



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving Judgment 21.11.2017	Date of Pronouncing Judgment 10.04.2018
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THE HON'BLE MR.JUSTICE K.KALYANA SUNDARAM
and
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.A. (MD) .No.959 of 2017

and

CMP (MD) .No.6453 of 2017

S.Shylajan

... Appellant / 3rd party

Vs.

1. The Authorized Officer cum
Special District Revenue Officer,
Land Acquisition for National Highways Authority,
Opp. to Public Works Department Guest House,
Nagercoil - 629 001.

2. The Special Tahsilder (Land Acquisition)
Vettoornimadam, Nagercoil,
Kanyakumari District - 629 003.

3. S.Ramarajan ... Respondents

Writ Appeal is filed under Clause 15 of Letters Patent Act, to set aside the order passed by this Court in W.P.(MD).No.14534 of 2016 dated 27.09.2016 and to allow this Writ Appeal.

Prayer in WP(MD). 14534/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to disburse the compensation amount to the petitioner which was acquired by the respondents in respect of Survey NOs. 855/7 and 900/1 in Mullivilai B Village, Kalkulam Taluk, Kanyakumari District and consider the Petitioners representation dated 22.02.2016.

For Petitioner : Mr.D.Saravanan

For Respondents : Mr.C.Selvaraj
Special Government Pleader
For R1 & R2
Mr.K.Guhan for R3



Judgment

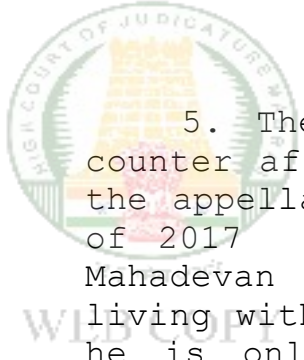
(Judgment of the Court was delivered by V.BHAVANI SUBBAROYAN, J.,)

This Writ Appeal has been filed against the order passed in W.P.(MD).No.14534 of 2016 dated 27.09.2016 on the file of this Court.

2. The appellant herein has preferred this appeal as a third party upon granting leave to challenge the order passed in W.P.(MD).No.14534 of 2016 on the file of this Court.

3. The brief facts of the case of the appellant herein is that the third respondent herein, who is the Writ petitioner and none other than the brother of the appellant, has filed the Writ petition seeking a Writ of Mandamus directing the respondents to disburse the compensation amount to him for the land acquired by the respondents in respect of S.Nos.855/7 and 900/1 in Mullivilai 'B' Village, Kalkulam Taluk, Kanyakumari District and to consider his representation dated 22.02.2016 within time frame. The appellant herein would submit that the third respondent/Writ petitioner is in the habit of looting and misappropriating the property of their elder brother Mahadevan @ Madhavan, who is a mentally retarded person. The third respondent/Writ petitioner had made false averments in the affidavit. It is further submitted by the appellant that the third respondent/Writ petitioner has filed M.H.O.P.No.298 of 2015 before the learned District and Sessions Judge, Kanyakumari at Nagercoil, without making the appellant herein as a party to the proceedings, seeking for an order to appoint the Writ petitioner as a guardian of their mentally retarded elder brother Mahadevan @ Madhavan, and obtained an order behind the back of the appellant on 02.11.2015, and hence, the appellant filed a petition to set aside the order before the said Court on 18.03.2016 and the same is still pending.

4. The appellant further submitted that his elder brother Mahadevan @ Madhavan is not in the custody of the third respondent/Writ petitioner and he alleged in contrary that the said brother was in custody and care of the appellant, and he was forcibly removed from the custody of the appellant to embezzle the estate of his mentally retarded brother. Hence, the appellant had lodged a Criminal complaint in Eranial Police Station in Crime No.710/2015 and the same is pending. The appellant had also filed a suit for partition in O.S.No.94 of 2014 and it is pending before the District Judge, Kanyakumari at Nagercoil. The appellant further submitted that now his brother Mahadevan @ Madhavan is kept in a home at Madurai, but of course, not under the custody of



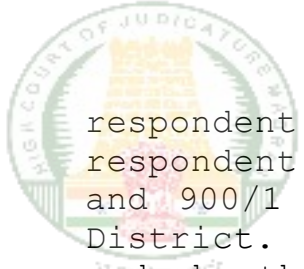
5. The third respondent/Writ petitioner has also filed his counter affidavit to the petition seeking leave to file appeal by the appellant in C.M.P.(MD).No.2633 of 2017 in W.A.SR(MD).No.11604 of 2017 in the Writ Appeal, contending that his elder brother Mahadevan @ Madhavan mentally retarded person, who is presently living with him after the death of their father Subbiah Pillai and he is only taking care of his mentally ill brother, and his property with in his custody. The Writ petitioner would further contend that there was a partition deed effected between his mother and other brothers and sisters as early as on 24.04.1980. In view of the said partition, S.Nos.855/7 and 900/1 were allotted to their brother Mahadevan @ Madhavan who is a mentally ill person and as per the partition deed, the third respondent, Padmanaba Doss, Krishnakumar were appointed as Guardians to their mentally ill brother, to which, the other brothers and sisters have accepted and signed the said partition deed. However, the appellant herein at that point of time was a minor and hence, he was not added as a party to the proceedings. It is further contended by the Writ petitioner that after the demise of his elder brother Padmanabha Doss, his another brother Krishnakumar was taking care of the said Mahadevan, since he also became old, he was unable to maintain his brother Mahadevan and subsequent to that, The Writ petitioner/third respondent is only taking care of his mentally ill brother Mahadevan.

6. It is further alleged by the third respondent/Writ petitioner that one of his brother Krishnakumar had executed a power of attorney on 09.05.2014 in favour of him, whereby, he is entitled to maintain his brother Mahadevan and his properties allotted to him as per the partition deed. Further, the Writ petitioner/third respondent contended against the averments raised by the appellant that first and second respondents had acquired the land in S.Nos.855/7 and 900/1 and he had made a representation to the first and second respondents to pay the compensation amount to him, and since no reply has been received, he filed a Writ petition seeking direction to the first and second respondents to disburse the compensation to him for the land acquired in the above said Survey Numbers, and the said Writ petition was disposed of. In response to that, the first and second respondent had disbursed a compensation amount of Rs.15,00,000/- towards the Survey No.900/1 and has not yet disbursed the compensation amount with regard to Survey No.855/7. Under these circumstances, the third respondent objected to the maintainability of the Writ appeal filed by the appellant, who is his brother and was minor at the time of partition.

7. Heard both sides and perused the materials available on record.

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

8. It is seen from the records that the Writ petition was filed for a Writ of Mandamus directing the first and second



respondent herein to disburse the compensation amount to the third respondent herein for the land acquired in respect of S.Nos.855/7 and 900/1 in Mullivilai 'B' Village, Kalkulam Taluk, Kanyakumari District. The learned Single Judge, upon accepting the statement made by the learned Additional Government Pleader appeared for the first and second respondents, that the respondents are agreeable to consider the representation of the petitioner dated 22.02.2016 and to pass orders, has disposed of the Writ petition with a direction to the first and second respondents to consider the representation of the petitioner dated 22.02.2016 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. As against the said order, the appellant herein has preferred the present Writ Appeal as a third party, after obtaining necessary leave from this Court.

9. It is categorically clear that the land acquired in S.Nos.855/7 and 900/1, absolutely belonged to Mahadevan @ Madhavan who is a mentally retarded person and the award of compensation pertains to the land of the said person. It is alleged in the affidavit filed in support of the Writ petition that the said Mahadevan @ Madhavan is presently under the custody and care of the third respondent herein. However, the third respondent/Writ petitioner in his Writ Petition, has intentionally suppressed the material facts which he has revealed in his counter, after the present appeal is being filed by his younger brother, the appellant herein.

10. On a perusal of the entire records, it is clear that there is dispute between the appellant and the third respondent herein under whom their mentally retarded brother Mahadevan @ Madhavan is in custody. Since the mentally retarded brother has some properties which stands in his name, either brothers are before this Court.

11. The appellant would submit that In fact the mentally retarded brother was forcibly removed from his care and custody and kept in a home at Madurai, but not under the custody of his brother/third respondent as alleged. In contrary, the third respondent would submit that the mentally retarded brother is only in his custody and care. However, both the appellant as well as the third respondent herein have not submitted any proof before this Court regarding under whom the said mentally retarded brother is in custody. Apart from this, taking advantage of the above order passed by the learned Single Judge of this Court, the third respondent has received entire compensation of Rs.15,00,000/- for the land acquired in Survey No.900/1. However, it is seen that the award amount for the land acquired in S.No.855/7 is still due.

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12. Under these circumstances, it is necessary to decide as to whom the compensation amount is payable by the authorities, when



there is a dispute regarding as to whom such amount has to be paid.

13. Section 30 of the Land Acquisition Act, 1894 reads as under:-

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"Dispute as to apportionment. When the amount of compensation has been settled under Section 11. if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such disputes to the decision of the Court."

14. On perusal of the above provision, it is clear that if there is any dispute as to the apportionment of the land of compensation, the Collector may refer the dispute to the Civil Court. However, it is not the duty of the Collector to decide the dispute regarding compensation to be paid to the conflicting rights of the parties, if there is any dispute between the actual claimant or as appearing from the documents, the Government has specific responsibility to see to that the compensation is paid to the rightful person who is entitled.

15. It is seen from the records that the appellant herein was not made as a party to the Writ proceedings and a criminal case was pending regarding the objection of his brother Mahadevan @ Madhavan from the custody of the appellant before the Eraniel Police Station in Crime No.710/2015 and the suit for partition in O.S.No.94/2014 filed by the appellant, which is also pending before the District Judge, Kanyakumari, at Nagercoil. The Writ petitioner has not made the appellant (brother) as a party to the proceedings in M.H.O.P.No.298 of 2015 and obtained an order behind his back purposely. The appellant had given a complaint before the Special Tahsildar on 13.02.2015, wherein, he has averred all the facts regarding the dispute to the Special Tahsildar Land Acquisition National Highways and he has also filed a petition to implead himself and the same is pending. The District Revenue Officer has passed an award on 10.11.2016 wherein, the compensation amount of Rs.15,15,796/- has been awarded and to be paid by the NHAI to the said Mahadevan @ Madhavan.

16. The Honorable Supreme Court in a case reported in 1996, (6) Supreme Court Cases 408, [Arulmighu Lakshminarasimhaswamy vs Union of India and Others] at paragraph 2, held as follows:

"2. On the admitted facts, the approach of both the learned Single Judge and of the Division Bench in the Writ Petition and the W.A.No.1358 of 1995 indicated in the learned order made on 30-1-1996 cannot be sustained. Notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 4-6-1987



without applying their mind, had simply paid the entire compensation amount to the third respondent.

18. When the same is challenged by the appellant and while the Court pointed out the lapses, the third respondent herein gave an undertaking by filing an affidavit that he would deposit the amount of Rs.7,50,000/- before the first respondent within a period of eight weeks to show his bonafide till the issue is decided by the Competent Court and sought for a direction from this Court to refer the matter to the Competent Court within a time frame. It may not be sufficient that the third respondent depositing Rs.7,50,000/- as against Rs.15,00,000/- before the first respondent as he received a compensation due to the mentally retarded brother by suppressing the vital facts before this Court.

19. Under these circumstances, we are of the opinion that the following directions would meet the ends of Justice. The third respondent is directed to deposit entire compensation amount of Rs.15,00,000/- (Rupees fifteen lakhs only) before the first respondent within a period of eight weeks from the date of receipt of a copy of this order. Failure on the part of the third respondent to deposit the said amount within a specified time, the Collector is directed to issue revenue recovery proceedings forthwith to recover the amount from the third respondent. The Collector is further directed to refer the disputes under Section 30 of the Land Acquisition Act to the appropriate court, to decide the dispute between the appellant and the third respondent who had said to be the rival title holders to the compensation. Since the learned Single Judge has not passed any orders on merits of the case, the orders passed in the Writ petition is only modified to the effect as stated above. Accordingly, the Writ Appeal is allowed with the above directions and the order of the learned Single Judge is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Authorized Officer cum
Special District Revenue Officer,
Land Acquisition for National Highways Authority,
Public Works Department Guest House,
Nagercoil - 629 001.



2. The Special Tahsilder (Land Acquisition)
Vettoornimadam, Nagercoil,
Kanyakumari District - 629 003.

+1cc to Spl.Government Pleader Sr.No.60462

+1cc to Mr.K.Guhan, Advocate Sr.No.60623

+1cc to Mr.D.Saravanan, Advocate Sr.No.60951

RAJA/PS

VB/RSK/SAR4/28/04/2018/8P/6C

Judgment in
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and
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