

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.4.2019

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM
and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal Nos.1151, 1157, 1166 & 1172 of 2019 &
CMP.Nos.8129, 8146, 8197 & 8231 of 2019

The District Collector, Kanchipuram,
Kanchipuram District.

...Appellant in
all the WAS

Vs

1.M/s.Gupta Garments, rep.by its
Authorized Signatory Mr.Anil
Gupta

...Respondent in
WA.No.1151/2019

2.The Village Crafts, rep.by its
Authorized Signatory Mr.Anil
Gupta

...Respondent in
WA.No.1157/2019

3.M/s.Sawan Enterprises, rep.by
its Authorized Signatory Mr.Anil
Gupta

...Respondent in
WA.No.1166/2019

4.M/s.Centre Fold Fashions, rep.by
its Authorized Signatory Mr.Anil
Chopra

...Respondent in
WA.No.1172/2019

APPEALS under Clause 15 of the Letters Patent against
the orders dated 12.2.2018 passed respectively in
W.P.Nos.32645, 32647, 32646 and 32644 of 2017.

Common Prayer:

Writ Petition filed under Article 226 of the
Constitution India Praying for issuance of a Writ of
Mandamus directing the Respondent to dispose of the
Petitioner's application dated 08.11.2017 within a time
frame fixed by this Hon'ble Court.

For Appellant : Mr.V.Anandha Murthi, AGP
For Respondents : Mr.G.Krishnakumar

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have heard Mr.V.Anandha Murthi, learned Additional Government Pleader appearing for the appellant and Mr.G.Krishnakumar, learned counsel accepting notice for the respondents.

2. These appeals are filed by the appellant - the District Collector, Kanchipuram challenging the orders dated 12.2.2018 made separately in W.P.Nos.32645, 32647, 32646 and 32644 of 2017 filed by the respective respondent herein.

3. The prayer sought for by the respondents herein - writ petitioners was identical though separate orders were passed in each of the said writ petitions. The finding rendered by the learned Single Judge was identical and the respondents were granted relief as sought for by them. Ultimately, the said writ petitions were allowed. Therefore, by consent of the learned counsel on either side, we have taken up the appeals together and they are disposed of by this common judgment.

4. The lands owned by the respondents herein - writ petitioners were the subject matter of acquisition under the provisions of the Tamil Nadu Highways Act, 2001 (hereinafter called the Act) for construction of road over bridge in lieu of existing railway line crossing No.26 in between Chrompet and Pallavaram railway stations near Vaishnava Women's College to connect NH-45 (GST Road) and Pallavaram Thuraipakkam Radial Road.

5. The acquisition proceedings culminated in Award No.2 of 2007 dated 25.4.2007. In the said award proceedings, it had been recorded by the appellant that an award enquiry was conducted on 24.1.2006, that the authorized representatives of the respondents herein appeared and produced copies of their title deeds, patta, etc and that the quantum of compensation payable to the respondents herein - writ petitioners were quantified. After doing so, the District Collector passed an order stating that the Special Commissioner and Commissioner of Urban Land Ceiling and Urban Land Tax, Chepauk, Chennai had been addressed to issue necessary no objection certificate for land acquisition under the Act, that the ownership of the respondents herein - writ petitioners was required to be proved and that after getting necessary orders from the Government, the compensation amount might be disbursed to the land owners involved in the land acquisition. Therefore, the appellant directed the amounts quantified as compensation to be kept in civil court deposit under Section 22(3) of the Act.

6. On a perusal of the said award dated 25.4.2007, it is not clear as to why the appellant was of the opinion that appropriate clearance/no objection certificate should be obtained from the Urban Land Tax Department.

7. Thereafter, the matter stood referred to the Subordinate Court, Tambaram to decide the issue relating to title of the respondents herein - writ petitioners so as to enable them to accept the compensation quantified. The proceedings, which were referred to the Subordinate Court, Tambaram ended in favour of the respondents herein - writ petitioners and their entitlement/title to the properties was affirmed by the Civil Court by judgment and decree dated 30.4.2013. Ultimately, the compensation, which was quantified in the said award and retained in civil court deposit was disbursed on 05.3.2014 to the respondents herein, who received the same without prejudice to their rights to claim enhanced compensation.

8. Immediately, within a period of 30 days ie. on 10.4.2014, the respondents herein - writ petitioners submitted a representation dated 08.11.2017 to the appellant claiming enhanced compensation. Along with the said representation, they enclosed all the documents, which they relied upon and also mentioned that the guideline value of the lands in question in the area concerned was more than Rs.1,700/- per sq.ft., and that payment of compensation at the rate of Rs.500/- per sq.ft was wholly inadequate and therefore, they claimed enhanced compensation. This representation was not considered by the appellant. Consequently, the respondents herein were compelled to approach this Court by filing W.P.Nos.12675 to 12678 of 2014, which were disposed of by a common order dated 02.6.2014 by directing the appellant to consider the said representation and pass appropriate orders.

9. It is thereafter the appellant issued the notice dated 03.9.2014 for affording an opportunity of personal hearing. Ultimately, by order dated 28.10.2014, the request made by the respondents herein - writ petitioners claiming enhanced compensation was rejected on the ground that it was beyond the time limit prescribed under Section 20 of the Act.

10. It is pertinent to note that the other land owners, whose lands were also acquired by the same Notification for the same purpose, had claimed enhanced compensation and that their request was referred to the Subordinate Court, Tambaram for determining enhanced compensation claimed by them.

11. The specific case of the respondents herein - writ petitioners is that they were totally unaware about the reference made in respect of the other land owners and that they were languishing before the Civil Court to establish their right over the properties in question from the year

2007 till 2013. It is the further case of the respondents herein - writ petitioners that they were never put on notice by the appellant as to why he came to the conclusion that the lands in question are hit by the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

12. According to the respondents herein - writ petitioners, they established their title and only on 30.4.2013, the Subordinate Court, Tambaram decided the same and the respondents herein received compensation only on 05.3.2014 fixed at the rate of Rs.500/- per sq.ft. It is the also case of the respondents herein - writ petitioners that even when the appellant rejected their representation dated 28.10.2014, there was absolutely no whisper about the pendency of the other reference cases before the Subordinate Court, Tambaram in respect of the other land owners, who were affected by the very same acquisition.

13. It is not in dispute that the enhanced compensation in respect of the other lands owners was determined by the Subordinate Court, Tambaram by judgment and decree dated 30.4.2013. Though the judgment was rendered on 30.4.2013, the enhanced compensation as awarded by the Subordinate Court, Tambaram for the other land owners was deposited into court only on 08.8.2017. Further, though the respondents herein - writ petitioners were not informed about the same, they came to know about it only in the year 2017 i.e. after the enhanced compensation was deposited on 08.8.2017. In other words, it was only thereafter the neighboring land owners informed the respondents herein - writ petitioners about the enhancement of compensation, the respondents herein - writ petitioners sent the representation dated 08.11.2017 claiming relief under Section 28A of the Land Acquisition Act, 1894 (for short, the LA Act) as made applicable to the Act.

14. The said representation dated 08.11.2017 was not considered and therefore, the respondents herein once again approached the Writ Court seeking to consider their representation dated 08.11.2017 by filing the present writ petitions in WP.Nos.32644 to 32647 of 2017, which were allowed by separate orders dated 12.2.2018, however, making it clear that the respondents herein - writ petitioners would not be entitled for any compensation for the period of delay occasioned in preferring the said representation dated 08.11.2017 under Section 28A of the LA Act.

15. Mr.V.Anandha Murthi, learned Additional Government Pleader submits that the Statute prescribes a time limit for claiming enhanced compensation and beyond that period, the Court cannot direct the representation to be considered. In this regard, he has placed reliance upon the decisions of the Hon'ble Supreme Court in the cases of

(i) Union of India Vs. Mangatu Ram
[reported in 1997 (6) SCC 59];

(ii) State of Andhra Pradesh Vs. Marri Venkaiah [reported in 2003 (4) CTC 700]; and

(iii) Model Economic Township Ltd. Vs. Land Acquisition Collector [reported in MANU/SC/0277/2019].

16. Per contra, Mr.G.Krishnakumar, learned counsel appearing for the respondents herein - writ petitioners submits that the learned Single Judge had taken into consideration the peculiar facts and circumstances of the case and the agony, to which, the respondents herein were put, because their right to properties was unnecessarily questioned, that without passing a speaking order, the matter was referred to the Civil Court in the year 2007, that they were able to establish their right before the Civil Court much later and immediately after obtaining the order from the Civil Court, they accepted the compensation on 05.3.2014. Further, they immediately made a representation on 10.4.2014, which was not considered in proper perspective. It is further contended that the respondents herein earlier approached this Court by filing WP.Nos.12675 to 12678 of 2014 seeking for the issuance of a Writ of Mandamus directing the appellant to refer award No. 2/2007 dated 25.4.2007 under Section 18(1) of the LA Act to the appropriate Tribunal within a time frame fixed by this Court. It is also contended that W.P.Nos.12675 to 12678 of 2014 were disposed of on 02.6.2014 by directing the appellant herein to consider the said representation dated 10.4.2014 and pass appropriate orders after issuing notice to the respondents herein.

17. It is again contended by the learned counsel for the respondents herein - writ petitioners that the appellant herein passed orders on 28.10.2014 rejecting the said representation dated 10.4.2014 and that thereafter, after coming to know about the judgment and decree dated 30.4.2013 only in the year 2017, the respondents herein - writ petitioners sent a representation dated 08.11.2017 to the appellant herein for redetermination of the compensation and since that was not considered, they approached the Writ Court once again by filing the present writ petitions. It is again contended that after taking note of the circumstances, the learned Single Judge of this Court granted relief by the respondents herein - writ petitioners in the present writ petitions within the time stipulated, however, denying compensation for the belated period.

18. In support of his contentions, the learned counsel for the respondents herein - writ petitioners has placed reliance on the decisions of the Hon'ble Supreme Court in the cases of

- (i) Bir Wati Vs. Union of India
[reported in 2017 (16) SCC 548] and
(ii) Karam Chand (dead) by legal
heirs Vs. State of Himachal Pradesh
[SLP(C) No.14700 of 2015 dated
27.10.2017].

19. We have carefully considered the submissions made by the learned counsel on either side and perused the material records.

20. Section 20(1) of the Act states that any person aggrieved by the decision of the Collector or the officer to whom the case was transferred, determining the amount, may, within sixty days from the date of such decision, in so far as it affects him, by application to the Collector or the officer to whom the case was transferred, require that the matter be referred by him for the determination of the Court as defined in the LA Act and when any such application is made, the provisions of Part III of the LA Act shall mutatis mutandis apply to further proceedings in respect thereof.

21. Sub-Section (2) of Section 20 of the Act deals with the decision of the Court on such reference and it states that subject only to such decision, the decision of the Collector determining the amount shall be final.

22. Section 28A of the LA Act deals with re-determination of the amount of compensation on the basis of the award of the Court. Sub-Section (1) of Section 28A is a provision, which grants a remedy for such of those persons, who have failed to make a request for reference to the civil court and on coming to know about the award of enhanced compensation, are entitled to make an application to the Collector within three months from the date of the award of the Court requiring the amount of compensation payable to them to be redetermined on the basis of the amount of compensation awarded by the Court.

23. The Proviso to Sub-Section (1) of Section 28A of the LA Act states that in computing the period of three months, within which, an application to the Collector shall be made under this Sub-Section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

24. In our considered view, this time limit needs to be computed considering the facts and circumstances of the case. Undoubtedly, Section 28A of the LA Act is a beneficial provision. Though this provision fixes a time limit, the Courts have interpreted the time limit by taking into consideration the conduct of the parties.

25. In the decision in the case of Mangatu Ram relied upon by the learned Additional Government Pleader, the Hon'ble Supreme Court found that there was gross delay and the facts and circumstances of the said case were not

identical to that of the case on hand, which are unique and peculiar. Hence, the decision in the case of Mangatu Ram is clearly distinguishable.

26. In the decision in the case of Marri Venkaiah, the Hon'ble Supreme Court held that Section 28A of the LA Act is a beneficial provision, that however, the advantage of the benefit, which is conferred, is required to be taken within the stipulated time, that a land owner may be poor or illiterate and because of that, he might not have filed reference application, but that would not mean that he could be negligent in not finding whether other land owners have filed such application. In that case, the Hon'ble Supreme Court concluded that the land owners were found to be negligent and therefore, denied the relief.

27. In the decision in the case of Model Economic Township Limited, the Hon'ble Supreme Court examined the explanation offered by the land owner for not able to prefer any application under Section 28A of the LA Act as an acceptable explanation and therefore, held that the land owner was not entitled to any relief. This decision is not applicable to the case on hand, as we find that the explanation offered by the respondents herein - writ petitioners is acceptable and reasonable.

28. The dates and events, which we narrated in the preceding paragraphs, would clearly show that the respondents herein - writ petitioners were driven to the Civil Court at the instance of the Department without enabling them to know as to why their title to the properties stands doubted and as to why the appellant came to the conclusion that the lands are hit by the provisions of the Urban Land (Ceiling and Regulation) Act, 1978 from 2007 to 2013, during which period, they were in the Civil Court and ultimately, their rights were vindicated. Even at that point of time, the respondents herein - writ petitioners were not made known about the reference applications, which were pending at the instance of the other land owners. Those reference applications were decided only on 30.4.2013. Even though such decision was taken on 30.4.2013, the compensation amount was deposited into Court only on 08.8.2017 and it is only at that point of time, the respondents herein - writ petitioners became aware of the same, as they were informed by the neighboring land owners.

29. It is common knowledge that once the lands are acquired and the claim for enhanced compensation is referred to the Civil Court, litigation prolongs. Many a time, the Department is not willing to settle the matter before the Lok Adalat. Even in the case of other land owners, the reference applications were pending before the Subordinate Court, Tambaram for over six years. Though the Subordinate Court, Tambaram passed the judgment in their

favour in the year 2013, for four long years, the appellant did not pay the compensation and only in 2017, the compensation amount was deposited into Court. Immediately thereafter, the respondents herein - writ petitioners sent their representation dated 08.11.2017.

30. In such circumstances, we hold that the delay can be extended in appropriate cases and we find the case of the respondents herein - writ petitioners to be one such appropriate case. To support this conclusion, we place reliance on the decision of the Hon'ble Supreme Court in the case of Karam Chand (dead) by legal heirs wherein it has been held as follows :

"Leave granted.

We have heard learned counsel for the parties.

The appellants sought determination of compensation at par with the compensation awarded to others covered by the same Notification under Section 28-A of the Land Acquisition Act, 1894. The said prayer having been rejected on the ground of delay, this appeal has been preferred.

We are of the view that even though limitation is prescribed and it is expected that the aggrieved party takes remedies within such prescribed time, the delay can be extended in appropriate cases. Subject to declining the interest for the delayed period, the compensation can be re-determined and paid to the appellants.

Accordingly, we set aside the impugned order and remand the matter to the Collector for re-determination of the compensation in above terms.

The appeal is disposed of."

31. In the decision in the case of Bir Wati, an application under Section 28A of the LA Act was held to be belated by the Reference Court and it was confirmed by the High Court. However, on appeal, the Hon'ble Supreme Court examined the reasons as to why the land owners could not make any application within time and ultimately, indulgence was granted to apply under Section 28A of the LA Act with a view to do complete and substantial justice to the land owners therein.

32. Thus, in our considered view, the learned Single Judge was perfectly right in allowing the present writ petitions and directing the appellant herein to pay

enhanced compensation excluding the period of delay. Hence, we find that there is no error in the orders passed by the learned Single Judge.

33. Accordingly, the writ appeals fail and are dismissed. The appellant is directed to consider the application under Section 28A of the LA Act, award enhanced compensation to the respondents herein - writ petitioners as paid to the other land owners, whose lands were acquired by the very same Notification for the same purpose and disburse the amount within a period of 12 weeks from the date of receipt of a copy of this judgment. As observed by the learned Single Judge, the respondents herein - writ petitioners would not be entitled to any compensation/interest for the period of delay. No costs. Consequently, the connected CMPs are also dismissed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

RS

+5ccs to Mr. , Advocate SR.No. 33262

+1 cc to Government Pleader Sr.No. 34676,34678,34677,34679

WA.No.1151 of 2019
etc.cases

AK (CO)

A.SK (15/05/2019)

सत्यमेव जयते

WEB COPY