



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition(MD)Nos.11478, 11479 of 2016 and 20773 of 2016 &
W.M.P.(MD).Nos.8784, 14843, 8785 of 2016 & 3425 of 2017

R.Kaliammal	... Petitioner in W.P.No.11478/2016
R.Natesan	... Petitioner in W.P.No.11479/2016
S.Pappayee	... Petitioner in W.P.No.20773/2016

Vs.

1. The District Collector,
Karur District,
Thanthonimalai,
Karur.

2. The Revenue Divisional Officer,
Karur District,
Karur.

3. Macha Naicker
4. Manivel

R4 is impleaded vide Court order
dated 29.11.2017 in W.M.P.(MD).No.17155/2016.

... Respondent in W.P.No.11478/2016

1. The District Collector,
Karur District,
Thanthonimalai,
Karur.

2. The Revenue Divisional Officer,
Karur District,
Karur.

3. Pappayee
4. S.Ganesan
5. S.Vasuki

... Respondent in W.P.No.11479/2016

1. The District Collector,
Karur District,
Karur.



2. The District Revenue Officer,
Karur,
Karur District.

3. The Revenue Divisional Officer and (L.A.),
Karur District,
Karur.

3. Natesan

... Respondent in W.P.No.20773/2016

Prayer in W.P.(MD).No.11478/2016: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to refer the dispute as to the apportionment in respect of the award passed under G.O.(Ms.)No.156, dated 25.06.2016 to the competent civil Court as far as the compensation granted to the properties in S.F.Nos.792/6 and 792/7 of Thanthoni Village, Karur Taluk.

Prayer in W.P.(MD).No.11479/2016: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 and 2 to refer the dispute as to the apportionment in respect of the award passed under G.O.(Ms.)No.156, dated 25.06.2016 to the competent civil Court as far as the compensation granted to the properties in S.F.Nos.747/3, 747/7, 750/4, 756/2 and 756/5 of Thanthoni Village, Karur Taluk owned by Rasa Gounder @ Rasappa Gounder.

Prayer in W.P.(MD).No.20773/2016: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents 1 to 3 to refer the dispute as to the apportionment in respect of award passed under G.O.(Ms.)No.156, dated 25.06.2016 to the competent civil Court as far as the compensation granted to the properties in S.F.No.756/1, S.F.No.756/3 in Thanthoni Village, Karur Taluk and District, originally belong to Rasa Gounder @ Rasappa Gounder, died intestate.

W.P.(MD).No.11478/2016

For Petitioner	:	Mr.Chandrasekar
For R1 & R2	:	Mrs.J.Padmavathi Devi Special Government Pleader
For R3	:	Mr.V.Ilanchezhian for Mr.P.Murugesan
For R4	:	Meenakshi Sundaram

W.P.(MD).No.11479/2016

For Petitioner	:	Mr.Chandrasekar
For R1 & R2	:	Mrs.J.Padmavathi Devi Special Government Pleader
For R3 to R5	:	Mr.V.Ilanchezhian for Mr.P.Murugesan



W.P. (MD).No.20773/2016

For Petitioner

: Mr.V.Ilanchezhian for

Mr.P.Murugesan

For R1 to R3

: Mrs.J.Padmavathi Devi

Special Government Pleader

For R4

: Mr.E.K.Kumaresan

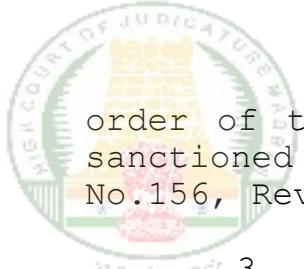
C O M M O N O R D E R

In view of the common issue involved in these writ petitions, all writ petitions are disposed of by a common order.

W.P. (MD).No.11479/2016

The writ petitioner seeks a direction directing the District Collector, Karur District and the Revenue Divisional Officer, Karur District to refer the dispute for apportionment in respect of the sanction of enhanced compensation in G.O.(Ms.)No.156, Revenue Department, dated 25.06.2016, for the properties in S.F.Nos.747/3, 747/7, 750/4, 756/2 and 756/5 of Thanthoni Village, Karur Taluk owned by Rasa Gounder @ Rasappa Gounder.

2. According to the petitioner, the properties in Survey Nos.747/3, 747/7, 750/4, 756/2 and 756/5, at Thanthoni Village, Karur Taluk were originally owned by Rasa Gounder @ Rasappa Gounder. The Rasa Gounder has got a son by name Subbarayan and daughter by name Nallammal. He died intestate on 06.02.2001, leaving behind the said Subbarayan and Nallammal as legal-heirs. The said Subbarayan died in the year 2012, leaving behind his wife Pappayee, son Ganesan and daughter Vasuki as legal-heirs / the respondents 3 to 5 in the writ petition. The daughter Nallammal also died intestate on 29.01.2015, leaving behind the petitioner R.Natesan and daughter Annammal as her legal-heirs. Since the said Rasa Gounder died intestate, the petitioner claims that she is also entitled to derive title through her mother. The property mentioned in Survey Nos.747/3, 747/7, 750/4, 756/2 and 756/5 were acquired by the Government in the year 1999 and an award was also passed. Against the award, the land-losers have sought for reference under Section 18 of the Land Acquisition Act, 1894. The Sub Court, Karur had enhanced the compensation. Against which, the Government of Tamil Nadu preferred an appeal in A.S.Nos.384 to 400 of 2005 and finally compensation was fixed at Rs.4,500/- per cent, by an order dated 06.12.2012. In the mean while, the son of Rasa Gounder viz., Subbarayan made an application under Section 28(A) of the Land Acquisition Act, 1894, [hereinafter called as "the Act"] for re-determination of compensation. Since his application was not considered, he preferred a writ petition in W.P.No.7035 of 2005 before this Court. This Court, directed the first respondent to keep the application filed by the said Subbarayan under Section 28(A) of the Act pending till the disposal of the appeal preferred by the Government. The appeal was disposed of on 06.12.2012. Against which, a Special Leave Petition was preferred by the Government and the



order of the High Court was confirmed. Thereafter, the Government sanctioned the enhancement of compensation by virtue of G.O.(Ms.) No.156, Revenue Department, dated 25.05.2016.

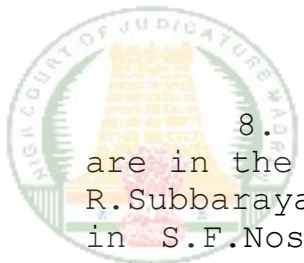
3. At this stage, the petitioner issued a legal notice to the respondents 1 and 2 on 03.06.2016, requesting them to refer the matter to competent Civil Court as per Section 30 of the Act for apportionment of the compensation. The respondents 1 and 2 have neither referred the matter to the Civil Court nor called for an enquiry. Aggrieved over the in-action of the respondents 1 and 2, the petitioner is seeking a direction to refer the matter for apportionment under Section 30 of the Land Acquisition Act, 1894.

4. The Official respondents have filed a counter stating that the land in Survey Nos.747/3, 747/7 and 750/4 are individual properties of the said Subbarayan, S/o. Rasa Gounder, who is the father of respondents 4 and 5. The property situated in Survey Nos.756/2 and 756/5 stood in the name of Rasappa Gounder.

5. At the time of award enquiry, the said Subbarayan had attended the enquiry. The Land Acquisition Officer verified the Village Accounts and the enjoyment in the field and determined that the said lands belong to Subbarayan Gounder and Rasappa Gounder and accordingly, passed the award to the above said two persons. As Rasappa Gounder consented that the amount due to him be paid to Subbarayan Gounder, the total compensation of Rs.1,62,835/- was paid to Subbarayan Gounder. No dispute was raised during the award enquiry regarding the ownership and title of the land. During the award enquiry, the owners of the land have not requested for reference under Section 18 of the Land Acquisition Act. Therefore, it was not referred for enhancement of compensation. Since Rasappa Gounder has consented that the entire compensation amount be paid to his son Subbarayan Gounder, the same was paid to him. Since there was no dispute as to the title at the time of award enquiry and even at the time of compensation, there is no question of referring the matter for apportionment under Section 30 of the Act. Therefore, the writ petition is liable to be dismissed.

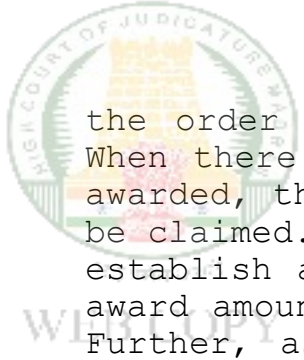
6. The respondents 3 to 5 have contended that at the time of award enquiry, there was no dispute as to the ownership. Even after passing the award and payment of compensation also the entitlement of the said Subbarayan was not disputed. Only after the sanction of enhanced compensation, the writ petitioner, with an ulterior motive to unduly enrich herself, preferred the above writ petition. It is an afterthought and she filed the writ petition only to extract money. The petitioner is not entitled to any amount as the property has already been given to Subbarayan Gounder by his father Rasappa Gounder.

7. Heard the submissions made on either side and perused the materials placed before this Court.



8. Admittedly, the property in Survey Nos.756/2 and 756/5 are in the name of Rasappa Gounder. Patta No.354 issued in favour of R.Subbarayan, S/o. Rasappa Gounder, shows that the property situated in S.F.Nos.747/3, 747/7, 750/4 and 766/25 stand in the name of Subbarayan Gounder. The petitioner's mother had never raised any dispute with regard to her entitlement in the property, during her life time, or during the life time of her brother Subbarayan, much less after the death of said Rasa Gounder in the year 2001, through whom the claim of entitlement pressed into service. The issue, as per the counter filed by the second respondent, categorically shows that the said Rasa Gounder had passed on the title to his son and consented for payment of entire award of compensation in favour of his son Subbarayan Gounder. Pursuant to the consent issued, the Subbarayan Gounder had also received the entire compensation. The petitioner seeks share in the property through her deceased mother, does not produce any material evidence as to the rights devolved on her mother. Even after the death of Rasa Gounder, the mother of the petitioner had not made any claim over the property. It is not the case of the petitioner the acquired lands are the only properties of the deceased Rasa Gounder. Therefore, it can be safely stated that during the award enquiry or at the time of passing award also there was no dispute as to the title of the property. The said Rasa Gounder died intestate on 06.02.2001. Even after the death, there was no dispute with regard to the partition of share of the properties of Rasa Gounder. Even assuming there exists a right, it has to be agitated by an independent suit with respect to all the properties of Rasa Gounder. There cannot be partial partition with respect to acquired properties alone and that too at the belated stage of disbursement of enhanced compensation. The petitioner does not produce any document to show that his mother had a claim or right over the properties stood in the name of Subbrayan Gounder in S.F.Nos.747/3, 747/7, 750/4, during her life time. In the absence of any claim, during the life time of her brother, in respect of the properties of Rasa Gounder, the petitioner cannot now seek reference under Section 30 of the Act. Insofar as the official respondents are concerned, the award was passed in the year 1999. During the award and passed award also there was no title dispute. The petition under Section 28(A) of the Act for re-determination of the compensation was filed only by the Subbarayan Gounder and he was treated as the land owner.

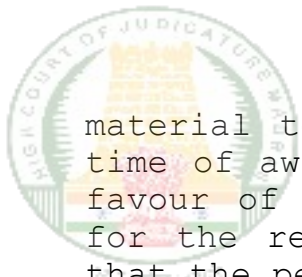
9. Even after the appeal filed by the State Government, there was no claim made against the enhanced compensation as per the order of Sub Court, Karur. The petitioner has come out with the claim only after the sanction was accorded by the respondent vide G.O.(Ms.)No.156, Revenue Department, dated 25.06.2016. Even though Section 30 of the Land Acquisition Act, 1984, does not prescribe any time limit for filing any application for reference, the Honourable Supreme Court has categorically held that it shall be filed within a reasonable time and for the cases of recovery of money, limitation period laid down is 3 years. Any person failed to take action within the period of limitation is bound by it. In the instant case also,



the order sought for is for recovery of enhancement compensation. When there was no claim with regard to the payment of compensation awarded, the consequential enhancement flowing from the award cannot be claimed. So far as the petitioner is concerned, when she does not establish any right to make any claim with respect to the original award amount, cannot now seek a share in the enhanced compensation. Further, as pleaded by the second respondent, it is seen that no materials were produced before the official respondents with regard to the title, pursuant to which, the entire award of compensation given to deceased Subbaraya Gounder. In such circumstances, the petition now filed at this distance of time for reference cannot be answered. Therefore, the Official respondents cannot be compelled to refer the matter after a period of 17 years under Section 30 of the Act. In fact, the petitioners are not left without any legal remedy, it is always open to them to file a civil suit and get their grievances redressed.

10. The Hon'ble Supreme Court, in the case of Sharda Devi vs. State of Bihar and another reported in 2003 (3) SCC 128, held that insofar as the Collector is concerned, finality to the award spoken of by Section 12(1) of the Act is between the Collector on one hand and the "persons interested" on the other hand. Insofar as the no dispute raised, during the award enquiry or when the award was passed, the Collector need not refer the matter under Section 30 of the Land Acquisition Act. When there is a dispute among the persons interested, then they can ask for reference under Section 30 of the Act. But, in the instant case, no such reference was sought for by the parties even during award enquiry, as stated supra or at the time of passing the award also. It is sought for after a period of 17 years, at the time of sanction given by the Government. It cannot be construed that the title came into existence only after sanction. If at all the title came into existence in favour of the petitioner, it must be on the date of death of the said Rasappa Gounder i.e., on 06.02.2001. Therefore, the relief now sought for, for reference under Section 30 of the Act is not sustainable and the writ petition is liable to be dismissed.

11. The third respondent in W.P.(MD).No.11479 of 2016 is the petitioner in W.P.(MD).No.20773 of 2016. This case also arises out of the same acquisition proceedings and the award passed in the year 1999. The petitioner claims that the property devolved on her through her husband Subbarayan Gounder and she also sought for apportionment by virtue of G.O.(Ms.)No.156, Revenue Department, dated 25.06.2016, as discussed in the previous writ petition. Since the Collector has passed the award in the year 1999, there was no dispute with regard to the title, at the time of award enquiry or after passing the order. The parties have kept silence for about 17 years. They should have raised this issue at least from the date of death of the owner of the property i.e., Rasappa Gounder, on 06.02.2001. Per contra, they have come to this Court, after the sanction of the enhanced compensation, for reference under Section 30 of the Land Acquisition Act Petition. Admittedly, there is no



material to show that she got any right in the properties at the time of award enquiry. The award of compensation was also given in favour of Subbarayan Gounder. As contended by the learned counsel for the respondents, the genealogy and the sale deeds go to show that the petitioner has no right or title to the property. If at all she has any right she has to get a declaration from the Civil Court as to her entitlement. The official respondents need not refer this matter for appointment at this distance of time. Without disputing the award of compensation, consequential sanction of enhanced compensation, cannot be referred under Section 30 of the Act.

12. The Official respondents are not bound to refer the matter on the basis of the consequential orders passed by the authorities as long as there is no dispute with regard to the award of compensation originally granted. The subsequent events will not give rise any right to the petitioner. In such circumstances, the W.P.(MD).No.20773 of 2016 filed at the distance of time is held to be barred by limitation and it is liable to be dismissed.

13. The W.P.(MD).No.11478 is also filed against the same award. It is stated that the petitioner is the daughter of the third respondent, whose ancestral land, was acquired by the Government and an award has been passed by the District Collector, Karur. The grievance of the petitioner is that the petitioner is entitled to 1/4th share. However, attempts have been made by the third respondent to receive the entire amount of compensation leaving the petitioner and other legal heirs. Eventhough the award was passed in the year 1999, the petitioner had not taken any steps to claim the share from the original award. For the past 17 years, no steps were taken for partitioning the property. The consequential proceedings is sought to be referred for appointment under Section 30 of the Act. It is always open to the petitioner to get her grievances redressed through an independent civil Court. At this distance of time, the respondents cannot be compelled to refer a stale dispute to Civil Court. The Honourable Supreme Court has categorically held that for the cases of recovery of money, limitation period laid down is 3 years. In the instant case also, the order sought for is recovery of compensation. The petitioner cannot seek the share of enhanced compensation, after the period of limitation. The discussions made in the previous writ petitions will apply to this case also. The claim is not sustainable in the eyes of law. Accordingly, this writ petition is also liable to be dismissed.

14. In the result, all the Writ Petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/



To

1. The District Collector,
Karur District,
Karur.

2. The District Revenue Officer,
Karur,
Karur District.

3. The Revenue Divisional Officer and (L.A.),
Karur District,
Karur.

+3 CCS TO Mr.P.MURUGESAN , ADVOCATE IN SR No.77426,77425,77424.
• 1 CC TO Mr.R.CHNADRASEKAR , ADVOCATE IN SR No. 77357.
+1 cc to Special Government Pleader, SR.No.77325.

AKV/TK

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W.P. (MD) Nos.11478, 11479 of 2016 and
20773 of 2016
02.08.2018