IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.08.2019
CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.10905 of 2011

1.Soundari
2.Saravanan
3.Ilavarasi ...Petitioners

Versus

1.The District Collector,
Dharmapuri.

2.The Special Tahsildar,
Land Acquisition,
Urban Project, Hosur. ...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to re-determine the compensation for the land acquired from the petitioner measuring 0.02.5 Hectare lands in S.No.202/2J, 0.01.5 Hectare lands in S.No.203/1217 and 0.05.5 Hectare lands in S.No.203/1319 and totally measuring 0.9.5 Hectares situated in Errapatti Village, A.Jettihalli Post, Dharmapuri District within the time.

For Petitioners: Mr.V.R.Annagandhi

For Respondents: Mr.M.Elumalai,
Government Advocate.

O R D E R

This writ petition has been filed seeking for issuance of Mandamus directing the respondents to re-determine the compensation for the land acquired from the petitioners in Errapatti Village, A.Jettihalli Post, Dharmapuri District.

2.The petitioners and his family members owned an extent of 0.02.5 Hectares of land in S.No.202/2J, 0.01.5 Hectares of land in S.No.203/1217 and 0.05.5 Hectares of land in S.No.203/1319 and the above said lands were acquired by the Land Acquisition Officer, Urban Project, Hosur for construction of houses by the Tamil Nadu Housing Board. A 4(1) notification was issued on

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21.08.1985 and the declaration under section 6(1) was passed on 28.05.1986 and the same was published on 09.03.1988. In the meantime, the 1st petitioner's husband and father of 2nd and 3rd petitioners died on 22.03.1992. The District Collector determined the compensation under Section 11 of the Land Acquisition Act (hereinafter called as 'the Act') and passed an award in Award No.3 of 1988 on 03.06.1988 and also deposited the compensation amount before the Sub-Court, Dharmapuri and made reference under section 30 of the Act and it was later transferred to the Additional District Court, Dharmapuri and the learned judge disposed of the reference in L.A.O.P.No.70 of 1992 on 28.03.2002. While so, the other neighboring land owners whose lands were also acquired under the same notification sought reference under Section 18 of the Áct before the Sub Court, Dharmapuri and the same was disposed of in L.A.O.P.No.99 of 1996 on 30.01.2002 fixing the compensation at Rs.6/- per sq.feet. The petitioners herein felt that the compensation fixed by the acquisition officer for their lands is very less than that of the neighboring land owners. Hence, the petitioners made a representation to the respondent 1 and 2 on 29.08.2002. The 1st respondent forwarded the representation to the 2nd respondent and directed the petitioners to approach the 2nd respondent for enhanced compensation vide letter dated 05.11.2002. Thereafter another representation was also sent to the 2nd respondent along with order of the first respondent and the same was received by the 2nd respondent. Despite several representations, the 2nd respondent did not take any steps to re-determine the compensation as per Section 28A of the Act. Hence, the petitioner filed a writ petition before this Court in W.P.No.24055 of 2003, wherein this Court by an order dated 28.08.2003, directed the 2nd respondent to consider the petitioner's representation and pass order on merits and in accordance with law. In compliance to the order dated 28.08.2003, the 2nd respondent sent a reply letter dated 26.07.2004 stating that as against the compensation award granted in L.A.O.P.No.99 of 1996, a petition has been filed in C.M.P.No.827 of 2003 and only after the disposal of the said petition, re-determination of their compensation would be considered. The petitioners through their counsel informed about the final order passed in CMP.No.827 of 2003 and requested the respondents for re-determination of the compensation amount. and after the disposal of the CMP.No.827 of 2003. Challenging the said order, the land acquisition officer has filed an appeal in A.S.No.221 of 2004 before this Court, wherein this Court by an order dated 19.07.2009 re-fixed the compensation to Rs.4.50/- per sq.feet from Rs.6/- per sq.feet as fixed by the Court below. Again, the petitioner made representations to respondents 1 and 2 for re-determination of the award under Section 28A of the Act. Since the same was not considered the petitioners have filed the present petition with the aforesaid prayer.

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3.Heard Mr.V.R.Annagandhi, learned counsel appearing for the petitioners and Mr.M.Elumalai, learned Government Advocate appearing for the respondents.

4.The learned counsel for the petitioners submitted that though a reference made under Section 18 of the Act in LAOP.No.99 of 1996 by the neighboring land owners, whose lands were also acquired under the same notification and the Sub-Court Dharmapuri has disposed of the said reference by fixing the compensation at Rs.6/- per sq.feet. However, this Court by an order dated 09.07.2009, re-fixed the compensation amount at Rs.4.50/- per sq.feet in A.S.No.221 of 2004. Therefore, he prays this Court to direct the 2nd respondent to re-determine the compensation on the basis of the order of this Court in A.S.No.221 of 2004.

5.The learned counsel for the respondents did not dispute the facts submitted by the learned counsel for the petitioners.

6.It is not in dispute that the petitioners land was acquired for the purpose of construction of houses by the Tamil Nadu Housing Board. However, the petitioner's case was not referred under section 18 of the Act, instead the land acquisition officer referred the matter under Section 30 of the Act before the Sub-Court, Dharmapuri and thereafter transferred to Additional District Court, Dharmapuri and the same was disposed of in L.A.O.P.No.70 of 1992 on 28.03.2002. However, the other lands near to the lands of the petitioners were also acquired under the same notification and made a reference under Section 18 of the Act in LAOP 99 of 1996, wherein the compensation was fixed at Rs.6.00 per sq.ft. on 30.01.2002 and the same was communicated to the petitioner. Immediately thereafter the petitioner made a representation on 29.08.2002, well before the time. This Court also by an order dated 28.08.2003 directed the respondents to redetermine the compensation as provided under Section 28-A of the Act. Thereafter an appeal was filed by the respondents in A.S.No.221 of 2004, which was disposed of by an order dated 09.07.2009 by fixing the compensation at Rs.4.50/- per sq.ft to the petitioner's land. Since the neighboring lands acquired under the same notification were fixed with compensation of Rs.6/- per sq.ft. Subsequently, the same was reduced to Rs.4.50/- per sq.ft., by an order of this Court in A.S.No.221 of 2004 dated 09.07.2009. On the basis of the order of this Court, the respondent ought to have considered the petitioner's claim under Section 28-A of the Act. The provisions of Section 28-A of the Act makes it clear that the Collector shall, on receipt of an application under Sub-section-1, conduct an enquiry after giving notice to all the persons interested and giving them a

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reasonable opportunity of being heard and make an award determining the amount of compensation payable to the applicants.

7.In the present case, initially the lower court have made an award in respect of neighboring land owners and subsequently, confirmed by this Court in A.S.No.221 of 2004. Hence, the lower court award continue prevalence and therefore the petitioner has also made an application for re-determining the compensation in favour of the petitioner is legally sustainable.

8.Considering the above facts, this Court feels that the petitioners are also entitled for the same amount of compensation awarded to the neighboring land owners. Therefore, there shall be a direction to the second respondent to pass appropriate orders on the representation of the petitioner dated 09.03.2010, within a period of eight weeks from the date of receipt of copy of the order. However, for ready reference, the petitioner is directed to enclose a copy of this order along with the representation dated 09.03.2010.

9.With the above directions, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1.The District Collector,
Dharmapuri.

2.The Special Tahsildar,
Land Acquisition,
Urban Project, Hosur.

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+1cc to Mr.V.R.Annagandhi, Advocate sr.72045
+1cc to Government Pleader sr.73430

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