

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO.1272 OF 2019
and W.M.P.No.1425 of 2019

Sundaram Finance Ltd.,
21, Patullos Road,
Chennai - 600 002,
Rep. by Mr.N.Madhusudhanam
Senior Manager (Legal)

...Petitioner

Versus

1.Special Tahsildar (Land Acquisition)
SIPCOT, Unit - II,
Sriperumbudur Expansion Scheme - 2,
Sriperumbudur.

2.Mr.K.Prabu Krishna

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in R.C.No.16/2010A, SIPCOT dated 09.08.2018 and quash the same and consequently, to direct the first respondent to disburse the compensation to the petitioner for the acquisition of the dry agricultural lands measuring .09.0 Hectares in Survey No.169/6 Vadakkal 'B' Village, Sriperumbudur Taluk, Kancheepuram District.

For Petitioner : Mr.S.Vasudevan

For Respondent

No.- 1 : Mr.V.Anandhamoorthy,
Additional Govt. Pleader

Respondents

No.- 2 : Mr.N.Santhosh Nagarajan

O R D E R

With the consent of both sides, this Writ Petition is taken up for final disposal.

2. The above Writ Petition has been filed seeking to call for the records of the first respondent in R.C.No.16/2010A, SIPCOT dated 09.08.2018 and to quash the same and consequently, to direct the first respondent to disburse the compensation to the petitioner for the acquisition of the dry agricultural lands measuring .09.0 Hectares in Survey No.169/6 Vadakkal 'B' Village, Sriperumbudur Taluk, Kancheepuram District.

3.1. The learned counsel appearing for the petitioner submitted that the petitioner is a non-banking finance company registered under the provisions of the Indian Companies Act, 1913, having branches all over India. He fairly submitted that the second respondent is the owner of the property, measuring 22 cents in S.No.169/6, in Vadakkal 'B' Village, Sriperumpudur Taluk, Kancheepuram District by virtue of Sale Deed dated 05.03.2010 registered at Sriperumbudur SRO, executed by one Krishnaveni for a total sale consideration of Rs.4,40,000/- (Rupees Four Lakhs and Forty Thousand only) referred to herein as subject property and the first respondent has acquired the subject property under Section 3(1) and Section 4 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (hereinafter referred to as 'Act') vide G.O.Ms.No.447 dated 29.11.2011.

3.2. The learned counsel further submitted that the second respondent approached the petitioner for availing a loan by way of a mortgage and entered into various Loan Agreements with the petitioner for purchase of various vehicles and availed a loan of Rs.6,00,00,000/- (Rupees Six Crores only) and has mortgaged the subject property to the petitioner by way of a Memorandum of Deposit of Title Deeds dated 22.01.2013, which was registered in the SRO Sriperumbudur in Document No.1415 of 2013 on the file of Sub-Registrar, Sriperumbudur as security for the loan availed by him. He further states that the second respondent has committed default in payment of loan and therefore, the petitioner initiated various legal proceedings against the second respondent. The learned counsel also submitted that at the time of entering into the Memorandum of Title Deeds by the second respondent in favour of the petitioner, the second respondent was the absolute owner of the subject property.

3.3. The learned counsel further submitted that the second respondent filed a Writ Petition in W.P.No.3984 of 2014 seeking for a direction to the first respondent to pay the compensation amount to him in respect of various other properties belonging to him in the same scheme, in which the petitioner company also intervened and sought for a direction to pay the compensation amount to it being the interested person over the compensation amount. The learned counsel for petitioner submitted that by a

common order dated 25.02.2015, this Court directed the first respondent to issue notice to all the parties including the petitioner for determining the compensation in respect of the acquired lands and its apportionment, and thereafter pass an award pursuant to which, the first respondent had passed an award and deposited the compensation in the Civil Court as disputes existed between the parties and the second respondent . On 14.12.2015, the petitioner company sent a letter to first respondent requesting him not to disburse the compensation amount to any third party without notice to it, but the same was not considered by the first respondent.

3.4. The learned counsel further submitted that on 26.07.2018, the petitioner company sent a representation to the first respondent requesting him to disburse the compensation payable in respect of the subject property directly to him in its capacity as interested party/mortgagee over the subject property, for which, the first respondent passed the impugned order by way of a Letter dated 09.08.2018 stating that the compensation is payable only to the land owners viz., Murugammal, Kishtammal, and Karate Venkatesh, as the compensation was awarded only to them. It is further stated in the impugned order that the sale transaction between the previous vendor and the second respondent and subsequent mortgage over the subject property in favour of the petitioner were illegal as the same was done after the Gazette Notification No.447 dated 29.11.2011 and the Mortgage Deed Registered as Doc.No.1415 of 2013 on 12.02.2013 was registered after Publication of Notice under Section 3(2) of the Act, on 10.05.2010 and the Declaration under Section 3(1) of the Act dated 29.11.2011.

4. The learned Additional Government Pleader appearing for first respondent submitted that the first respondent has filed a counter affidavit in which he has stated that there is dispute with regard to the title of the land comprised in Survey No.169/6 to an extent of 0.22 cents and an enquiry is going to be conducted to ascertain as to whom the compensation amount has to be paid and the matters involving in such disputes will be referred to the Civil Court under the provisions of the Act. He further argued that the petitioner is only a mortgager not owner of the property and therefore, the petitioner is not entitled to receive the compensation. However, he fairly submitted that the second respondent has also filed a counter affidavit, in which, he stated that he has no objection in releasing the compensation amount by the first respondent in favour of the petitioner in discharge of a portion of his liability and also he undertook that he will execute necessary documents for release of the compensation amount in favour of the petitioner.

5. Heard the learned counsel for petitioner and the learned Additional Government Pleader for first respondent and perused the materials on record.

6.1. Taking into consideration the facts of the case, it is seen that the second respondent is the absolute owner of the property. However, pursuant to the mortgage deed executed by the second respondent in favour of the petitioner, the land of second respondent was acquired, by virtue of mortgage deed, the first respondent is liable to pay the compensation to the petitioner. Infact, the second respondent has filed the counter affidavit wherein he stated that he has no objection for releasing the compensation amount by the first respondent to the petitioner and also undertook that he will execute the necessary documents for releasing the compensation by the first respondent to the petitioner.

6.2. However, considering the fact that so far no award enquiry is conducted in the subject property for payment of compensation amount, the District Collector is appointed as an Competent Authority to conduct an enquiry and find out as to whom the compensation amount has to be paid. The said exercise shall be done by the District Collector after issuing notice to the petitioner and other interested parties, and thereafter, he/she shall pass orders.

7. In the result, this Writ Petition is allowed and the Letter R.C.No.16/2010A, SIPCOT dated 09.08.2018 issued by the first respondent is quashed and liberty is granted to the petitioner to appear before the District Collector at the time of award enquiry and place all the necessary materials. On receipt of such materials, the District Collector is directed to pass appropriate orders as per the above directions on merits and in accordance with law, after providing opportunity to the parties concerned. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.
mrr

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Special Tahsildar (Land Acquisition)
SIPCOT, Unit - II,
Sriperumbudur Expansion Scheme - 2,
Sriperumbudur.

+1cc to Mr.S.Vasudevan, Advocate, SR.No.32286
+1cc to the Govt.Pleader, Vide Sr.No.33421

W.P.No.1272 of 2019

Kak(12/07/2019)



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