

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2066 of 2011
and M.P.No.2 of 2011

R.Ramachandran

... Petitioner

Vs.

1. The Land Acquisition Officer cum Deputy
Collector (Revenue),
Karaikal.

2. The Settlement Officer,
Settlement Branch
Taluk Office,
Karaikal.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the award passed by the 1st respondent dated 31.08.1995 under Section 11 of the Land Acquisition Act bearing Ref.No.2579/78/B2/LA in respect of lands situate at Ward G Block-5, T.S.No.16, R.S.No.112/6, O.S.No.4 an extent of 0.10.50 Hectare of Dry land at Keezhaveli Village, Karaikal and quash the same.

For Petitioner : Mr.A.E.Chellaian
Senior Counsel for Mr.Saifullah

For Respondents: Mr.N.Mala
Additional Government Pleader
(Puducherry)

O R D E R

This writ petition has been filed challenging the award passed by the 1st respondent dated 31.08.1995 under Section 11 of the Land Acquisition Act bearing Ref.No.2579/78/B2/LA in respect of lands situate at Ward G Block-5, T.S.No.16, R.S.No.112/6, O.S.No.4 an extent of 0.10.50 Hectare of Dry land at Keezhaveli Village, Karaikal and to quash the same.

2.The brief facts of the case are as follows:

Originally, the subject land ad-measuring 0.10.50 Hectare of dry land situated at Ward G Block-5, T.S.No.16, R.S.No.112/6, O.S.No.4, Keezhaveli Village, Karaikal, was purchased by one Mohamad Saheed, Son of Abdul Rahman on 05.04.1982 by a registered sale deed vide Document No.168 of 1982. Prior to his purchase, a land acquisition proceedings was initiated against the vendor of the petitioner for construction of quarters for scavengers. The 4(1) notification was published in the government gazette in G.O.No.45 dated 07.11.1978 and thereafter the declaration under Section 6 was published in Gazette No.29 on 17.07.1979. In the year 1982, the land acquisition officer informed the petitioner's vendor with regard to the compensation relating to the land acquired and the same was available in the office till 10.06.1983 and requesting the petitioner to produce relevant documents on or before 10.06.1983. However, the land acquisition officer passed an award on 09.06.1983 and on 18.08.1993, the compensation was deposited in the civil deposit under Section 30 of Land Acquisition Act with lodgment schedule. Since no one appeared for 5A enquiry, the District Court assigned the case as LAOP.No.19 of 1983 and ordered the petitioner to be added as a party and referred the matter to the land acquisition officer under Section 30. In the meanwhile, 11(A) was inserted in the L.A.Act by way of an amendment that the Deputy Collector shall make the compensation award within a period of two years from the date of publication of declaration. Immediately thereafter, the petitioner filed a writ petition in W.P.No.7374 of 1983 challenging the award proceedings and this Court by an order dated 28.01.1991 quashed the award proceedings on the ground that the said award was passed in the name of the erstwhile owners and no opportunity was given to the petitioner. Thereafter on 28.05.1992, the land acquisition officer conducted a fresh enquiry in which the petitioner participated and produced the relevant documents including the neighboring land owners sale deed. On 30.08.1995, the land acquisition officer fixed Rs.164/- per Are and for the land Rs.1722/-. Accordingly on 31.08.1995, the land acquisition officer passed an award and fixed the compensation as Rs.4048/- with conditions subject to the production of original title deed, encumbrance certificate for 13 years within 30 days from the receipt of the notice under Section 12(2) of the Act, failing which the compensation will be deposited in Revenue Deposit for 15 days. Immediately after the award was passed, the Sub-Registrar, Karaikal made entries for transfer of land in favour of the government. After mutation of revenue records, the petitioner sent a legal notice on 14.09.1998 to the respondents not to interfere with peaceful and enjoyment of the property and another notice dated 21.07.2003 was sent to the respondent for making correction and re-enter his name in the records as land owner. On 20.11.2007, a notice under Section 80 CPC was sent and also instituted a suit in

O.S.No.235 of 2004 seeking permanent injunction and to effect mutation of revenue records. However, the said suit was dismissed. Aggrieved by the said order, the petitioner filed A.S.No.14 of 2008 and the same was withdrawn on 30.09.2008. Thereafter, the petitioner sent representations dated 09.06.2009 and 21.09.2010 for mutation of revenue records and not to interfere with the peaceful possession of the petitioner's property. Since, no orders have been passed, the present writ petition has been filed seeking to quash the award passed on 31.08.1995.

3.Mr.A.E.Chellian, learned senior counsel appearing for the petitioner would submit that though the land acquisition officer immediately after the award passed has referred the matter under Section 30 of LA Act and 18 of LA Act, the trial Court has passed an order in favour of the petitioner that the petitioner is entitled for claiming the award amount under Section 30 of the Act. However, the land acquisition officer referred under Section 18 of the Act before the competent Court. However, due to ill defects that reference under Section 18 was withdrawn by the petitioner and thereafter, in the settlement register, the petitioner's name was replaced by the 2nd respondent without any notice, for which the petitioner made repeated representations. However, the same was not considered. In this regard, a suit in O.S.No.235 of 2004 was instituted, which was dismissed and the subsequent appeal was also confirmed the same. Thereafter, the petitioner filed a writ petition for appropriate compensation. The further averment of the petitioner is that he is still in possession of the acquired lands. The learned counsel for the petitioner submitted that though the petitioner challenged the award proceedings dated 31.08.1995, considering the public interest followed in the land acquisition, this Court may pass appropriate orders for fair compensation to the petitioner.

4.Mrs.N.Mala, learned Government Pleader (Puducherry) appearing on behalf of respondents would submit that though the acquisition proceedings initiated in the year 1978, the award was passed in the year 1983 and the said award proceedings was challenged by the petitioner, who have purchased the subject land from the vendor one Mohammed Saheed. The petitioner initially challenged the award proceedings in the writ petition, which was acquired in the year 1983. However, in view of the amendment made in the year 1984, this court allowed the writ petition filed by the petitioner and set aside the award proceedings. Again, the land acquisition officer conducted enquiry after hearing the petitioner and fixed the compensation as Rs.4,048/- in the year 1984. For the said award notice was also served on the petitioner and subsequently, the land acquisition officer referred the matter under Section 30 and under Section 18 of the Act to the competent court. Though the section 30 applications ended in favor of the petitioner, section 18 application was withdrawn by the petitioner after lapse of 16

years, the petitioner filed writ petition challenging the award proceedings, which is unsustainable one. Once, the petitioner withdraws Section 18 reference, he is not entitled to challenge the acquisition proceedings which is non-est in the eye of law. Accordingly, she prays for dismissal of this petition.

5.This Court carefully considered the submissions made on either side and perused the records produced before this Court.

6.On perusal of entire records, reveals that the petitioner purchased the property from the vendor in the year 1982 against whom the land acquisition proceedings was initiated and the same was not disputed by the respondent. However, the original award was set aside by this Court in W.P.No.7374 of 1983 and thereafter another award was passed in the year 1995. The learned senior counsel appearing for the petitioner on instructions fairly conceded that he is not inclined to challenge the acquisition proceedings in view of the order of the withdrawal of Section 18 reference. However, he seeks only fair compensation from the respondents. It is also an undisputed fact that the petitioner, who is the subsequent purchaser is entitled for fair compensation though the earlier award was set aside by this Court in W.P.No.7374 of 1983 and subsequent award was also passed. After purchase, fixation of fair compensation at the prevailing rate as on date cannot be considered as 4(1) notification was in 1978 and an award was passed in the year 1985. However, the land acquisition officer did not considered the market value at the relevant point of time i.e.1985. However due to improper advice, as fairly conceded by the learned counsel for the petitioner, the petitioner withdrawn the enhancement compensation petition and in order to resolve the dispute between the petitioner as well as Government, it would be appropriate to re-open the matter which was withdrawn by the petitioner in the year 1998. However, the fact remains that the project was not completed due to the disputes pending before different forum.

7.Therefore, in order to resolve the dispute, it would be appropriate to issue a direction to the Additional District Judge, Puducherry at Karaikal to restore the LAOP.No.18 of 1996, which was withdrawn by the petitioner. The trial Court is directed to assign fresh number and thereafter conduct enquiry and complete the proceedings within a period of six months from the date of assigning the fresh number. This Court makes it clear that the petitioner shall file appropriate documents for enhancement of compensation. If such documents are filed, the trial court has to consider the petition after hearing the petitioner as well as other parties and pass appropriate orders within a period not less than six months.

8.The writ petition stands disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is also closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To

1.The Land Acquisition Officer cum Deputy
Collector (Revenue),
Karaikal.

2.The Settlement Officer,
Settlement Branch
Taluk Office,
Karaikal.

+2 Ccs to Mr.C. Safiullah, Advocate sr 74954

+1 CC to The Govt. Pleader sr 74924

W.P.No.2066 of 2011
and M.P.No.2 of 2011

RSK(CO)
SP(12/11/2019)

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