the same. The learned Single Judge while deciding this case, failed to take into consideration the decision of the Supreme Court in the case of Sutni (Supra). This decision of the Madras High Court in C.Arunachalam, Lakshmi and Arukkani Vs. the Special Tahsildar (supra) is therefore per incuriam, and does not lay down the correct law.

15. The Respondents have also placed reliance on the decision of Supreme Court in the case of Bhagwan Das v.State of U.P., reported in (2010) 3 SCC 545.

16. As the Collector is not a civil court and as the provisions of Section 5 of the Limitation Act, 1963 have not been made applicable to proceedings before the Collector under the Act, and as there is no provision in the Act enabling the Land Acquisition Collector to extend the time for making an application for reference, the Collector cannot entertain any application for extension, nor extend the time for seeking reference, even if there are genuine and bona fide grounds for condoning delay. This view was reiterated in SAIL v. SUTNI Sangam. Therefore, the observing of the High

Court that an application for condonation of delay could have been made by the person interested, is incorrect.

17. We should however notice that there is an apparent inconsistency in two observations of this Court in SUTNI Sangam. In the earlier part of the decision, this Court observed: (SCC p. 17, para 25)

"25... The proceedings before the land Acquisition Collector is of an administrative nature and not of a judicial or quasi judicial character."

(emphasis supplied)

However, in a letter part of the said decision (at SCC p. 30, para 75 of the Report), this Court observed:

"75. The Land Acquisition Collector is a statutory authority. The proceeding before the Land Acquisition Collector is a quasi judicial proceeding."

(emphasis supplied)

As the said inconsistency has no bearing upon the issue on hand, we do not propose to consider it in this case, but leave the clarification to be done in an appropriate decision.

The Supreme Court in this case noted the inconsistency in the judgement of the Supreme Court in the Sutni Case (Supra), only limited to the question of the nature of the functions of the Collector under the act. The Court did not offer any opinion on the correctness of the decision in Sutni Sangam (supra) and merely highlighted the inconsistency in the judgement itself, and the decision of the supreme Court in the Sutni Sangam (supra) continues to hold the field, insofar as it related to the applicability of the statement of the Collector, who promises to refer the matter to the reference court in the award passed by him for enhancement of compensation. This decision of the Supreme Court, therefore will not come to the aid of the respondent.

16. Therefore, I am of the view that where the Collector himself states in his award that he will refer the matter to the reference Court, and in such a case no separate application under section 18 of the Act is required to be filed by a person aggrieved. The State cannot go back on the promise of the Collector and take advantage of the fact that reference cannot be made after the period of limitation, which is prescribed in the Land Acquisition Act. The requirement of making a written application in such a scenario is not mandatory.

17. In light of the above, the writ petition is allowed, and the respondent is directed to refer the matter to a reference court as contemplated under section 18 of the Act, within a period of six (6) weeks today. Parties to bear their own costs.

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Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector, Krishnagiri.
2. The Special Tahsildar,
Neighbourhood Scheme,
Land Acquisition, Hosur.

+ 1 cc to Mr. V. Raghavachari, Advocate Sr.55195
+ 1 cc to Mr. Government Pleader Sr.56412

W.P.No.3303 of 2009

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