



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.08.2018

PRONOUNCED ON : 25.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.3085 of 2018

and

WMP(MD)No.3241 of 2018

K.Kumar

.. Petitioner

Vs.

1.The Special Tahsildar,
Land Acquisition,
National Highways 226,
Sivagangai.

2.The Special Tahsildar (ADW),
Sivagangai.

.. Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the 1st respondent in his proceedings No.Na.Ka.A1/3/2013, dated 26.10.2017 and quash the same and consequently direct the respondents to release the amount held by them (Rs.8,90,494/-) with 18% interest from the date of award passed by the competent authority, dated 29.07.2016.

For petitioner : Mr.RM.Arun Swaminathan

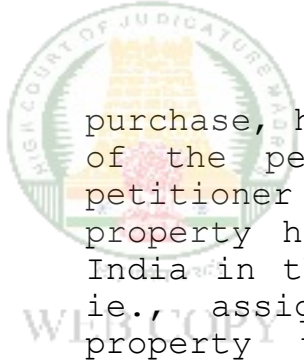
For respondents : Mr.A.Thiyagarajan,

Government Advocate

ORDER

This writ petition has been filed by the petitioner challenging the order passed by the first respondent in his proceedings No.Na.Ka.A1/3/2013, dated 26.10.2017 and for a consequential direction to the respondents to release the award amount held by them ie., Rs.8,90,494/- with 18% interest from the date of award passed by the competent authority ie., from 29.07.2016.

2. The case of the petitioner is that the second respondent herein had assigned 3 cents of land in Survey No.192/1, Plot No.56, K.K.Pallam Village, Manamadurai Taluk, Sivagangai in favour of one Gokila, by his proceedings in Na.Ka.No.A246/1991, dated 03.09.1991. On 19.12.2003 the said Gokila has sold the said land by way of a registered sale deed to the father of the petitioner and after



purchase, he had put up a construction. In the year 2012, the father of the petitioner settled the said property in favour of the petitioner by way of registered settlement deed. While so, the said property has been acquired by the National Highways Authority of India in the year 2015. After satisfying with the original records ie., assignment order, parental document, settlement document, property tax etc., produced by the petitioner, the Special Tahsildar, Land Acquisition, Manamadurai, has recommended for award and subsequently, the Special District Revenue Officer, has awarded a sum of Rs.38,44,294/- as compensation for the land and building put up thereon, by his proceedings dated 29.07.2016. But, on 14.09.2016, only a sum of Rs.29,53,800/- intended to superstructure was paid to the petitioner. Since the balance amount has not been paid for a long time, the petitioner has made a representation dated 26.10.2017, for which the first respondent has replied that before purchasing the said land, "No Objection Certificate" ought to have been obtained and hence, requested to produce the same. When the petitioner approached in person, the second respondent replied that as 14 years have gone from the date of purchase, now, No Objection Certificate cannot be issued. Hence, the petitioner is before this Court challenging the impugned order dated 26.10.2017.

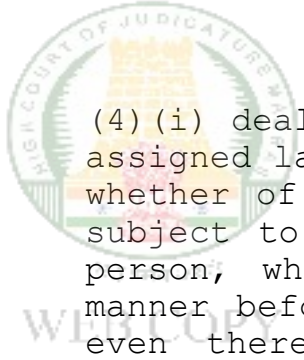
3. Heard the learned counsel appearing for both sides and perused the records carefully.

4. The main ground on which the respondents refused to give the balance award amount is that the land has been allotted at free of cost to the beneficiary with the conditions to construct a house within one year and not to let for others enjoyments, and that in violations of the said conditions and without obtaining "No Objection Certificate", the said land has been purchased by the father of the petitioner and since the purchase is invalid, the petitioner is not entitled to get compensation amount in respect of the same.

5. Admittedly, the land in dispute was purchased by the father of the petitioner for a sale valid consideration of Rs.7,850/- after about 12 years from the date of allotment of the land to the original allottee viz., Gokila. Though the learned Government Advocate appearing for the second respondent stated that the original allottee has failed to construct a house within one year as per the condition No.7 mentioned in the assignment order and therefore, the original allottee has lost her right, the fact remains that till date the second respondent does not cancel the allotment order. On the other hand, the petitioner's father, after purchase, has mutated the revenue records, put up construction and paid property tax, etc. and therefore, the said contention cannot be countenanced. Further, it is not specifically mentioned in the assignment order that the land assigned cannot be sold or alienated to anybody.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The Revenue Standing Order 15 Section III sub-clause (41)



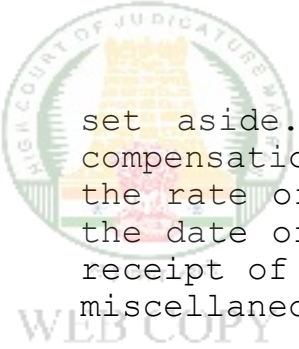
(4) (i) deals with the restriction to be imposed on alienation of the assigned lands in favour of SC and ST. It says that the assignments whether of ordinary lands or valuable lands in these areas will be subject to condition that the lands shall not be alienated to any person, whether a member of the scheduled castes or not, in any manner before the expiry of ten years from the date of grant, not even thereafter except to other members of these castes. This provision does not contemplate that "No Objection Certificate" is necessary for selling the assigned land from the authority which made the assignment, after ten years. Admittedly, in this case, it is not in dispute that the property was purchased by the father of the petitioner after ten years from the date of assignment. It is also equally not in dispute that the original assignee and the petitioner are belonging to the scheduled caste. When that be so, the first respondent cannot insist for "No Objection Certificate" from the second respondent for payment of balance award amount.

7. Even assuming that "No Objection Certificate" ought to have been obtained by the original allottee before selling the property, the father of the petitioner has constructed the house by mutation of revenue records and paying taxes, etc. and the mutation of revenue entries initially in the name of the father of the petitioner endorsed the ownership of the father of the petitioner and such transfer can be considered to be an act of permission for transfer of assignment. The authorities, having permitted to mutate the revenue records, now cannot be permitted to say that no prior permission has been obtained for transfer of assignment.

8. More over, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was enacted to provide just and fair compensation to the affected families whose land has been involuntarily acquired. In this case, the value of the land is fixed as Rs.57,750/-. As stated earlier, the father of petitioner has purchased the land in dispute by paying valid sale consideration in the year 2003. Till the commencement of acquisition proceedings in the year 2015, the petitioner has been in possession and enjoyment of the land and building thereon without any hindrance. The acquisition leads to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. Therefore, the first respondent ought to have liberally dealt with this matter and released the balance amount.

9. Viewing from any angle, the impugned order, dated 26.10.2017, is liable to be set aside. Considering the facts and circumstances of the case, this Court is of the view that the petitioner is entitled to receive the balance amount with nominal interest to be payable in the bank.

10. In the result, this Writ Petition is allowed and the impugned order, dated 26.10.2017, passed by the first respondent is



set aside. The first respondent is directed to pay the balance compensation amount to be payable to the petitioner with interest at the rate of 7.5% from the date of the award, dated 29.07.2016, till the date of payment, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1.The Special Tahsildar,
Land Acquisition,
National Highways 226,
Sivagangai.

2.The Special Tahsildar (ADW),
Sivagangai.

• 1 CC TO Mr.RM.Arun Swaminathan , ADVOCATE IN SR No. 92560.
GCG
DS RSK SAR1 09 11 2018 4P 4C

Order made in
W.P(MD)No.3085 of 2018
and
WMP(MD)No.3241 of 2018
25.10.2018