

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. No.19184 of 2004

W.P.M.P. Nos.23102, 23103 and 23104 of 2004

Mrs.Marie Louis Damayanthy
No.32 Ranga Pillai Street
Pondicherry

... Petitioner

Vs.

1. Union of India
Represented by Union Territory of Pondicherry
Represented by Secretary to Government.
Revenue Department,
Pondicherry.
2. The Deputy Collector (Revenue-North),
and Land Acquisition Officer,
Pondicherry.
3. The Pondicherry Housing Board, rep
by its Chairman, Anna Nagar,
Nellithope,
Pondicherry - 605 005.

(Third Respondent impleaded as per the
Order of the Court dated 11.04.2005 in
WPMP No.38123 of 2004)

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records comprised in the proceedings of the Second Respondent dated 13.05.2004 in No.2638/89/C/LA and quash the same and consequently direct the Respondents to reconsider the claims of the Petitioner and allot 30 Kuzhies of land or plots measuring 30 Kuzhies or thereabouts in the layout from out of the lands acquired which is the subject matter of award dated 22.02.2002 namely lands comprised in Survey No.15/1-A/1 of Ariyankuppam Village, Pondicherry.

For Petitioner : Mr.Rahul Balaji

For R.1 & R.2 : Mr.Balamurugane for
Mr.J. Kumaran
Govt. Advocate (Pondy.,)

For R.3 : Mr.T.M. Naveen

ORDER

The Petitioner has filed the Writ Petition seeking to issue a Writ of Certiorarified Mandamus to call for the records comprised in the proceedings of the Second Respondent dated 13.05.2004 in No.2638/89/C/LA and quash the same and consequently direct the Respondents to reconsider the claims of the Petitioner and allot 30 Kuzhies of land or plots measuring 30 kuzhies or thereabouts in the layout from out of the lands acquired which is the subject matter of award dated 22.02.2002, viz., lands comprised in Survey No.15/1-A/1 of Ariyankuppam Village, Pondicherry.

2. It is the case of the Petitioner that an extent of 1.43 acres of land in Survey No.15/1-A/1 of Ariyankuppam Village in Union Territory of Pondicherry was purchased by C.Thanappa Diagou from a Trust and on his demise, the Petitioner as one of his legal heirs, was entitled to one-third share in that property. The aforesaid lands were acquired by Pondicherry Housing Board in the Union Territory of Pondicherry to plot out and sell to the public. The Petitioner approached this Court earlier by way of a Writ Petition bearing W.P. No.940 of 2004 seeking direction to consider her representations dated 27.10.2001, 15.05.2002 and 02.11.2002 for allotment of 30 kuzhies (4320 sq. ft.) of land from the acquired lands subject to deduction of value thereof from the compensation amount and for payment of the due compensation as owner and cultivating tenant in accordance with law, which was disposed by this Court by order dated 23.01.2004 directing the Respondent therein to consider the representation of the Petitioner and pass orders.

3. In pursuance thereof an order No.2638/89/C/LA dated 13.05.2004 has been passed by the Second Respondent in which it has been held as follows:-

"AND WHEREAS, the Petitioner Tmt.Marie Louis Damayanthi through her representations has put forth the following claims:-

(i) In her first letter/petition, she has requested to apportion $1/3^{\text{rd}}$ of the total compensation to her in her capacity as the land owner and $2/3^{\text{rd}}$ portion of the

compensation to her in her capacity as the cultivating tenant;

ii) In the second letter she has requested to allot 30 kuzhies of the acquired land OR to allot a job to her unemployed son; and

iii) In her third letter she has requested to allot 30 kuzhies of the acquired land and apportion 1/3rd of the total compensation to her in her capacity as the land owner and 2/3rd of the total compensation to her in her capacity as the cultivating tenant.

AND WHEREAS, the above mentioned claims of the Petitioner in her representations dated 27.10.2001, 15.05.2002 and 02.11.2002 were carefully examined in accordance with law and in consultation with the Pondicherry Housing Board;

AND WHEREAS, the Pondicherry Housing Board has prepared a layout plan in accordance with the specifications prescribed by the Pondicherry Planning Authority containing forty eight residential plots and two commercial areas by providing inner roads and park area with minimum possible with area.

AND WHEREAS the Pondicherry Housing Board has felt that exclusion of a portion from the Layout Plan would not be in consonance or uniformity with the other residential plots in the Layout and would completely upset the scheme itself making it un-implementable;

AND WHEREAS, the Pondicherry Housing Board has stated that the persons employed by the Board as of now are more than required and excessive and that due to financial strains the Board is not able to pay salaries to its employees out of its own funds and that there is no vacancy of any post;

AND WHEREAS, during the award enquiry held on 19.02.2001 Thiru.C.Thanappa Diagou represented by his Power Agent Thiru Joseph Christian Lourdes Marianathan filed a statement stating that the property

originally belonged to (late) Kulandai Dairyantha Mudaliar and after his death the property was inherited by his legal heirs Tvl.Jaganou Diagou, Thanappa Diagou and Tmt.Damayanthi and claim 1/3rd of the compensation amount.

AND WHEREAS, another person Tmt. Josephine Yvonne Ketty Amali W/o late Jaganou Diagou filed a statement stating that after the death of her husband she is the Superintendent of the Pious and Charity works of Diagou Mudaliar;

AND WHEREAS, since no original documents were produced during the Award enquiry, the Land Acquisition Officer being unable to decide the rightful ownership and apportionment of the compensation ordered that the entire amount of the compensation be deposited with the Civil Court under Section 31(2) of the Land Acquisition Act with reference to Section 30 of the Act for deciding the same;

AND WHEREAS, the entire amount of compensation of Rs.11,59,613/- was subsequently deposited in the Civil Court vide Chalan No.1/DCR(N)/LA/2003-04;

NOW THEREFORE, for the reasons explained in detail in the foregoing paragraphs the request/claims of the petitioner are not acceded to and the petitioner is entitled only to receive her share of monetary compensation to be decided by the Court and accordingly the petitions are disposed."

The aforesaid order is challenged in this Writ Petition.

4. The learned Counsel for the Petitioner is not in a position to show any infirmity in the aforesaid order warranting interference by this Court.

5. The learned Counsel for the Third Respondent has brought to the notice of this Court that after the filing of this Writ Petition, the Petitioner had filed yet another Writ Petition bearing W.P. No.30151 of 2005 challenging the Notification No.PHB/EW7/CP/Allot/Ariyankuppam/2005 dated 17.08.2005 issued by the Third Respondent which has been dismissed on 20.09.2005 with observations that it is always open to the Petitioner to

participate in the bid along with the other intending buyers. Learned Counsel appearing for the Third Respondent further submits from the para 11 of the counter affidavit that after the dismissal of aforesaid W.P. No.30151 of 2005, the Third Respondent in accordance with the procedure had allotted 45 plots to eligible applicants and the remaining 3 plots were to be allotted as per the directions of the Government, and in such circumstances, no plot now remains for any allotment and the relief sought by the Petitioner does not survive any further for consideration.

6. Having regard to the aforesaid submissions made, there does not appear to be any merits in the claim made by Petitioner and in view of the same, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. Union of India
Represented by Union Territory of Pondicherry
Represented by Secretary to Government.
Revenue Department,
Pondicherry.
2. The Deputy Collector (Revenue-North),
and Land Acquisition Officer,
Pondicherry.
3. The Chairman,
The Pondicherry Housing Board,
Anna Nagar,
Nellithope, Pondicherry - 605 005.

+1cc to Government Pleader(Pondicherry) sr.no.48300
+1cc to Mr.T.M. Naveen, Advocate sr.no.47997
+1cc to Mr.R.Parthasarathy, Advocate sr.no.48179

W.P.No.19184 of 2004

nr 17/09/2018