

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2018

CORAM

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

W.P.No.17431 of 2017

1.P.Thangavel
2.Buvaneshwari
3.Selvanayaki

..Petitioners

Vs.

1.The District Collector,
Coimbatore District,
Coimbatore-18.

2.The Revenue Divisional Officer
Land Acquisition Officer(LAO),
Coimbatore Water Supply Scheme,
Collectorate Office,
Coimbatore-18.

3.The Executive Engineer,
Public Works Department,
Bhavani Sagar Dam,
Bhavani Sagar.

..Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus or any other appropriate writ or order or direction in the nature of a writ, directing the 2nd respondent herein to take appropriate action to pay enhanced compensation u/s.28-A of Land Acquisition Act for acquisition our agricultural lands in S.F.No.162/1A & 163/2 with the extent of 2.01.5 & 1.87.0 hectares respectively of Chinnavedampatti village in Coimbatore District for Chinnavedampatti Tank Scheme (Chinnavedampatti yeri Thittam) based on our representation dated 15.05.2017.

For Petitioner : Mr.K.Sadasivam for
Mr.P.M.Duraiswamy

For Respondents : Mr.M.Karthikeyan AGP

O R D E R

1.1 The grievance expressed by the petitioners in this case is that the petitioners' properties comprised in Survey Nos.162/1A, 163/2 of Chinnavedampatti Village, Coimbatore District were acquired along with other adjacent lands for development of a water body. An award was passed in Award No.1/1990 on 26.02.1990. Thereafter, a joint representation of 53 owners of the land involved in the acquisition was made to the land acquisition authority to refer the matter under Section 18 of the Land Acquisition Act, 1894. This representation was made on 02.04.1990. The petitioners submit in the said list of 53, 27th person was one S.Pattilingam. The Collector has made a reference with regard to all the other individuals, but no reference was made as concerning Post the case on 27.02.2018. Pattilingam is now no more and petitioners are his legal heirs the case of the said S.Pattilingam.

1.2 As concerning matters that were referred to the Civil Court under Section 18 of the Land Acquisition Act, 1894, they were taken on file by the I Additional Sub-Court, Coimbatore, in LAOP.Nos.10/2005 to 21/2005 on 10.03.2018 and it passed awards enhancing the compensation payable. These were challenged by the State in a batch of First Appeals before this Court. The owners of the land/petitioners in LAOP have also preferred cross objections. This Court by its judgment dated 05.04.2017 dismissed both the First Appeals as well as the Cross Objection. In effect, this Court has confirmed the award passed by the Reference Court in a batch of LAOP referred to above on 10.03.2018.

1.3 In the meantime, the petitioners moved the Collector requesting him to make a reference yet again. Since that was not done nor it evoked any response from the authority, on 16.06.2016, a notice through lawyer was sent to the Revenue Divisional Officer [Land Acquisition] to pay enhanced compensation under Section 28A of the Land Acquisition Act. This was again followed by the representation dated 25.11.2016 through counsel. After the disposal of the First Appeals mentioned in above, on 05.04.2017 a fresh representation was again made on 15.05.2017 to respondents 2 and 3. Even this has not evoked any positive response from the authorities. Hence, the petitioners have come forward with this present petition for issuance of a Writ of Mandamus to direct the second respondent to consider their representation 15.05.2017 favourably.

2. Heard Mr.K.Sadasivan, learned counsel appearing for Mr.P.M.Duraiswamy, learned counsel for the petitioners and Mr.M.Karthikeyan, learned Additional Government Pleader appeared for the respondents.

4. There are unassailable set of facts in this case, which are:

- An award in this case was passed on 26.02.1990 and without loss of time, on 02.04.1990 a joint representation of all the owners was made to the Collector for reference. Apparently, this is within time. Reference was made as concerning all but not for pattilingam, the father of the petitioners.
- After the disposal of the LAOP by the Reference Court on 10.03.2008, petitioner again moved to The Special Tahsildar (LA), Coimbatore Water Supply Scheme, on 24.03.2008.
- After the disposal of the A.S.Nos.211 to 222 of 2009, the petitioners again approached the authority with representation dated 15.05.2017.
- One fact that stands out is that the petitioners have been continuously communicating the authorities, seeking a reference right from the time when the award was passed on 02.04.1990 and for the reasons best known to the authority their case has not been considered for reference. What the petitioner now attempts is to undo the damage that the failure of the authorities to refer the case of their father under Sec.18 statutorily with their present attempt to resort to Sec.28-A of the Land Acquisition Act, 1894.
- The fact remains that that a Division Bench of this Court has disposed of the First Appeals challenging the awards of the reference Court only on 05.04.2017. Therefore, petitioners' right to move the authorities to seek parity in payment of compensation under Section 28-A of the Act opens only thereafter. Therefore, whichever way the case of the petitioners are approached, it becomes amply clear that the petitioners are entitled to have enhanced compensation.

5. This Court hereby direct the Collector/first respondent, to pay compensation to the petitioners in terms of Section 28-A of the Land Acquisition Act, 1894., and any interest as considered to be payable under Section 28A of the Land Acquisition Act, 1894, within a period of eight weeks from the date of receipt of copy of this order.

6. With the above direction, this petition is allowed accordingly. No costs.

Sd/-
Deputy Registrar

//True Copy//

bri

Sub Assistant Registrar

To

1.The District Collector,
Coimbatore District,
Coimbatore-18.

2.The Revenue Divisional Officer
Land Acquisition Officer(LAO),
Coimbatore Water Supply Scheme,
Collectorate Office,
Coimbatore-18.

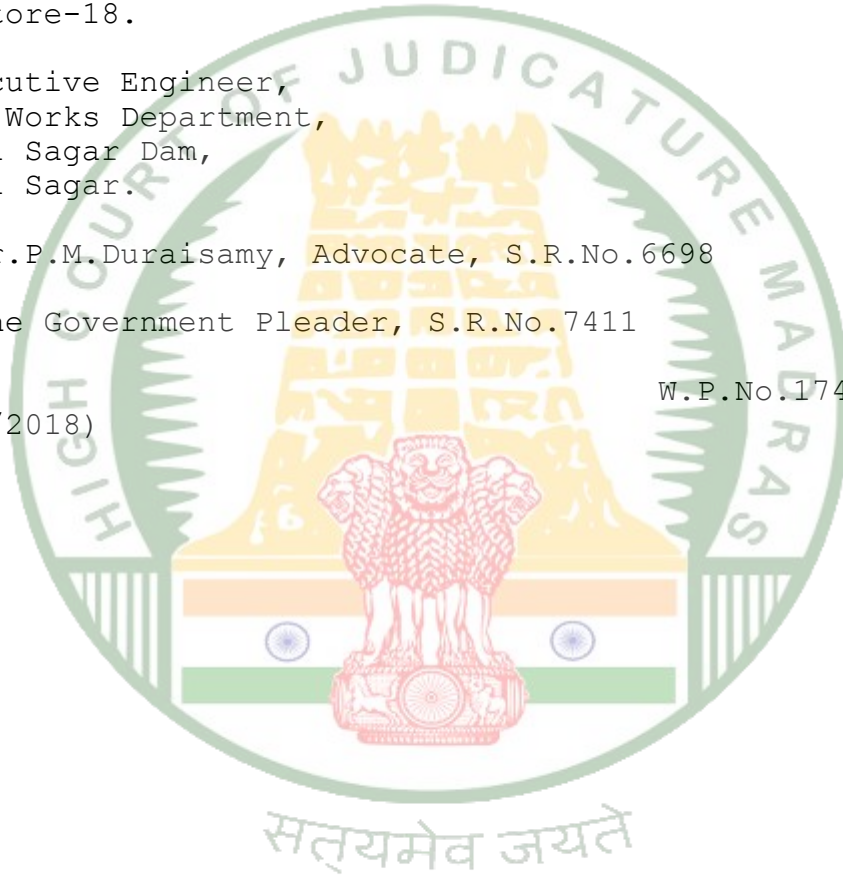
3.The Executive Engineer,
Public Works Department,
Bhavani Sagar Dam,
Bhavani Sagar.

+3cc to Mr.P.M.Duraisamy, Advocate, S.R.No.6698

+1cc to the Government Pleader, S.R.No.7411

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RRK(23/02/2018)



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