

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.02.2019

CORAM :

THE HON'BLE MRS JUSTICE V.BHAVANI SUBBAROYAN
W.P.No.5729 of 2010

V.Gopal

...Petitioner

Vs.

1. The Special Dy. Collector (Land Acquisition)

Tamilnadu Urban Development Scheme III
15, M.G. Nagar Main Road,
(Near Vigneswara Theatre)
Poonamallee

2. V.Srinivasa Reddy (Deceased)

(R3 to R6 are substituted as
Legal representatives of R2)

3. Sathyavathy

4. Dinakar

5. Rajasekar

6. Udayasekar

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus, to call for the records of the 1st respondent made in Na.Ka.10/09 A1 dated 20.01.2010 and quash the same and direct the 1st respondent to refer the dispute for the decision of the Court under Section 21(2) of the Act by depositing the compensation under Section 22 (3) of the Tamilnadu Highways Act.

For Petitioner

: Mr.D.Rajasekar

For Respondents

: Mr.Thirumaran

Special Government Pleader for R1.

Mr.G.Devadoss for R2, R3 to R5.

O R D E R

This writ petition has been filed praying to issue a writ of certiorarified mandamus calling for the records of the 1st respondent in Na.Ka.10/09 A1 dated 20.01.2010 and quash the same and further, directing the 1st respondent to

refer the dispute for the decision of the Court under Section 21(2) of the Tamilnadu Highways Act by depositing the compensation under Section 22(3) of the Act.

2. The case of the writ petitioner is that he is the owner of Eastern portion abutting the road admeasuring 0.45 cents out of 0.91 cents, in S.No.118/1A, 118/1B Koladi Village, Ambattur Taluk, Thiruvallur District. The other half of 0.46 cents on the Western portion belongs to the petitioner's brother, the second respondent, who died when the writ petition was pending. The legal representatives have been brought on record.

3. There was a partition effected between the family members, by a partition deed dated 22.08.1978, registered under Document No.2403 of 1978, before the Sub Registrar, Poonamallee. Though the partition was effected three decades ago, mutation has not been made in the Revenue register. The first respondent issued notification on 21.02.2009 under Section 15(2) of the Tamilnadu Highways Act, 2001, for widening the roads and acquired an area of 445 sq.m in the eastern portion S.No.118/1 and 118/1B, which was allotted to the petitioner through the said partition deed. The petitioner requested the first respondent to pass an award in his name since the property had already been partitioned and allotted to him.

4. The petitioner has filed a writ petition in W.P.No.20618/2009 to direct the first respondent to pass an order on the representation given by him and further, direct the first respondent to pass an award, by recognizing the petitioner as owner of S.No.118/1 or 118/1B of Nanja land in Koladi Village, Ambattur Taluk, Thiruvallur District. This Court, by order dated 02.03.2009, has directed the first respondent to consider the petitioner's representation dated 02.03.2009 and the advocate notice dated 14.06.2009, and pass an order after giving personal opportunity to the persons concerned. The petitioner has also applied for Encumbrance Certificate for the above said survey numbers. Since mutation of records has not been made in the Revenue records, the property stood in the name of both the petitioner and his brother namely, the second respondent.

5. According to the petitioner, even as per the partition deed, the second respondent does not have any right over the property and the land absolutely belongs to the petitioner. However, the first respondent has passed the impugned order stating that since mutation of records have not been made, the property as such stands in the name of the petitioner and the second respondent. Since the civil suit filed by the petitioner is pending before the civil court, only after the outcome of the said suit, a decision could be taken in the matter of giving compensation and the ownership of the property.

6. According to the learned counsel for the petitioner, as per Section 21(2) of the Tamilnadu Highways Act, whenever there is dispute with regard to the ownership or there is a rival claim, the same could be referred to the Court and compensation amount should be deposited in the Court. Because of the impugned order passed by the first respondent, the compensation amount awarded has not been deposited anywhere and therefore, the petitioner has come out with the present writ petition.

7. After the notification issued by the first respondent, the petitioner has filed a suit for partition, claiming half share in S.No.118/1 and 118/1B, after nearly 32 years, before the learned Subordinate Judge's Court, Poonamallee in O.S.No.140/2009.

8. The suit is still pending. Meanwhile, enquiry was conducted by the 1st respondent on 18.11.2009 and the 2nd respondent's son appeared for enquiry and claimed for 50% of compensation from the 1st respondent stating that the 2nd respondent has filed a suit for partition in respect of the property sought to be acquired by the 1st respondent.

9. Mr.Thirumaran, learned Special Government Pleader appearing for first respondent submits that as per the Act, the same is to be referred to the Court by the Collector concerned.

10. Heard both sides and perused the materials available on record.

11. The Act is very clear. As per Section 21(2). when the amount has been determined and any dispute arises as to the apportionment, the Collector may refer such dispute for the decision of the Court. Section 22(3) makes it further clear that if the persons entitled to amount does not consent to receive it and if any dispute arises regarding the title of the property, the Court shall deposit the amount before the Court.

12. In this case, admittedly, the petitioner has filed a Civil Suit against his brother viz., the second respondent. The said suit is pending on the file of the Sub Court, Poonamalle. The Sub Court is yet to give the verdict. Such being the position, the first respondent should have in all fairness, referred the matter to the trial Court to take a decision. On a reading of the impugned order, it is seen that the first respondent is well aware of the pending civil proceedings. That being the case, keeping the award amount idle, is not correct. The impugned order is liable to be set aside.

13. The order of the first respondent is quashed. The writ petition is allowed. No costs.

14. The learned counsel for the petitioner brought to the notice of this Court that the award amount has not been deposited in any Bank. Therefore, the Trial Court is directed to deposit the award amount in any one of the Nationalised Bank in a interest fetching deposit till the disposal of the civil suit.

Sd/-/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

msv
To

The Special Dy. Collector (Land Acquisition)

Tamilnadu Urban Development Scheme III
15, M.G. Nagar Main Road,
(Near Vigneswara Theatre)
Poonamallee

+1cc to Mr. D.Rajasekar, Advocate SR.No. 11705

+1 CC TO GOVERNMENT PLEADER SR.NO.12306

W.P.No.5729 of 2010

A.SK(15/03/2019)

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