

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.28453 of 2016

1.R.Rajagopal
2. Nookiah(alias) M.Kamalakannan (deceased)
3. R.Indirani
4. M.Munuswamy
5. Nagammal
6.Devi (alias) L.Devika
7. S.Prema
8. M.Varalakshmi
9. Ellammal
10. Vinoth Kumar
11. K.Mangalam
12. V.Mahalakshmi
13. K.Suresh
14. K.Karthik Petitioners

(P11 to P14 are substituted as Legal
Representatives of the deceased
2nd petitioner Nookiah @ Kamalakannan
as per order dated 24.01.2018
by NSSJ in WMP No.1401/2018 in
W.P.No.28453 of 2016)

Vs

1. The Secretary
Housing and Urban Development,
Fort St.George,
Chennai-600 009.

2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

3. The District Collector,
Tiruvallur District,
Tiruvallur.

4. The Special Tahsildar,
Land Acquisition Division II,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 4th respondent impugned order Rc.No.34/2004/C5 dated 6.6.2016 and quash the same, consequently direct the respondents to re-determine the amount of compensation on the basis of reference Court (Sub-Court Poonamallee) in LAOP No.15 of 1986 dated 20.06.1988 now which is confirmed by the Division Bench of this Court in batch of Appeals in A.S.No.399 to 405 of 2004 dated 10.02.2004 dated 10.02.2010 and pay the compensation, solatium and interest thereon to the petitioners.

For Petitioners : Mr.V.Suryanarayana Reddy

For Respondents 1,3 & 4 : Mr.Akhil Akbar Ali
Government Advocate

For 2nd Respondent : Mr. B.Vivekavan

ORDER

The case of the petitioners is that the property was acquired and an award was passed on 20.09.1986. The entire compensation payable to the petitioners was deposited into Sub-Court, Poonamallee under Sections 30 and 31(2) of the Land Acquisition Act, 1894 in LAOP No.428 of 1986. Be that as it may some of the land owners have preferred a Reference to the Civil Court under Section 18 of the Land Acquisition Act and their case were taken on file by Sub Court, Poonamallee in LAOP No.15 of 1986 batch, in which the Reference Court has enhanced the compensation payable by fixing the market value at Rs.4,571/- per cent Vide its Award dated 20.06.1988. Soon, thereafter, the petitioners have approached the Collector with their representations dated 16.09.1988 and 19.09.1988 for extending parity in the matter of payment of compensation under Section 28-A of the Land Acquisition Act. This was responded to by the Special Tahsildar (Land Acquisition) / 4th respondent Vide communication dated 12.04.1990 that the Government was proposing to prefer an appeal to this Court challenging the award passed by the Reference Court in LAOP No.15 of 1986 batch of cases. The Government indeed had preferred a batch of appeals in A.S.Nos.399 to 405 of 2004; 859 to 864 of 2004; 727 and 728 of 2004; 225 to 227 of 2004 and 159 of 2007 against the awards of the Reference court. The Division Bench of this Court by its judgment dated 10.02.2010 disposed of them. In the meantime, the petitioners have preferred an application dated 12.12.2003 to the 4th respondent for enhancement of compensation for the lands acquired and the same was rejected by the Special Tahsildar on 06.06.2016 on the ground that this petition was filed after one year from the date of the Original order of the LAOP 15 of 1986, dated 13.12.2002, which is now under challenge.

2. The learned counsel for the petitioners submitted that it is not in dispute that the petitioners have approached the Collector under Section 28-A almost immediately, after the passing of the award by the Reference court on 16.09.1988. But, the same was not considered since the Land Acquisition Authority was then proposing to appeal against those awards. The second petition dated 15.12.2004 was also filed during the pendency of the first appeals in a batch of cases in A.S.Nos.399 to 405 of 2004; 859 to 864 of 2004; 727 and 728 of 2004; 225 to 227 of 2004 and 159 of 2007. Therefore, in fitness of things no finality on the sum payable to other land owners who have opted to move the Reference Court under Section 18 was reached and therefore, the Collector could not reject the application that the petitioners have made and that he should have kept them in abeyance. He relied on the authority in *Kendriya Karmachari Sehkari Grah Nirman Samiti v. State of U.P.*, [(2009)1 SCC 754].

3. Heard Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents 1, 3 and 4 and Mr.B.Vivekavanam, learned counsel appearing for the 2nd respondent. A counter is filed.

4. One fact that emerged from the submissions of the learned counsel for the respondents is that challenging the inadequacy of the compensation as determined in the award dated 29.09.1986, few other land owners had moved the Reference Court in LAOP No.15 of 1986 and that an award enhancing the original compensation was passed by the Reference court challenging which the Government had preferred first appeals in A.S.No.36 of 1989 batch, that this Court under its judgments dated 15.02.2001 allowed them and remanded the matter back to the reference Court for fresh consideration, and that the Reference Court had again determined the market value of the property at Rs.4,571/- per cent Vide its Awards dated 13.12.2002. However, subsequently there is no dispute between the petitioners and the respondents in that both agree that this award was again challenged by the Government in a batch of first appeals where this Court has determined the market value of the property at Rs.4,125/- per cent.

5. Now, it cannot be disputed the petitioners have filed at least three representations for extending parity in the matter of payment of compensation to the land acquisition authority. The first representation was dated 16.09.1988 and this was acknowledged and replied on 12.04.1990 by the Special Tahsildar followed by another representation dated 02.03.1994 which was acknowledged and by a reply dated 07.08.1995 and subsequently on 15.12.2003, which is now responded under the impugned order. One aspect that becomes instantly evident is that all these

representations were made by the petitioners even before the awards of the Reference Court under Section 18 of the Land Acquisition Act, 1894, have attained finality. As already indicated, the market value payable to other land owners under Section 18 of the Land Acquisition Act has become final only on 10.02.2010. In *Kendriya Karmachari Sehkari Grah Nirman Samiti v. State of U.P.*, (2009(1) SCC 754), this Court has extracted a passage from *Babua Ram v. State of U.P.*, (1995) 2 SCC 689 as under:

''43. 3. The entire controversy has been considered by this Court in *Babua Ram v. State of U.P.*, and batch and held that since an appeal has been preferred by the State against the award of the District Judge made under Section 26 of the Act, the proper course open to the LAO, on an application made under Section 28-A(1) of the Act, would be to keep the applications under Section 28-A(1) pending till the appeal filed against the award of the District Judge is disposed of by the High Court and then to take action as per Section 28-A(2) of the Act. Following the law laid down therein and subject to directions contained therein, we hold that the High Court was not right in dismissing the writ petitions. Therefore, the order of the High Court is set aside. The award of the Collector made under Section 28-A(2) is quashed. The Collector/LAO is directed to keep the application filed under Section 28-A(1) of the Act pending till the disposal of the appeal. On receipt of the judgment from the High Court or in an appeal by this Court the LAO is directed to determine the compensation based on the final judgment according to law.''

This would make clear that the petitioners' request for invoking Section 28A of the Land Acquisition Act should have been kept in abeyance. Even de hors the same, since the petitioners have approached the authority earlier than when their request for invoking Sec.28-A became due, their request cannot be termed belated.

6. It was brought to the notice of this Court by the learned counsel for the respondents that the petitioners instead of approaching the collector under Section 28A of the said Act, have approached the Special Tahsildar. This cannot be considered a valid argument in a country where the citizens' familiarity with law and rights are inadequate, and it is for the authority concerned to find ways and means of aiding them and apply law. Therefore, all the representations that the petitioners have made earlier are directed to be treated as petitioners' representations made to the District Collector under the Land Acquisition Act.

7. So far as the impugned order is concerned, it shall fail on two grounds: (a) That the Tahsildar is not the competent authority to decide the issue; and (b) On facts the petitioners' prayer for invoking Sec.28-A is not belated.

8. For the foregoing reasons, this Court allows this petition and quashes the impugned order of the 4th Respondent in Rc.No.34/2004/C5, dated 06.06.2016, and direct the 3rd respondent to pass appropriate orders in terms of the judgment of this Court in A.S.Nos.399 to 405 of 2004; 859 to 864 of 2004; 727 and 728 of 2004; 225 to 227 of 2004 and 159 of 2007 dated 10.02.2010 within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The Secretary
Housing and Urban Development,
Fort St.George,
Chennai-600 009.

2. The Chairman and Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

3. The District Collector,
Tiruvallur District,
Tiruvallur.

4. The Special Tahsildar,
Land Acquisition Division II,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

+1cc to Mr.B.Viveka Vannan, Advocate, S.R.No.9953

+1cc to Mr.V.Surya Narayana Reddy, Advocate, S.R.No.9906

W.P.No.28453 of 2016

RRK(09/04/2018)

SP(29/05/2018)