

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :21.02.2018

CORAM

THE HON'BLE MR.JUSTICE N. SESHASAYEE

W.P.No.4246 of 2016

P.Arumugam

... Petitioner

Vs.

1. The Revenue Divisional Officer,
Taluk Office Road,
Ponneri 601 204.

2. The Head
Personal and General Administration - II
Satish Dhavan Space Centre
SHAR, Sriharikota - 524 124.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents herein to consider the petitioner's petition dated 28.04.2015 and to deposit the balance compensation amount to the credit of LAOP No.339 of 1986 on the file of Sub Court, Tiruvallur, pursuant to the judgment and decree dated 31.10.1990 in respect of the petitioner's lands acquired in Survey No.354/2 measuring 5.00 acres in Karimanal Village, Ponneri Taluk by fixing a time limit.

For Petitioner : Mr.M.S.Subramanian

For R1 : Mr.Akhil Akbar Ali
Government Advocate

For R2 : Mr.Venkataswamy Babu

ORDER

1.1 The petitioner's case is that his property, along with others, were acquired under the provisions of Land Acquisition Act, 1894, and an award was passed on 26.03.1985 wherein, the market value of the property was fixed at the rate of Rs.10/- per cent and the compensation amount of Rs.39,010.15 was received by the petitioner under protest. Several owners of

land sought reference under Sec.18 of the Land Acquisition Act, 1894, and a batch of 49 cases were referred to the Civil Court.

1.2. The petitioner's case was taken on file in LAOP No.339 of 1986, along with other cases, and they were disposed of by the Sub Court, Tiruvallur on 31.10.1990. As per the award of the Reference Court, the price for the petitioner's property was enhanced from Rs.10/- per cent to Rs.160/- per cent. Challenging the award of the Reference-Court, the Government had preferred an Appeal to this Court in ASSR No.10024 of 1993, with an application to condone the delay in filing the said Appeal. This Court Vide its order dated 16.11.2001 refused to condone the delay. Thereafter, the petitioner had moved the Reference Court in E.P.No.79 of 2003 in LAOP No.339 of 1986 for realising the amount awarded. As the amount was not deposited before the Execution Court, the petitioner, justly aggrieved, has approached this Court now for remedy.

2. Mr.Akhil Akbar Ali, the learned Government Advocate enters appearance for the first respondent and Mr.Venkataswamy Babu, the learned counsel for the second respondent appears for the beneficiary of the acquisition.

3. The learned Government Advocate appearing for the first respondent submitted on instructions, that while in the case of the petitioner, this Court refused to entertain the first appeal, there was another batch of first appeals filed against the awards passed by the Reference Court and those Appeals were entertained by this Court and on merit this Court had reduced the market value fixed by the Reference Court from Rs.160/- per cent to Rs.100/- per cent. The compensation amount determined @ Rs.100/- per cent less the amount already deposited in term of the award of the land acquisition authority has been deposited before the Execution Court in E.P.No.79 of 2003 in LAOP No.339 of 1986. As to the balance amount payable working it @ Rs.150/- per cent (Rs.160 per cent determined by the Reference Court - Rs.10 per cent determined by the Collector), the learned Government Advocate submitted that the Government has addressed a communication to the second respondent to make available the funds required to enable it to deposit it before the Execution Court.

4. In any event the compensation amount payable @ Rs.100/- per cent, as fixed by this Court in the connected batch of first appeals has been deposited before the Reference Court, which the writ petitioner can withdraw. As to the balance, the first respondent has already written to the beneficiary of the acquisition, namely, second respondent to make available the necessary funds in order it could be disbursed to the petitioner.

5. Joining hands with him, the learned counsel for the

second respondent would now argue that in land acquisition proceedings all the lands including the land of the petitioner were acquired. When this Court in the batch of Appeals has reduced the compensation payable from Rs.160/- per cent to 100/- per cent, the petitioner is only entitled to compensation of Rs.100/- per cent and not at Rs.150/- per cent as fixed by the Reference Court. His further arguments are two fold: Firstly, an attempt was made by the petitioner earlier by filing W.P.No.8070 of 2012 with an identical prayer and on 07.01.2013, he has withdrawn the said Writ Petition with liberty to workout his remedy in the manner known to law. Therefore, a second petition on the same cause of action is not maintainable. Secondly, when an alternative remedy in executing the Award is available and the same is already being pursued, the petitioner ought not to have approached this Court and to maintain two proceedings on the same cause is an abuse of judicial process.

6. Ultimately, it boils down to whether, the petitioner is entitled to compensation payable at Rs.150/- per cent, which is the difference between the Common Order passed by the Reference Court and the compensation determined by this Court in other appeals, which amount the Government had rather unsuccessfully challenged in ASSR No.10024 of 1993. It is the rudimentary principle of law that when once an appeal was not taken on file, the decree of the Court below will attain finality. Once finality is attained, it is not open to anyone to meddle with the same. It may be true, as contended by the learned counsel for the second respondent, that there may be some discrepancy in the matter of payment of compensation when compared to other land owners for whom compensation was paid at Rs.100/- per cent whereas the petitioner might be receiving a higher amount, but yet when the decree of the Reference Court has become final, except for want of jurisdiction in it to pass the said Award, the same cannot be re-opened. It may be an anomaly, but it is also a creation of the respondents, and their failure to challenge the award of the Reference Court in time. Belated filing of appeals at a pace which the bureaucracy considers appropriate is not an unfamiliar sight, nor is it also uncommon experientially, but it can backfire on it as it has happened in the instant case against the petitioner.

7. In the result, this writ petition is allowed, with the above direction to the respondents, more particularly, the first respondent to deposit the balance amount payable @ Rs.160/- per cent less the amount already paid within a period of five months excluding the period of summer vacation for Civil Court. It is clarified that the first respondent shall pay this amount irrespective whether it could obtain the amount still required to be paid in terms of the decree of the Reference Court from the second respondent since the primary obligation is on the

first respondent. No costs. Consequently, connected
Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

dna

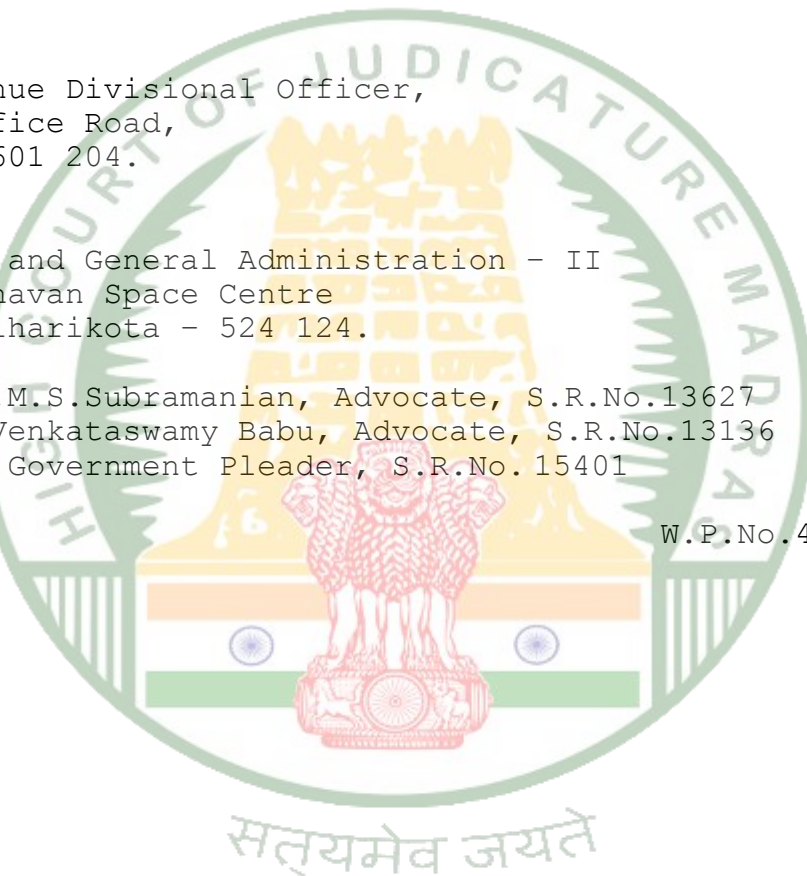
To

1. The Revenue Divisional Officer,
Taluk Office Road,
Ponneri 601 204.
2. The Head
Personal and General Administration - II
Satish Dhavan Space Centre
SHAR, Sriharikota - 524 124.

+2ccs to Mr.M.S.Subramanian, Advocate, S.R.No.13627
+1cc to Mr.Venkataswamy Babu, Advocate, S.R.No.13136
+1cc to the Government Pleader, S.R.No.15401

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CS/27/03/18



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