

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.1340 of 2018
and
W.M.P.No.1722 of 2018

N.Devarasu

...Petitioner

Versus

1. Government of Puducherry
represented by its Chief Secretary,
Puducherry - 605 001.
2. The Secretary (Revenue),
Department of Revenue and Disaster Management,
Government of Puducherry,
Puducherry.
3. The Deputy Collector (Revenue) - North
-cum-Land Acquisition Officer,
Puducherry.
4. The Sub Collector (Revenue) North
-cum-Land Acquisition Officer,
Puducherry.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorarified Mandamus to call for records on the file of the third respondent relating to the impugned Letter No.9750/DC(R)N/LA/2017/2735 dated 17.11.2017 of the third respondent and quash the same and direct the third respondent herein to refer the Award, in Award No.4/2007 dated 18.05.2007 in respect of the land belonging to the petitioner, situated at Vaithikuppam Hamlet, Puducherry Village & Taluk, comprised in T.S.No.B/15/45 measuring an extent of 3312 square feet under Section 18(1) of the Land Acquisition Act, 1894 to the Court of Competent Jurisdiction for appropriate adjudication for enhancement of the compensation.

For Petitioner : Mr.S.Sathish

For Respondents : Mr.J.Kumaran,
Government Advocate (Pudhucherry)

O R D E R

1.1. The petitioner claims that he owned a plot of land measuring an extent of 3,312 sq.ft in T.S.No.B/15/45 was acquired under the provisions of Land Acquisition Act, 1894 (hereinafter referred to as "Act") and an award too was passed fixing a compensation amount at Rs.170/- per sq.ft., On 06.09.2006, petitioner was paid an interim compensation of Rs.6,04,369/- (Six Lakhs Four Thousand Three Hundred and Sixty Nine Rupees) representing 80% of the compensation amount payable as per Section 17(3) of the Act and the balance Rs.1,66,604/- (One Lakh Sixty Six Thousand Six Hundred and Four Rupees) was paid on 05.11.2007.

1.2. In the meantime, being dissatisfied with the quantum of compensation awarded, petitioner has been communicating with the Authorities through his letters dated 18.05.2006, 28.07.2006 and 05.11.2007 for enhancing the compensation. To the last mentioned communication dated 05.11.2007, the respondent responded after a decade on 17.11.2017, rejecting the petitioner's prayer for Reference on the ground that the prayer for Reference was made beyond the period of limitation stipulated in Section 18 of the Act. This order is now challenged.

2. In the counter affidavit filed by the third respondent, it is primarily alleged that an award was passed following which, Section 12(2) Notice was issued on 18.05.2007 and as per Section 18(2) of the Land Acquisition Act, a request for Reference to the Civil Court should have been made within six weeks from the date of receipt of notice under Section 12(2) of the Act. However, the petitioner made his request for reference only on 05.11.2007, which is well beyond the period of six weeks statutorily stipulated. Of the other two communications dated 18.05.2007 and 28.07.2006, the respondents admits the receipt of the letter dated 28.07.2006, but not 18.05.2007.

3. The learned counsel for the petitioner submits that:

- The respondents have enclosed a copy of the Section 12 (2) Notice in the typed set of papers which will not serve the purpose either under Section 12(2) or Section 18(2) of the Act. Contrary to the assertion made in paragraph No.13 of the counter affidavit that Section 12(2) Notice was served on 18.05.2007, there is no date of service actually available in the copy of the 12(2) Notice. Therefore, the reason given for not making reference in terms of the date of alleged service of 12 (2) Notice is not tenable;
- The respondent would admit the receipt of some of the letters stated by the petitioner which contained the

signature of the petitioner. However, the copy of the 12(2) Notice now made available nowhere contains the signature of the petitioner and it is not known on whom it was served and the mode of service is contrary to the one prescribed in Section 45 of the Land Acquisition Act.

4. Mr.J.Kumaran, the learned Government Advocate (Puducherry) appearing for the respondents argued that the petitioner had filed a representation only on 05.11.2007, which is well beyond the period of six weeks provided for making a request for reference under Section 18 of the Act and therefore, the decision of the Collector not to make the reference is well founded. He also argued that the petitioner was present during the award enquiry.

5.1. As to the last of the objection of the learned Government Advocate is concerned, the terminus quo for reckoning the limitation period for preferring reference under Section 18 (2)B has little to do with the participation of the petitioner during the enquiry for passing the award under Section 12(2) of the Act, since the time has to be reckoned either from the date of which the award is passed, in which case, the owner of the land should be present, or from the date of service of Section 12(2) Notice, where, the land owners are so present. But, the respondents do not have a case that the petitioner was present on the very date on which the award was passed.

5.2. Turning to the first of respondent's objection, the said contention is rooted on their assertion that Section 12(2) Notice was served on 18.05.2007, and as rightly indicated by the learned counsel for the petitioner, the copy of the Notice enclosed in the typed set of papers, the respondent nowhere gives the said date and not known where the said date was obtained. This is buttressed and supplemented by another fact, in that, the said notice issued under Section 12(2) was not seen to have served on the petitioner at all. That the service of Section 12(2) Notice on the right person and on the date on which the respondent asserts the same to have been served, therefore comes under the cloud of suspicion. Consequently, it would be unsafe to accept the case of the respondents. In any event, in all cases where doubt arises, the benefit of such doubt should ensure to the benefit of the petitioner.

6. Turning to the petitioner, he asserts that he has issued a letter dated 28.07.2006 and even though this letter was denied in the counter affidavit, in the copy of the said letter made available by the petitioner in his typed set of papers, there is a refer to the earlier letter of the petitioner dated 18.05.2006. Unfortunately, the receipt of this letter has been

denied by the respondents. Unless, the entire cards are placed before this Court with fairness it is nigh difficult to appreciate the case of the respondents.

7. In the result, this Court finds adequate enough materials that enhances the probability of the case of the petitioner and quashes the impugned Letter No.9750/DC(R) N/LA/2017/2735 dated 17.11.2017 of the third respondent and further directs the District Collector to make a Reference to the concerned Civil Court within six weeks from the date of receipt of a copy of this order. Accordingly, this Writ Petition is allowed with the direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The Chief Secretary,
Puducherry - 605 001.
2. The Secretary (Revenue),
Department of Revenue and Disaster Management,
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3. The Deputy Collector (Revenue) - North
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Puducherry.
4. The Sub Collector (Revenue) North
-cum-Land Acquisition Officer,
Puducherry.

+1cc to Mr.P.Sivagaminathan, Advocate, S.R.No.19508
+1cc to the Government Pleader, S.R.No.19899

W.P.No.1340 of 2018

GMI (CO)
CS/10/05/18