

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Review Application No.143 of 2017

in

A.S.No.994 of 2009

Yoganathan .. Applicant

Vs.

1. The Special Tahsildar (L & A),
Neighbourhood Scheme, Erode.

2. Pavayammal

3. Valliammal

4. Kumarasamy Gounder

5. The Executive Engineer,

Administrative Officer,

Erode Housing Unit, Erode. .. Respondents

Review Application filed under Order 47 Rule 1 read with Section 114 of CPC, to review the judgment and decree dated 19.12.2009 in A.S.No.994 of 2009 on the file of this Court.

For Applicants : Mr.M.Guruprasad

For Respondents : Mr.J.Balagopal, Spl.G.P. for R-1

Mr.R.V.Babu for R-5

R-4 - Notice served on 16.10.2017

RR-2 and 3 - Door Locked,

notice/tapal returned/intimation not claimed

ORDER

(The Order of the Court was made by R.Subbiah, J)

This Review Application is filed to review the judgment and decree dated 19.12.2009 in A.S.No.994 of 2009 on the file of this Court, whereby this Court, in the said First Appeal in A.S.No.994 of 2009, filed by the first respondent-Special Tahsildar, Neighbourhood Scheme, Erode, had fixed the compensation at Rs.8/- per Sq.Ft.

2. The subject lands were acquired for making provision of flats and houses to the public by the Tamil Nadu Housing Board under the Neighbourhood Scheme. Along with the lands, several other lands were also acquired for the very same purpose. The Land Acquisition Officer, after completing all the formalities, awarded a sum of Rs.0.086p per Sq.Ft., as compensation. The claimants, not

being satisfied with the compensation so awarded, got the matter referred to the Reference Court for enhancement of compensation. The Reference Court, taking into consideration the materials placed before it and the arguments advanced by the respective counsel, enhanced the compensation at Rs.17/- per Sq.Ft. Aggrieved by the enhancement, the Land Acquisition Officer filed an appeal in Appeal Suit No.392 of 2007, which has been decided by a Division Bench of this Court on 08.07.2009, in which the compensation awarded was reduced to Rs.8/- per Sq.Ft. The present appeal also arise out of the very same acquisition proceedings and in respect of the lands in the same village, having same 'tharam' and potential and similar to the lands considered in A.S.No.392 of 2007.

3. Further, when A.S.No.994 of 2009 came up before this Court on 19.12.2009, it was noted that since the issue is covered by the judgment and decree of this Court, dated 08.07.2009 made in A.S.No.392 of 2007, this Court fixed the compensation at the rate of Rs.8/- per Sq.Ft.

4. Learned counsel appearing for the review applicant submitted that A.S.No.994 of 2009 was filed by the Special Tahsildar, Neighbourhood Scheme, Erode (first respondent herein) with a delay and in the condone delay petition, the claimants were served with notice. After condonation of delay, when the appeal in A.S.No.994 of 2009 came up for hearing before the Division Bench of this Court on 19.12.2009, their names were not printed in the cause list. In this regard, learned counsel for the Review Applicant relied on a decision of the Supreme Court reported in 2012 (9) SCC 683 (Union of India Vs. Sandur Manganese and Iron Ores Ltd.), wherein the Supreme Court observed as follows: "3. The principles of natural justice embody the right to every person to represent his interest to the court of justice. Pronouncing a judgment which adversely affects the interest of the party to the proceedings who was not given a chance to represent his/its case is unacceptable under the principles of natural justice.

4. In the case on hand, though during the course of hearing, a reference was made as to the presence of the learned Attorney General by the learned Senior Counsel for the respondents, as mentioned above, we are satisfied that the Union of India was not given an opportunity to represent its case due to mistake on the part of the Registry. Applying the well-settled principles governing a review petition and giving our anxious and careful consideration to the facts and circumstances of this case, we have come to the conclusion that the review petition filed by the Union of India should be admitted on the basis of the above reasoning."

5. Heard both sides and perused the materials available on record. In this Review Application, the respondents 1 and 5 are represented by the learned counsels. The notice sent to respondents 2 and 3 returned, as Door was locked and the intimation was not claimed. As far as the fourth respondent is concerned, he was served with notice on 16.10.2017.

6. It is seen that while disposing of A.S.No.994 of 2009 on 19.12.2009, the Division Bench of this Court, by following the judgment rendered in the connected A.S.No.392 of 2007, dated 08.07.2009, and since the subject lands were also covered under the lands covered in A.S.No.392 of 2007, fixed the compensation at Rs.8/- per Sq.Ft. As against the reduction of the compensation amount to Rs.8/- per Sq.Ft. in A.S.No.994 of 2009, the Review Applicant herein filed appeal before the Supreme Court in S.L.P. to Appeal (Civil).No...of 2012 (CC.17059 of 2012) and by order dated 01.10.2012, the Supreme Court, at the request of the learned counsel for the petitioner, permitted to withdraw the appeal, with liberty to seek review before this Court. The said order of the Supreme Court reads as follows:

"After arguing the case for some time, learned counsel for the petitioner made a request that his client may be permitted to withdraw the special leave petition with liberty to seek review of the impugned order on the ground that the appeal filed by respondent No.1 had been decided without giving him opportunity of hearing.

The request of the learned counsel is accepted and the special leave petition is dismissed as withdrawn with liberty in terms of the prayer made.

However, it is made clear that this order shall not be construed as a mandate of this Court to the High Court to entertain the review petition and if any such petition is filed, the High Court shall decide the same on its own merits. It is also made clear that the High Court shall independently consider the issue of delay in filing the review petition and shall not be influenced by the fact that this Court has given liberty to the petitioner to seek review despite the fact that the special leave petition was filed with delay of 831 days in filing and 176 days in refiling."

7. Thus, the Supreme Court gave liberty to the review applicant to file Review Application before this Court and also directed that this Court shall consider the issue of delay, if any in filing the Review Application. Accordingly, considering the reasons stated by the review applicant, this Court condoned the delay in filing the Review Application and thereafter, now the Review Application is taken up for hearing.

8. Learned counsel for the review applicant submitted that the subject lands are also covered under A.S.No.392 of 2007 under the same land acquisition proceedings. Earlier, as against the reduction of the compensation to Rs.8/- per Sq.Ft. in A.S.No.392 of 2007, appeal was filed before the Supreme Court, and along with the connected appeals, the Supreme Court, in Civil Appeal Nos.6127-6128 of 2011, etc., by judgment dated 01.08.2011, has fixed the compensation at Rs.20/- per Sq.Ft. Hence, learned counsel appearing for the review applicant submitted that by following the said judgment dated 01.08.2011 passed by the Supreme Court in the connected matter, the present Review Application also may be disposed of and the compensation be enhanced to Rs.20/- per Sq.Ft.

9. Learned Special Government Pleader appearing for the first respondent-Special Tahsildar fairly submitted that by following the said judgment dated 01.08.2011 passed by the Supreme Court in the appeal filed against the judgment rendered in A.S.No.392 of 2007, the compensation in this case, may also be enhanced to Rs.20/- per Sq.Ft.

10. Taking into consideration the submissions made on either side, and following the judgment of the Supreme Court in the connected matters, as noted above, the compensation is hereby enhanced from Rs.8/- to Rs.20/- per Sq.Ft..

11. With the above observations, the Review Application is allowed. No costs.

(R.P.S.J) (R.P.A.J)

28.09.2018

Index: Yes/no

Speaking Order: Yes/no

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To

1. The Special Tahsildar (L & A),
Neighbourhood Scheme, Erode.

2. The Executive Engineer,

Administrative Officer,
Erode Housing Unit, Erode.

R.SUBBIAH, J

and

R.PONGIAPPAN, J

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