

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :23.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.10920 of 2008

and

WMP.No.33111 of 2018

1. Pazhani (died)
2. Porkalai
3. Prasath
4. Ezhilarasi
5. Premnath

(P2 to P5 are substituted as LRs
of the deceased vide order dated
05.07.2019 made in WMP.No.33111
of 2018 in W.P.No.10920 of 2008
by MDIJ

.... Petitioners

vs

1. The State of Tamil Nadu
Represented by the Secretary, Housing
Fort St. George, Chennai- 600 009.

2. The Chairman & Managing Director,
Tamil Nadu Housing Board,
Madras.

3. The Executive Engineer,
Special Division No.VII
TNHB, Ashok Nagar,
Madras 83.

4. The District Collector,
Villupuram District
Villupuram.

5. The Special Tahsildar LA
TNHB Scheme
Cuddalore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ or order in the nature of mandamus or any other appropriate writ directing the fourth respondent to refer the claim of the petitioner for enhanced compensation under Sections 18 and 19 of the Land Acquisition Act 1894 for his land measuring 50 cents in DS No.24/10, TS No.2/11 in Maharajapuram Village, Villupuram District, acquired under Award 4/94 dated 23.08.1994 or in the alternative re-transfer the land to him under Section 48B of the Land Acquisition Act 1894 based on his notice dated 28/08/2006.

For Petitioners: Mrs. Meenal

For Respondents: Mrs. Gowri for R2 and R3
Mr. M. Elumalai, Government Advocate
for R4 and R5

O R D E R

Writ Petition is filed directing the fourth respondent to refer the claim of the petitioner for enhanced compensation under Sections 18 and 19 of the Land Acquisition Act 1894 for his land measuring 50 cents in DS No.24/10, TS No.2/11 in Maharajapuram Village, Villupuram District, acquired under Award 4/94 dated 23.08.1994 or in the alternative re-transfer the land to him under Section 48B of the Land Acquisition Act 1894 based on his notice dated 28/08/2006.

2. The case of the petitioner is that the petitioner is the owner of the land in Survey No.24/10, TS No.2/11 to the extent of 50 cents in Maharajapuram Village, Villupuram District. The said land was acquired under the Land Acquisition Act, 1894 and after acquisition, the Award was passed on 23.08.1994 to pay the compensation for a sum of Rs,1,61,328/- and same was paid as compensation to the petitioner and the petitioner received the said Award under protest and thereafter the petitioner sought reference for determination of enhanced compensation to the competent Civil Court but the Land Acquisition Officer/5th respondent ignored the claim made by the petitioner, though the 5th respondent had referred the claim of neighboring land owners whose lands were acquired under the same proceedings to the Competent Civil Court for enhancement of compensation. Thereafter, the petitioner caused lawyer notice issued to the 5th respondent on 28.08.2006 seeking enhanced compensation or in the alternative re transfer of the land to petitioner. Against the said inaction on the part of the 5th respondent the present Writ Petition is filed.

3. The learned counsel for the petitioner would submit that though the case of adjacent land owners was referred to the competent civil court for apportionment of compensation. The competent civil court has also passed Award in favour of the claimant therein on 19.07.2004 in LAOP No.122/97. The learned counsel for the petitioner further submitted that inadvertently the prayer to refer the claim under section 18 and 19 of the Act was made in the petition. Therefore, he submitted that this Court may permit the petitioner to make fresh representation to the fourth respondent under section 28 A of the Land Acquisition Act.

4. The learned counsel for the respondent would submit that if any representation is received from the petitioner the same will be considered in accordance with law to extend the benefit of LAOP order in favour of the petitioner.

5. On a perusal of the record, it is seen that the land of the petitioner was acquired for the purpose of construction of houses for Government employees. Thereafter the Award 4/49 was passed on 23.08.1994 and within the prescribed period of limitation, the petitioner had made application before the land acquisition officer to refer the matter for determination for compensation before the competent civil Court. However it appears that neighboring land owners case was referred for apportionment of compensation under section 18(1) of the Land Acquisition Act. Thereafter the Reference Court had passed an Award in their favour in LAOP No.122 of 2014 dated 19.07.2004. However, it appears that the petitioner caused a legal notice on 28.08.2006 wherein it is clearly mentioned that the neighboring land owners case was referred for enhanced compensation under section 18(1), however the petitioner's case was not referred to competent civil court under section 18(1) of the Act. In view of the above, though the prayer in the Writ Petition cannot be granted in favour of the petitioner, however this Court is inclined to grant liberty to the petitioner to filed fresh application under section 28 A of the Land Acquisition Act and the District Collector is directed to entertain the application and pass appropriate orders in accordance with law.

6. The alternative prayer with regard to re-transfer of the land is rejected.

7. The petitioner is directed to file appropriate application under section 28 A of the Act within two weeks from the date of receipt of a copy of this order and thereafter the District Collector has to pass appropriate orders within six weeks in accordance with law With the above directions, the Writ Petition is disposed of. No costs Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrn

To

1. The State of Tamil Nadu
Represented by the Secretary, Housing
Fort St. George, Chennai- 600 009.

2. The Chairman & Managing Director,
Tamil Nadu Housing Board,
Madras.

3. The Executive Engineer,
Special Division No.VII
TNHB, Ashok Nagar,
Madras 83.

4. The District Collector,
Villupuram District
Villupuram.

5. The Special Tahsildar LA
TNHB Scheme
Cuddalore.

+1cc to Ms.R.Meenal, Advocate Sr.63087

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srg 04/10/2019