

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No. 2344 of 2011

- 1.D.Danial (Deceased)
- 2.H.Daniel @ Hepzibah
- 3.Joshva
- 4.Rufus
- 5.Titus
- 6.Issac
- 7.Shaaran

...Petitioners

(Petitioners 2 to 7 substituted as LR's of the Deceased D.Danial vide order of this Court dated 19.08.2019 and made in WMP.No.23876 of 2019)

Vs.

- 1.The District Collector,
Collector's Office,
Thiruvallur District, Thiruvallur.
- 2.The Tahsildar,
Ponneri Taluk,
Thiruvallur District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Mandamus, directing the respondents to make the payment of compensation to the petitioner for acquiring the petitioner's lands to the extent of one ground and 1470 sq.ft., by a sale deed dated 06.05.1967 in Survey No.9/1 in Village No.43, Attippattu situated in registration District at Madras, Chengalpet and within the Sub Registration District at Thiruvottiyur measuring.

For Petitioners : Mr.M.Gnanasekar
For Respondents : Mr.M.Elumalai for R1 & R2
Government Advocate

O R D E R

The petitioner has filed this Writ Petition seeking to direct the respondents to make the payment of compensation to

the petitioner for acquiring the petitioner's lands to the extent of one ground and 1470 sq.ft., by a sale deed dated 06.05.1967 in Survey No.9/1 in Village No.43, Attippattu situated in registration District at Madras, Chengalpet and within the Sub Registration District at Thiruvottiyur measuring.

2. The case of the petitioner is that the first petitioner namely Danial purchased 2 plots No.108 and 142 in Survey No.9/1 in No.43, Attippattu village measuring one ground and 3817 sq. ft.. Since the said Danial working in the Government job, he was frequently transferred all over Tamil Nadu, due to which, he did not know the Land Acquisition proceedings initiated by the State Government. After sometime, the petitioner had oral information that his land was acquired by Land Acquisition proceedings for North Madras Thermal Power project, Unit-VI, Kathivakkam, Madras 57. Immediately, thereafter the petitioner made a representation dated 07.08.2006 to the first respondent and the same was acknowledged and the first respondent directed the first petitioner to meet the second respondent. Accordingly, the first petitioner approached the second respondent. But, he did not receive any reply so far from the second respondent. As against the inaction, the petitioner filed this present Writ Petition.

3.The learned counsel appearing for the petitioners would submit that though Acquisition proceeding was initiated as against the petitioner, no notice was issued either under 4(1) or fixed declaration published in the name of the first petitioner and he had also not participated in the award enquiry, behind the order was passed, which is unsettled one. However, it would sufficient to refer the matter under Section 18. Further, the learned counsel submitted that the said land was acquired for North Madras Thermal Power project. Hence, the petitioner is not inclined to challenge the Land Acquisition proceedings. Till date, the petitioner did not receive any compensation from the respondent.

4.The learned Government Advocate appearing for the respondents would submit that since the petitioner is not available in the locality and 4(1) notice was issued on 23.04.1990 and 23.03.1992, Gazette notification was issued on 16.04.1991 and local publication was made on 19.04.1990.

5.On perusal of the records, it is seen that though the 4(1) notification was issued in the name of the petitioner. However, the petitioner had not participated in the Acquisition proceedings. In the present case, though the petitioner filed this present Writ Petition for directing the respondents to make the payment of compensation to the petitioner for acquiring

the petitioner's lands to the extent of one ground and 1470 sq.ft., by a sale deed dated 06.05.1967 in Survey No.9/1 in Village No.43, Attippattu situated in registration District at Madras, Chengalpet and within the Sub Registration District at Thiruvottiyur measuring, now the learned counsel submitted that it would sufficient to issue direction to refer the matter under Section 18 for enhancement of compensation.

6. In such circumstances, the petitioner entitled to receive the notice under Section 12 (2) of the Act. In the present case, no notice was issued under Section 12 (2) along with award copy in favour of the petitioner.

7. The learned counsel appearing for the petitioners would submit that in the decision of the Hon'ble Supreme Court in the case of Vijay Mahadeorao Kubade Vs. State of Maharashtra through the Collector reported in (2018) 8 SCC 266, it was held as follows;

"11.The learned counsel appearing on behalf of the Government, has not disputed the aforesaid proposition of law. Accordingly, we are of the opinion that the aforesaid observations are squarely applicable to the present case as the notice dated 04.12.1987, was not accompanied with the award. In this case, there could not have been a valid notice of the award, by letter dated 04.12.1987, under sub-section (2) of Section 12 of the Land Acquisition Act, until the appellant received a certified copy of the award, which he did on 3.2.1988. Therefore, the reference for enhancement was, accordingly, not barred by limitation.

12.Having regard to the facts and circumstances of this case, we set aside the order of the High Court concerning the point of limitation and remand the matter back for fresh consideration on merits of the case, inter alia, as to the quantum of compensation. Taking into consideration, the long pendency, we request the High Court to dispose of the matter expeditiously."

8. In view of the above and the decisions stated supra, I am inclined to issue a direction to the respondent to send a notice under Section 12(2) along with award copy to the second petitioner namely Hepzibah, within a period of two weeks. Thereafter, the second petitioner/ wife of the deceased make an

application under Section 18 within a period of two weeks. Thereafter, the Land Acquisition Officer has to refer the matter under Section 18 within a period of two weeks. The Trial Court has to pass an appropriate order as expeditiously as possible.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Collector's Office,
Thiruvallur District, Thiruvallur.

2.The Tahsildar,
Ponneri Taluk,
Thiruvallur District

+1 cc to M/s.M.Gnanasekar,Advocate Sr.No. 73316

+1 cc to The Government Pleader Sr.No.74026

AKM/23.10.19/4P-5C /

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