

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.01.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.33055 of 2013

and

W.P.M.P.No.1 of 2013

1. S. Kandammal
2. Muthu
3. Errapillai
4. Ramamoorthy
5. Lakshmi

...Petitioners

Versus

1. The District Collector,
Dharmapuri.
2. The Special Tahsildhar,
Land Acquisition Officer,
Hosur Neighbourhood Scheme,
Hosur.
3. Tamil Nadu Housing Board,
Rep. by its Chairman and Managing Director,
Teynampet, Chennai - 600 016.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandmus calling for the proceedings of the second respondent dated 25.08.2005 and made in W.R.1/2002/R2 and quash the same and direct the respondents to redetermine the compensation for the lands referred in Survey Nos.213/1Z2, 213/1AB, 213/1AC and 212/2 of A.Jathihalli Village acquired under the Hosur Neighbourhood Scheme as per Section 28 of Land Acquisition Act.

For Petitioners : Mr.M.Selvam

For Respondents 1 & 2: Mr.Akhil Akbar Ali,
Government Advocate

Respondent 3 : No Appearance

ORDER

1.1. In the affidavit filed in support of the Petition, the petitioners claim that they were joint owners of about 1.65 Acres in Survey Nos.213/1Z2, 213/1AB, 213/1AC, 212/2 of A.Jathihalli Village, Errapatti Village, Dharmapuri Taluk, that the said property was acquired by the Government for establishing Neighbourhood Scheme at Hosur, that compensation payable too is determined in an Award No.3/88 dated 03.06.1988, and that the award-amount too has been deposited by the second

respondent in the Court. In the case of petitioners' lands, award was passed in the name of their father and within couple of months, he died on 19.10.1988.

1.2. Meanwhile, some of the land-owners whose property was acquired along with the property of petitioners' father had referred the matter under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "Act"), that on 30.04.1997 the said References were disposed of by the Sub Court, Dharmapuri, granting enhanced compensation. On coming to know about the enhancement, the petitioners moved the Collector with a representation dated 29.07.1997 seeking compensation in parity under Section 28-A of the Act. This communication was received by the R1 & R2 on 30.07.1997 and it was duly acknowledged. However, the R1 & R2 did not take up any action on that, and hence the petitioners addressed the first respondent with a letter dated 16.09.2001, to which, the first respondent replied Vide his correspondence dated 20.09.2001, wherein, he has indicated that the first respondent had required the Housing Board to make available the funds and that the amount would be paid on receipt of the amount from the Housing Board. However, since nothing happened, the petitioner moved this Court in W.P.No.18429 of 2002 and this was disposed of with a direction to the Authorities to redetermine the compensation in the manner that law mandates. This was followed by yet another order in W.P.15433 of 2002, and this Court Vide its order dated 28.06.2005, directed the Authorities to re-determine the compensation on the basis of the request dated 29.07.1997. In the said order, the High Court has also indicated that if the date of representation was 29.07.1997, then the request was within the time-limit stipulated in Section 28-A of the Act.

1.3. Thereafter, Vide communication dated 25.08.2005, the Special Tahsildar has passed the proceedings rejecting the claim for invoking Section 28-A of the Act on the ground that the alleged representation of the petitioner dated 29.07.1997 was not available on his file.

2. Mr.Akhil Akbar Ali, the learned Government Advocate entered appearance for the respondents. The counter affidavit has not been filed yet in this case.

3.1. The learned counsel for the petitioners submitted that since the amount due to the petitioners were deposited in the Court under Section 30 of the Act, even though, there was no title dispute, yet the petitioners had to wait for the disposal of the matter in order to invoke Section 18 of the Act. The reference made under Section 30 of the Act was taken on file of the Sub Court, Dharmapuri in L.A.O.P.No.125 of 1992 and was disposed of only on 10.02.1999. However, the petitioners' representation was made even on 29.07.1997, wherein, it has not sought enhancement of compensation under Section 18 of the aforesaid Act, but have sought only parity in payment of compensation in terms of the award passed by the Reference Court under Section 28-A of the Land Acquisition Act, 1894.

3.2. The subject matter of the earlier writ proceedings was one in W.R.No.1/2002/R2 dated 25.08.2005, where the respondents had not taken the contention that it takes now. Having suffered an order in that writ petition, it is not open to the Special Tahsildhar/second respondent to reject it on the ground of non availability of the said representation in its file now. It may also be added that the competent authority to deal with an Application under Section 28-A of the Act is the District Collector and not the Tahsildar.

4. This Court finds merit in the submission of the learned counsel for the petitioners. There is no denial of the fact that the petitioners have filed their representation seeking parity in payment of compensation under Section 28A of the Act on 29.07.1997 and its service was acknowledged Vide acknowledgement card dated 30.07.1997 received both from the Collector and from the Tahsildhar. This was also the subject matter of the earlier Writ petitions mentioned above and this Court has passed Orders for addressing this particular representation.

5. In fitness of things, the Special Tahsildar irrespective of whether he is competent or not to deal with the matter, should have only required the petitioners to provide another copy of the said representation dated 29-07-1997, re-constructed his file rather than rejecting the same on the ground that the same was not available. By short circuiting the spirit behind the Order of this Court in W.P.No.15433 of 2002, he has only attempted to over simplify his responsibility in dealing with matters such as this. Necessarily, the impugned order dated 28.06.2005 cannot be sustained.

6. This Court therefore has no option but to quash the impugned order of the first respondent dated 25.08.2005. Since, the representation is said to be not available in the file of the respondents, the petitioners are directed to make available a copy of their representation dated 29-07-1997 along with the copies of the acknowledgement card within four weeks from the date of receipt of a copy of this order to facilitate the Authorities to re-construct the papers and the same may be tendered to District Collector, since under Section 28-A of the Act he alone is the Competent Authority to entertain the matter and once done, the Authority concerned shall treat the same as one filed on 29-07-1997 and pass appropriate orders within eight weeks thereafter. The Authority must bear in mind that they have driven the citizen on one pretext or the other, thrice, to this Court, and hence, if the Collector defaults to comply with this order, he is directed to appear before this Court personally and to explain why he did not abide by this Order.

7. With the above direction, this Writ Petition is disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

mrr

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Dharmapuri.
2. The Special Tahsildhar,
Land Acquisition Officer,
Hosur Neighbourhood Scheme,
Hosur.
3. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Teynampet, Chennai - 600 016.

+1cc to Mr.Selvam, Advocate Sr.No.5272

+1cc to Government Pleader SR.No.7413

SV1(co)

sm:4.6.2018

W.P.No.33055 of 2013

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