

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.19730 of 2008

P.Suresh Kumar

... Petitioner

Versus

The Special Tahsildar,
(Land Acquisition),
Salem Karur Broad gauge,
Line project,
C.K.P. Plaza, Paramathi Road,
Namakkal.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking Writ of Mandamus, to direct the respondent to make a reference under section 18 of the Land Acquisition Act, 1894, with regard to the fixation of compensation for the petitioner's lands in S.No.435/6A, in No.51, Kosavampatti Village in Namakkal Taluk in Namakkal District, measuring an extent of 0.04.5 hectares.

For Petitioner : Mr.C.Jagadish

For Respondent : Mrs.Thanga Vadhana Balakrishnan,
Additional Government Pleader.

O R D E R

The prayer sought for in the present writ petition is to direct the respondent to make a reference under section 18 of the Land Acquisition Act, 1894, with regard to the fixation of compensation for the petitioner's lands in S.No.435/6A, in No.51, Kosavampatti Village in Namakkal Taluk in Namakkal District, measuring an extent of 0.04.5 hectares.

2. The petitioner would contend that, he is the owner of the lands in S.No.435/6A, in No.51, Kosavampatti Village in Namakkal Taluk in Namakkal District, measuring an extent of 0.04.5 hectares and it was acquired by the respondent herein for the formation of a link road to avoid water stagnation due to the formation of Salem-Karur Broad Gauge Railway line under Section 17(1) of the Land Acquisition Act, 1894. Therefore, an enquiry was conducted by the respondent herein and passed an award in Award No.14 of 2003, dated 17.07.2003 in the

proceedings of the Land Acquisition Officer and Special Tahsildar (L.A), Salem - Karur Broad Gauge Railway Project in Namakkal. At that time of award enquiry the petitioner deposed to accept the award with protest and requested to award the compensation to him. The pattadar, who is on ill-health condition has consented to give the compensation amount to his only son Thiru.Suresh and his son also given a statement. The authorities taken him as a owner of the land and ordered to award a sum of Rs.1,21,847/- as compensation. Since, the petitioner raised a protest that amount of compensation was lesser amount it was recorded by the respondent in the enquiry. Since, the petitioner was not satisfied with the award amount had offered by the respondent, the petitioner made representations and approached many times to refer the matter to the competent Civil Court and one of which was on 01.10.2007 to refer the matter under Section 18 of the above said Act for enhancing the compensation amount.

3. In spite of the representation the respondent has not referred the matter to the competent Civil Court under Section 18 of the Act. Since, the respondent owes a public and statutory duty to refer the matter to a Civil Court for determination of fair compensation amount. Hence, the petitioner filed this present writ petition.

4. The respondent has filed a counter stating that even the petitioner's father appeared for the award enquiry, since the petitioner was on ill-health condition and consented to give the compensation to his son, Suresh Kumar, he has not filed any separate application before the Collector for refer the matter before the Civil Court under Section 18 of the Act. He would also contend that at that time of award enquiry the petitioner's father, Periyasamy had also has been read out that as per the Section 18 of the Land Acquisition Act, if the petitioner received the amount, they have to file a separate petition in writing to the concerned authorities within the time frame prescribed. Under Section 18 of the Land Acquisition Act, when the person, who did not accept the award amount, he/she is not entitled for the reference to competent Civil Court but has to submit an application within the stipulated time, as per the Act, within six months from the date of receipt of a copy of that award.

5. In spite of having been informed to make a separate application under Section 18 of the above said Act, the petitioner herein has not sent any application to the Collector, but he sent a representation after a lapse of 5 years for enhancing of the compensation, which is time barred and it does not provide any relief for such belated application. Since the petitioner had not filed any application separately before the competent authorities or before the Collector, requesting to

refer to the competent Civil Court the request of the petitioner cannot be accepted and the writ petitioner has to be rejected. Since the award enquiry was conducted on 27.12.2007 and also reply given to the petitioner vide letter No.Roc.65/2007(A), dated 04.01.2008, holding proper enquiry by over ruling the said representation and dismissed the same, the writ petition has to be dismissed. In this context, the learned counsel for the petitioner has cited the Judgment rendered by a Division Bench of this Court in the case of (Managing Director, Tamil Nadu Housing Board, Chennai Vs. Chinnasamy and Others) reported in (2006) 4 M.L.J. 254 in W.P.Nos.4022 to 4024 of 2004 and 2011 & 2012 of 2005 and W.A.M.P.Nos.3694 and 3695 of 2005, wherein it was held as follows:-

"Land Acquisition Act (1 of 1894), Section 18 - Acquisition proceedings - Reference to Court - No written application by the land owners, before the Land Acquisition Officer - Protest against the award of the Collector is implied notwithstanding the acceptance of compensation - if the land owner express his protest or dissatisfaction to the award of compensation, the authority is under an obligation to refer the matter to the Court, even without a formal application - Writ appeals dismissed."

6. In this case, it was held that the land owner, unsatisfied with the award of compensation is duty bound to seek to refer the matter to the Civil Court, the authorities are bound to do so even in the absence of written application.

7. It could be seen from the records, the land owner has received the amount and it was deposited by the concerned authority. It is stated by the petitioner that the respondent ought to have referred the matter to the competent Civil Court when he is not satisfied with the compensation. There is no written representation required to refer the matter in accordance with law with the Section 18(2) of the Act.

8. When the time for seeking to refer the matter expires and protested by the land owner for referring the same the right of the owner cannot be denied to refer the case under Section 18 (2) of the Act, even without formal application if the land owner is dissatisfied with the award of compensation and the applications can be referred to the competent Civil Court. Even though there is no separate application filed by the petitioner it is clearly stated that the award was passed in favour of the land owner and he received the amount under protest. While so, the Land Acquisition Officer has to refer the matter to the competent authority with a formal application.

9. In the said decision reported in, (2006) 4 M.L.J. 254 (cited supra), the Division Bench held as follows:

"7. In this context, it is useful to refer to a recent decision rendered by the First Bench of this Court reported in Steel Authority of India Limited, Salem Steel Plant, Salem V. Salem Urukklai Thittathal Nilam Ilanthor Sangam and Others (2006) 1 MLJ 252: 2006-1-LW-347. While considering similar objection raised by a public body, viz., Steel Authority of India Limited, after referring to the decision of the Supreme Court in Ajit Singh V. State of Punjab 1994 (4) SCC 67, the Bench held that the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The Division Bench also approved a similar view expressed in W.P.No.2450 of 1983, Another V. Special Tahsildar, Land Acquisition, Salem Steel Plant and Another. The following conclusion of the Division Bench is very relevant and the same is extracted hereunder:

"21. Having regard to this settled legal position laid down by the Apex Court as well as various High Courts, it is clear that mere protest or expression of dissatisfaction to the award of compensation without there being anything in writing may be sufficient and that the authority concerned is under an obligation to refer the matter to the Court in accordance with Section 18(2) of the Act. In view of this legal position various categories as indicated hereinabove, expressing their protest and filing their applications for reference and some having not even received notices under Section 12(2) of the Act, cannot be denied the right to refer their cases to the Court under Section 18(2) of the Act, and therefore, we do not find any ground to interfere with the judgment of the learned single Judge."

Thus, it is clear that even without a formal application, if the land owner express his protest or dissatisfaction to the award of compensation, the authority is under an obligation to refer the matter to the Court under Section 18(2) of the Act."

10. In view of the above, this Court is of the view that the Collector, who is the authority under the Act, shall refer the matter to the Competent Civil Court. The authority concerned is directed to comply with the order and refer the matter to the Civil Court within a period of two months from the date of receipt of a copy of this order.

11. With the above observation and direction, this Writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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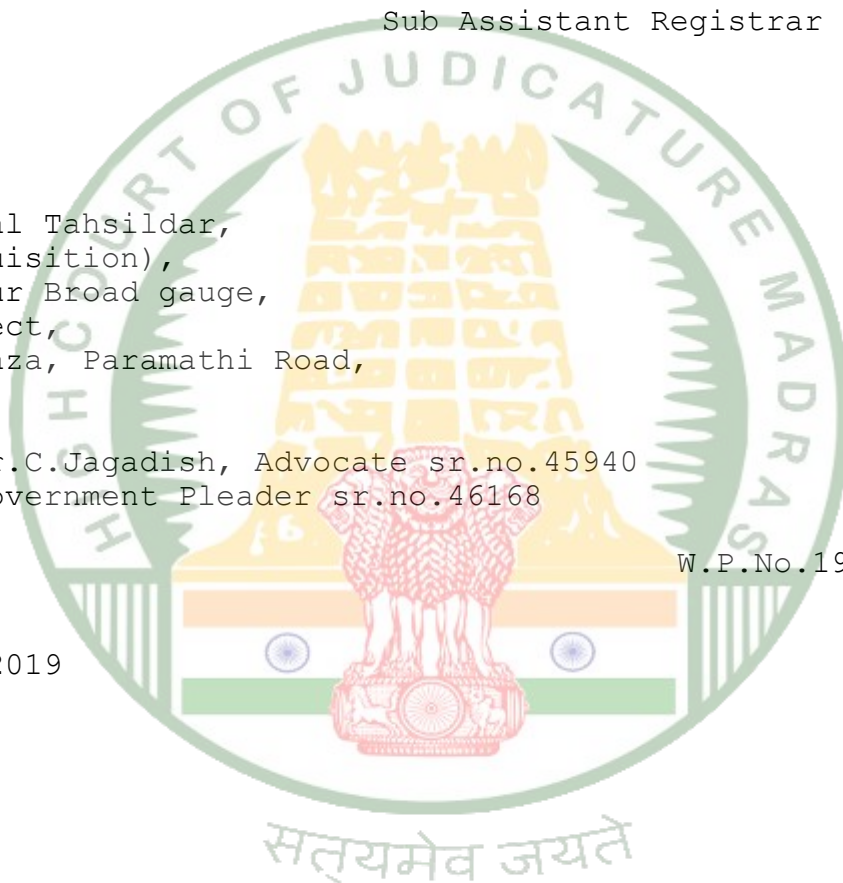
To

The Special Tahsildar,
(Land Acquisition),
Salem Karur Broad gauge,
Line project,
C.K.P. Plaza, Paramathi Road,
Namakkal.

+1cc to Mr.C.Jagadish, Advocate sr.no.45940
+1cc to Government Pleader sr.no.46168

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