

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2019

CORAM

THE HON'BLE Mr.JUSTICE M.DHANDAPANI

W.P.No.7999 of 2005
W.P.M.P.No.8709 of 2005

R.Mohan Kumar

...Petitioner

vs

1. State of Tamil Nadu
rep.by its Secretary
Home Department
Fort St.George,
Chennai 600 009.

2. The Land Acquisition Officer
cum Tahsildar
Pudukottai.

3. The District Collector
Pudukkottai District
Pudukkottai.

.... 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 made in the impugned Award No.1/2004 dated 25.10.2004 passed by the 2nd respondent, quash the same and further directing the respondents to make fresh notification, to pay compensation to the lands comprised in S.No.344/3 and 344/4 measuring an extent of 0.70 cents in Kavinadu Melavattam, Pudukkottai Taluk and District on the present market value.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mr.Akhil Akbar, Government Advocate
Mr.M.Elumalai, Government Advocate

O R D E R

This petition has been filed by the petitioner for issuance of a writ of Certiorarified Mandamus, to call for the records made in the impugned Award No.1/2004 dated 25.10.2004 passed by the 2nd respondent, quash the same and further direct the

respondents to make fresh notification, to pay compensation to the lands comprised in S.No.344/3 and 344/4 measuring an extent of 0.70 cents in Kavinadu Melavattam, Pudukkottai Taluk and District on the present market value.

2. The case of the petitioner is that he is the owner of 21 cents in SF.No.344/3 and 58 cents in S.F.No.344/4 totalling an extent of 79 cents comprised in Patta No.349 in Kavinadu Melavattam, Pudukkottai Taluk and District. The petitioner has purchased the said land from the then owner one R.Chokkalingam under a registered sale deed dated 24.06.1985. The petitioner stated in the affidavit that though in the revenue records the lands have been classified as dry and wet, it can be used for the purpose of constructing residential buildings as it is adjacent to Perambalur Manamadurai Highways. The petitioner further stated in the affidavit that one contractor by name Lakshmanan attempted to trespass into his property by putting up a big mud road, denying the petitioner's title and asserting that the lands are Government lands. The petitioner constrained to file a civil suit in O.S.No.210 of 1999 on the file of the Principal District Munsif, Pudukkottai against the 3rd respondent herein, the Divisional Engineer, Tamil Nadu Agricultural Development Project and the said Contractor. The petitioner has prayed for declaration, delivery of vacant possession and for mandatory injunction to remove the encroachment. The District Collector and the Divisional Engineer contested the suit denying the petitioner's title in their written statement and asserting that the properties are Government Poromboke lands. The learned District Munsif, Pudukkottai after full trial decreed the suit holding that the petitioner is the owner of the property and the act of encroachment by the Government is highly condemnable. However, in the interest of justice, the learned Judge granted compensation to the owner of the lands, directing the defendants therein to pay the market value of the entire suit property as on the date of decree with costs to the petitioner. The said Judgment has become final as the defendants therein have not chosen to prefer any appeal.

3. In the meanwhile, the 2nd respondent herein had published a notification in R.C.No.D.2/58682/99 in the Pudukkottai District Gazette extraordinary dated 10.10.2000 for the acquisition of the petitioner's land under Section 4(1) of the Land Acquisition Act. The 2nd respondent herein sent a notice of enquiry dated 08.12.2000 to the petitioner and the enquiry date was fixed on 26.12.2000, whereas, the said notice was served on the petitioner only on 24.12.2000. The act of not following the mandatory requirements under Land Acquisition Act by the respondents clearly vitiate the provisions of law. Challenging the said notification, the petitioner filed a writ petition in W.M.P.No.3248 of 2001 before this Court. This Court while

admitting the writ petition was pleased to grant interim stay of all further proceedings by an order dated 21.02.2001 in W.M.P.No.4491 of 2001. On 10.04.2002, the W.M.P.No.4491 of 2001 was listed before this Court and there was no representation on the petitioner side and therefore, the interim stay already granted by this court was vacated. Taking advantage of the fact, the respondents 2 and 3 herein, have started to initiate further proceedings pursuant to 4(1) notification. On 25.10.2004, the 2nd respondent herein by his proceedings Na.Ka.No.1/10577/99 in Award No.1/2004-2005 has passed an award for a sum of Rs.1,31,402/- for the land acquired for the purpose laying road. Challenging the same, the present writ petition is filed.

4. Mr.T.M.Hariharan, learned counsel appearing for the petitioner would submit that the Civil Court while decreeing the suit in O.S.No.210 of 1999 has categorically directed the respondents to pay compensation in lieu of the property in question at the market value as on the date of decree i.e. on 27.02.2003. Subsequently, the respondents have proceeded to pass an order, dated 25.10.2004, on the market value, as on the date, under the 4(1) Notification which is clearly illegal. The relevant paragraphs of the order in O.S.No.210 of 1999 are extracted hereunder:

"44) It is held that the plaintiff is the owner of the suit property but not entitled for recovery of possession or Mandatory injunction on the basis that the rights & interest of the larger public will be above that of the individual. But at the same time, the right of the individual shall not be taken away without any compensation. Therefore, it is held that, the plaintiff is entitled for the compensation for the lands encroached by the defendant and they are directed to pay the market value of the entire suit property to the plaintiff as on the date of decree as they had been denying his title all along. They are also directed to pay the costs of the suit.

45) In view of the discussions made above, I hold that the plaintiff is entitled for declaration of his title, and for compensation in lieu of the suit property at the market value as on the date of the decree and for costs of the suit. This issue is decided accordingly. "

5. The learned counsel for the respondents would submit that the writ petitioner refused to receive the compensation through negotiation and action has been initiated to determine the compensation due to petitioner by the provisions of the Land Acquisition Act, 1894 and accordingly, the notification issued under Section 4(1) of the Land Acquisition Act 1894, has been published on 13.10.2000, appointing the Tahsildar, Pudukkottai

as Land Acquisition Officer. The learned counsel would further refute all the allegations raised by the petitioner and he justified the notification.

6. Considering the request made by the learned counsel appearing for the petitioner and also taking into consideration the facts and circumstances of the case, this Court is inclined to grant the relief in favour of the petitioner and the petitioner is entitled to get compensation of the suit property, at the market value, as on the date of decree. Hence the respondent is directed to pay compensation within a period of 12 weeks. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssb

To

1. State of Tamil Nadu
rep.by its Secretary
Home Department
Fort St.George,
Chennai 600 009.
2. The Land Acquisition Officer
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Pudukottai.
3. The District Collector
Pudukkotai District
Pudukkotai.

+1cc to the Government Pleader, S.R.No.54906

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SPD(CO)
CS/13/08/2019