

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.03.2019

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.9439 of 2010

and

M.P.No.1 of 2010

1.K.Sundararajan
2.K.Ayyappan
3.K.Balasubramaniam
4.Santhi
5.Vijayalakshmi

... Petitioners

Versus

1.The Special Tahsildar,
(Land Acquisition)
Neighbourhood Scheme,
Ayyanthirumaligai,
Salem - 8.

2.The District Collector,
Salem District.

3.The Executive Engineer &
Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Salem - 636 008.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of mandamus, directing the respondents to pay the entire amount of compensation awarded for the lands acquired from the petitioner's mother in S.No.113/2 measuring 0.98 acres in Ayyamperumampatty Village and Taluk, Salem District, with interest at 9% p.a for one year from the date of taking possession of the land and thereafter at 15% p.a till payment of the entire amount of compensation as per Section 34 of the Land Acquisition Act, 1894, forthwith.

For Petitioner : Mr.P.Jagadeesan

For Respondents : Mr.V.Anandhamurthi, for RR1 & 2
Additional Government Pleader.
Mr.I.Sathish, for R3 (No Appearance)

O R D E R

The writ petition has been filed directing the respondents to pay the entire amount of compensation awarded for the lands acquired from the petitioner's mother in S.No.113/2 measuring 0.98 acres in Ayyamperumampatty Village and Taluk, Salem District, with interest at 9% p.a for one year from the date of taking possession of the land and thereafter, at 15% p.a till payment of the entire amount of compensation as per Section 34 of the Land Acquisition Act, 1894.

2.The petitioners case is that the lands measuring 0.98 acres in the above said S.No.113/2 belongs to the mother Padma which was acquired by the respondents for the formation of a neighborhood scheme at Salem by Tamilnadu Housing Board. The land was acquired by Special Tahsildar, Land Acquisition by the award No.3/86-87 dated 29.02.1988 and the compensation for the lands was fixed for the S.No.113/2 at the rate of 0.56 paise per Sq.Ft. Aggrieved by the same, the petitioners' mother sought for a reference under Section 18 of the Land Acquisition Act and the same was made and the reference was numbered as LAOP No.235 of 1988 before Subordinate Court, Salem. Even though, this award was passed on 29.02.1988 the said amount was not paid to the petitioners' family. The compensation in respect of the lands in S.No.113/2 was remitted in State Bank of India, Namakkal, under Works deposit head.

3.It was further contended that later on, the petitioners' mother had received the entire award amount on 29.02.1988 as fixed in award No.12 of 1986-87, which was deposited in LAOP No.11 of 1987. In as far as the amount deposited under the head Works deposit in State Bank of India on 12.04.1986 is concerned, the petitioners' mother has not withdrawn the same. It is further submitted that the petitioners' mother approached the first respondent and demanded the compensation amount, but, the first respondent did not pay the same and the petitioners' mother sent a legal notice on 05.01.2005 to the Accountant General Office, Chennai and to the respondents 1 and 3, with great difficulty, the petitioners sent another representation on 22.01.2008 to pay the amount of compensation of Rs.45,420.90/- with interest at the rate of 9% p.a. for one year from the date of taking possession on 12.11.1986 and thereafter at the rate of 15% p.a. till payment of entire amount. The petitioners' mother died on 11.03.2009 and her legal heirs have filed this writ petition stating that on 30.10.1995, the Principal Subordinate Judge, passed an award in LAOP No.235 of 1988 and enhanced the compensation to Rs.3/- per Sq.Ft and the appeal preferred by the respondents before the Hon'ble Court in A.S.No.439 of 1997 was also dismissed. Based on the said decision, the petitioners mother had filed an Execution Petition in R.E.P.No.143 of 1998

and the first respondent had also deposited the enhanced compensation, after deducting the amount fixed in Award No.3/86-87 which was remitted under Works deposit. Originally the petitioners' mother had withdrawn 25% of the enhanced compensation on 22.12.1999 and another 25% was withdrawn on 05.03.2001 in REA No.67 of 2001 and the said amounts were withdrawn as per the Court's direction in CMP.No.14331 of 1999 in A.S.No.439 of 1997. The remaining 50% of the enhanced compensation was withdrawn as per the order dated 01.11.2007 in I.A.No.124 of 2007 after the disposal of A.S.No.439 of 1997.

4.Now the petitioners' contention is that the amount of compensation which has been deposited as per award No.3/1986-87 has not been withdrawn by the petitioners and they have filed this writ petition stating that as per Section 31(2) of the Act, the amount so deposited in the Court is only in the works order and as per the statute, as such they are entitled for getting interest for the amount so not deposited within the said time as per Section 31(2) of the Act. Since the respondents have violated the provisions of Section 31(2) of the Act, the petitioners have filed this writ petition seeking remedy from the Court.

5.The counter was filed by the third respondent in the year 2011, in which they have stated that the compensation amount has been deposited under the works deposit and this amount has been released from the Sub Court, Salem and they would submit that the entire amount has been deposited on time and therefore, there is no question of payment of any interest.

6.The counter filed by the first respondent would give a contrary statement, it is found that the award has been published as per the notification, as per the old Act 31(1) of the Act and board's standing orders, the amount so awarded shall be kept under the head works deposit for disbursement of the award amount to the land owners and if the landowners do not claim the amount, or if there is a dispute in the title of the acquired land, the same shall be deposited into the concerned Court for legal distribution. Accordingly, the lands were acquired under the neighborhood scheme and by the award passed in No.3/86-87 dated 22.09.1986, the deposit was made in the works deposit in State Bank of India, Namakkal on 05.06.1987. Since the Special Tahsildar, Namakkal was disbanded, the amount kept under the head of works deposit was subsequently transferred and duly deposited under Section 30 of the Land Acquisition Act, 1894 before the Sub-Court, Salem on 20.01.1988.

7.It is further submitted that the petitioners have not applied for any enhancement of compensation under Section 18 before the competent civil Court as provided under the Act. The

amount was deposited into the Court and the enhanced award amount was already been withdrawn by the petitioners' mother, the amount which is lying in the deposit of Sub-Court, Salem, which has been deposited on 20.01.1988 can be withdrawn by the petitioners by filing formal application. It is also seen from para No.12 of the counter, that the award amount of the Ex-land owner has been duly deposited into the Court on 21.01.1988 itself and the enhanced compensation under Section 18 as per the Court order has also been duly deposited into the Sub-Court, Salem, which was also withdrawn by the petitioners' family. The question of paying the interest for the said amount do not arise, since the possession of the land was taken only on 06.11.1995, as per Section 31(2) which reads as follows:-

31. Payment of compensation or deposit of same in Court-(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted:

Provided that any person admitted to the interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18 :

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

8. Accordingly, the petitioners case was considered and it is seen that as per Section 31(2), the same has been deposited into the Sub Court in the year 1988. As per old Act, the same has been deposited in the Bank at the first instance and later on it has been deposited in the Court as per the Act. Section 34 deals with the payment of interest, which contemplates that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, the interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year.

9. On a perusal of the counter affidavit, it is seen that the possession of the land was taken only on 06.11.1995, but the amount has been deposited earlier during 1988 itself, as such there is no question arises regarding payment of interest to the parties concerned. Hence, the prayer in this writ petition

regarding payment of interest fails and cannot be considered. The petitioners are at liberty to approach the Sub-Court, Salem for withdrawal of the amount so deposited within a period of four weeks from the date of receipt of a copy of this order and the Sub Court, Salem is directed to release the said amount which is deposited in the Sub-Court, Salem within a period of three weeks, thereafter.

10. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Tahsildar,
(Land Acquisition)
Neighbourhood Scheme,
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Salem District.
3. The Executive Engineer &
Administrative Officer,
Salem Housing Unit,
Tamil Nadu Housing Board,
Salem - 636 008.
4. The Sub Court,
Salem.

+1 cc to Mr.P.Jagadeesan, Advocate, S.R.No.26235

+1 cc to the Government Pleader, S.R.No.26855

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and M.P.No.1 of 2010

BR(CO)
SSM(30/04/2019) .