

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.27320 of 2016

Vivekananda Chettiar

Represented by the

Power Agent S.Anilkumar

... Petitioner

Vs

1. The Member Secretary,
C.M.D.A., Thalamuthu Natarajan Maaligai,
Egmore, Chennai-600 008.

2. The Land Acquisition Officer and
Special Tahsildar (LA) Unit-6,
O.R.R.Project Phase-II,
CMDA, Koyambedu,
Chennai-600 092.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to call for the records relating to the impugned order dated 20.06.2016 made in Na.Ka.No.61/2013.A1/Unit-6 on the file of the 2nd Respondent, to quash the same and consequently direct the 2nd Respondent to make reference under Section 18 of the Land Acquisition Act to the jurisdictional civil court.

For Petitioner : Mr.V.Perumal

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader
[For R1 & R2]

ORDER

In this case the petitioner's property was acquired and an award was passed on 16.02.2009. Thereafter, on 10.05.2016, the petitioner came to know through one R.Saraswathi, who was the owner of another piece of adjacent land which was also acquired along side the acquisition of petitioner's property, that in a Reference preferred by her under Section 18 of the Land

Acquisition Act, which was taken on file by the Sub-Court, Ponneri in L.A.O.P.No.2 of 2011, an award was passed in the Lok Adalat on 01.02.2014, wherein the compensation was enhanced to Rs.95,010/- per cent. The petitioner has therefore approached the 2nd respondent with his representation dated 23.05.2016, and this was rejected by the 2nd respondent on the ground of limitation.

2. Mr.M.Karthikeyan, the Additional Government Pleader appears for the respondents. Counter is not filed. The learned Additional Government Pleader however produced the files containing service of notice under Section 12(2) of the Land Acquisition Act and also the Register under which the amounts are paid.

3. A perusal of the files indicates that a notice under Section 12(2) was attempted to be served on the petitioner by certificate of posting but the said notice was returned without being served. This implies that there has not been due service of Section 12(2) notice. On perusal of the payment register shows the compensation amount has been paid to the petitioner on 31.05.2016.

4. Could an attempt to serve notice under Sec.12(2) through certificate of posting be termed as a valid and complete service is the moot point here. How notices that are required to be served under the Land Acquisition Act, 1894, is specifically provided in sec.45. It reads:

"45.Service of notices.--(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house,

and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and [registered under sections 28 and 29 of the Indian Post Office Act, 1898 (VI of 1898)] and service of it may be proved by the production of the addressee's receipt.'

5. The legislature does not trouble the Court to understand the true import of this provision, when it chose to couch the manner of serving notice in plain, unambiguous language: Try serve it on the person concerned; and at the address where the person resides. Service through post is introduced as an exception to the general rule through the Proviso, and even here the prescribed mode of service is through registered post and not through 'Certificate of Posting'. It is not only what is attempted in the case of the petitioner is not in conformity with what the statute has prescribed, but whatever that was attempted too has not shown to have achieved the purpose. Therefore, it cannot be held that a notice as contemplated under Sec.12(2) of the Act has been served on the petitioner, in order terminus quo for computing the six weeks period for making the reference under Sec.18, could be based on the one which this Court has now rejected, and consequently the rejection of petitioner's request for Reference under sec.18 under the impugned order is bad in law.

6. Be that as it may, the petitioner has produced a copy of the award passed by the Lok Adalat case No:3/2014, dated 01-02-2014, in L.A.O.P.No.2 of 2011, wherein the compensation for adjacent lands was enhanced to Rs.95,000/- per cent. In the context of the present case, since the award enhancing compensation for the adjacent owner namely R.Saraswathy has already been passed, alongside seeking Reference under Section 18, the petitioner would also be entitled to seek parity in payment of compensation under Sec.28-A of the Act.

7. The learned counsel for the petitioner agrees to this option. Since, petitioner's plea to sustain his request for Reference under Sec.18 is maintainable for reasons already indicated, an equally efficacious relief is possible under Sec.28-A of the Act, through the respondent may now contend that the same is barred by limitation. While Sec.18 is not hit by limitation, the proceedings thereunder are far more cumbersome, than the one under sec.28-A, through limitation as a factor can

figure in while considering the prayer for the latter. In the context of the facts as are available, limitation for invoking Sec.28-A is only technical in character, and it has to be overlooked.

8. This Court therefore, allows the petition, quashes the impugned order dated 23-05-2016, and further directs the petitioner to prefer a fresh representation to the authority concerned under Section 28-A of the Act within four weeks from the date of receipt of a copy of this order and the 2nd respondent shall pass the order of the same within four weeks thereafter without reference to any limitation. The petition is allowed with directions as above. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

ssn

To

1. The Member Secretary,
C.M.D.A.,
Thalamuthu Natarajan Maaligai,
Egmore, Chennai-600 008.

2. The Land Acquisition Officer and
Special Tahsildar (LA) Unit-6,
O.R.R.Project Phase-II,
CMDA, Koyambedu,
Chennai-600 092.

+1 CC to Mr.V.Perumal, Advocate Sr.No.12756.

+1 CC to Mr.C.Johnson, Advocate Sr.No.12587.

WEB COPY

W.P.No.27320 of 2016

SKS (CO)
KP (29/05/2018)