



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

CORAM:

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

Writ Appeal No. 1470 of 2016

1. State of Tamil Nadu
represented by its Secretary
to Government
Highways Department
Secretariat
Chennai - 600 009
 2. The District Collector
Thanjavur District
Thanjavur - 613 001
 3. The Revenue Divisional Officer
Thanjavur - 613 001
- .. Appellants

Versus

1. Mrs. B. Mary Selvam (deceased)
 2. Ms. Rosanna Savarimuthu
 3. Mr. Justice C.T. Selvam
 4. Mr. Clara Prabu
 5. Ms. Vasuki K. Athidiyan
 6. Mrs. Fathima Mary Selvam
 7. Mr. Raja Paneerselvam
 8. Mr. Lenord Arul Joseph Selvam
- (Respondents 2 to 8 are brought on record
as per Order dated 29.11.2017 passed in
CMP No. 20888 of 2017 in W.A. No. 1470
of 2016)
- .. Respondents

Appeal filed under Clause 15 of Letters Patent against the Order dated 11.12.2015 passed in W.P. No. 5543 of 2014 on the file of this Court. Writ of certiorarified Mandamus call for the records comprised in the proceedings of the third respondent in award No.1 of 2014 Na.Ka.4245/2000/A5 dated:30.07.2014 and to quash the same and consequently direct the respondents herein to adopt the land value as on the date of notification of the Central Act 30 of 2013 and follow the procedure contemplated under the Central Act 30 of 2013 in fixing the compensation for the lands comprised in Survey NOS.167/1A and 167/1B measuring a total extent of 72000 sq.ft in Nanjikottai village Thanjavur Taluk Thanjavur District which were forcibly taken possession from the petitioner(prayer



amended as per order dated 13.08.2015 by MMJ) in MP.1/2014 in WP.5543 of 2014.

For Appellants :Mr. C. Thirumaran
Special Government Pleader

For Respondents :Mr. Ar.L. Sundaresan, Senior Advocate
for Mr. A. Sivavarathanan for RR2, 3, 7 and 8
Mr. T. Senthilkumar for R4
Mr. M. Muthappan for R5

JUDGMENT

(Judgment of the Court was delivered by R. SUBBIAH, J.)

This intra-court appeal is filed by the State, questioning the correctness and validity of the order dated 11.12.2015 passed by the learned single Judge in W.P. No. 5543 of 2014, whereby the learned single Judge allowed the writ petition filed by the first respondent in this appeal (since deceased).

2. It is seen from the averments made in WP No. 5543 of 2014 filed by the first respondent (since deceased) (hereinafter referred to as land owner) that she was the owner of the land comprised in Survey No. 167/1A and 167/1B measuring a total extent of 72,000 square feet situated in Nanjikottai Village, Thanjavur Taluk, According to the land owner, her land was forcibly taken possession of by the Government without following the procedures contemplated under the Land Acquisition Act (Act 1 of 1894). Therefore, she filed WP No. 17740 of 1995 before this Court praying for issuance of a Writ of Mandamus directing the Government to proceed with the acquisition proceedings afresh from the stage of award enquiry especially when her lands were forcibly acquired for formation of the road. The said WP No. 17740 of 1995 was allowed by this Court on 13.03.2000. Notwithstanding the order passed by this Court in WP No. 17740 of 1995, according to the land owner, the appellants have resorted to fix the value of the acquired land as on the date of taking forcible possession. Therefore, the land owner filed another writ petition, being WP No. 2358 of 2001 before this Court seeking for issuance of a Mandamus directing the Government to adopt the value of the land as on the date of the award enquiry. The said writ petition was allowed by this Court on 18.02.2002 with a direction to the Government to adopt the value of the land as on the date of the award enquiry. As against the order dated 18.02.2002 passed in WP No. 2358 of 2001, a writ appeal was filed in W.A. No. 2314 of 2002 and it was dismissed by the Division Bench of this Court on 25.10.2010 with a direction to the Government to adopt the value of the land as on the date of award enquiry, as ordered by the learned single Judge.

3. According to the land owner, inspite of the specific direction given in the order dated 18.02.2002, which was also confirmed by the Division Bench of this Court in W.A. No. 2314



of 2002 dated 25.10.2010, directing the Government to adopt the value of the land as on the date of the award enquiry, there was delay in passing the award, and therefore, the land owner filed WP No. 9295 of 2013 praying to issue a Writ of Mandamus directing the respondents therein to pass a revised award in terms of the Judgment dated 25.10.2010 passed by the Division Bench of this Court in W.A. No. 2314 of 2002. By order dated 09.04.2013, this Court disposed of W.P. No. 9295 of 2013 with a direction to the respondents to pass appropriate orders on the claim for compensation, for having acquired her land, in the light of the Judgment of the Division Bench of this Court, within a period of eight weeks. According to the land owner, inspite of such a specific direction issued by this Court in the order dated 09.04.2013 in WP No. 9295 of 2013, the respondents in the said writ petition did not pass any order and therefore, she was constrained to file Contempt Petition No. 1439 of 2013. On receipt of notice in the contempt petition, the third appellant herein issued a notice dated 24.12.2013 directing the land owner to appear for an award enquiry by fixing the date of enquiry on 20.01.2014. In the said notice dated 24.12.2013, it has been stated that the State Government propose to acquire the lands mentioned therein which are required for formation of a road, which is a public purpose, which would show that no award has been passed under the Old Act, since the award enquiry itself was fixed on 20.01.2014, i.e. after the Central Act 30 of 2013, i.e. the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into effect, the award ought to have been passed under the provisions of the New Act 30 of 2013, but the award was passed as per the provisions of the old Act, and therefore, the land owner has filed the present writ petition, being WP No. 5543 of 2014 praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the third appellant herein dated 24.12.2013, quash the same and consequently direct the appellants herein to adopt the value as on the date of notification of the Central Act 30 of 2013 in fixing the compensation for the lands comprised in Survey Nos. 167/1A and 167/1B measuring a total extent of 72000 square feet in Nanjikottai Village, Thanjavur Taluk, Thanjavur District, which was forcibly taken possession from the petitioner.

4. When the writ petition was taken up for hearing, the learned single Judge, after hearing the counsel for both sides, passed the following order:-

"6. The order passed in WP No. 2358 of 2001 dated 18.02.2002 has become final between the parties. A perusal of the said order makes it clear that the third respondent therein will have to take into consideration of the date on which the award enquiry was conducted instead of the date of entry into the land on 27.04.1994 for the purpose of fixing the compensation. Admittedly, as on the date on which Act 30 of 2013 has come into force, no award was passed. It was passed subsequently on 30.07.2014. Therefore, the rigour of Section 24



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(i) A would apply in all force to the case of the petitioner. Resultantly, the compensation will have to be fixed by the third respondent as per the said enactment alone and not under the erstwhile Land Acquisition Act 1 of 1994.

7. Accordingly, the order impugned is hereby set aside and consequently the third respondent is directed to conclude the award by applying the provisions of New Act 30 of 2013 and fix the compensation in the light of the orders passed by this Court in WP No. 235 of 2001 and WA No. 2314 of 2002, within a period of eight weeks from the date of receipt of a copy of this order. Therefore, for the purpose of fixing compensation, the date for hearing on the award enquiry i.e., 20.01.2004 alone will be taken into consideration by applying Act 30 of 2013.

The writ appeal is allowed. No costs."

5. The learned Special Government Pleader appearing for the appellants would contend that possession of the land in question was taken even on 27.04.1994 due to the urgency involved in acquiring the land for formation of the bye-pass road in and around Thanjavur Town. While so, the learned single Judge ought not to have allowed the writ petition filed by the land owner and directed the third respondent to conclude the award by applying the provisions of New Act 30 of 2013.. When the possession of the land was taken even in the year 1994, the provisions contained under the new Act, which came into force in the year 2013, cannot be made applicable for the purpose of fixation of compensation to the petitioner.

6. Per contra, the learned Senior counsel appearing for the respondents 2, 3, 7 and 8 would contend that the learned single Judge, on appreciation of the rival claims, has rightly concluded that as on the date of coming into force of the new Act the appellant did not pass any award. Even as admitted by the appellants, award was passed only on 30.07.2014. The award enquiry itself was conducted only on 20.01.2014, i.e. subsequent to the introduction of the New Land Acquisition Act (Act 30 of 2013), and the New Act would be made applicable after 01.01.2014. Further, it was also pointed out by the learned Senior Counsel that the dispute with regard to the reckoning of the date for the purpose of fixing the compensation has also reached a finality by virtue of the earlier order passed by this Court in WP No. 2358 of 2001 dated 18.02.2002, which was also pointed out by the learned single Judge. In such circumstances, the learned single Judge is wholly justified in allowing the writ petition and thus prayed for dismissal of the writ appeal.

7. Keeping the above submissions made by the counsel on either side, we have carefully gone through the material records placed. Admittedly, the lands in question were acquired by the appellants, forcibly, which led to filing of writ petition by the land owner before this Court. It is also



an admitted fact that even though the possession of the land was taken in the year 1994, an award was passed by the appellants only on 30.07.2014, which is explicitly clear from paragraph No.14 of the Memorandum of Grounds of writ appeal filed on behalf of the appellants. As per the Judgment dated 25.10.2010 passed by the Division Bench of this Court in W.A. No. 2314 of 2002 the date of award enquiry alone has to be taken into consideration for the purpose of determining the compensation amount for having acquired the land of the land owner and not the date of taking possession of the land. In this case, the appellants have conducted the award enquiry on 20.01.2014 and on the date of award enquiry, the new Act namely Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) came into force on 01.01.2014. Section 24 of the new Act specifically provides that where no award is passed as required under Section 11 of the Land Acquisition Act, then all provisions of the new Act, relating to the determination of compensation, shall apply. In the light of the specific provisions contained under Section 24 (1) of the new Act, the learned single Judge has rightly allowed the writ petition filed by the land owner and we do not find any reason to interfere with the same. Accordingly, the writ appeal is dismissed. No costs. Consequently, CMP No. 18300 of 2016 stands closed.

Sd/-
Assistant Registrar(Co)

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Sub Assistant Registrar

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To

1. State of Tamil Nadu
represented by its Secretary to Government
Highways Department
Secretariat
Chennai - 600 009

2. The District Collector
Thanjavur District
Thanjavur - 613 001

3. The Revenue Divisional Officer
Thanjavur - 613 001

+ 1 cc to Mr. Government Pleader Sr.66287

WA No.1470 of 2016