

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.5509 of 2012

S.Karpagalakshmi

.. Petitioner

Vs

1.The District Collector,  
Erode District, Erode

2.The Tahsildar,  
Bhavani, Erode District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to re-convey the petitioner's land of an extent of 610 sq.ft. In T.S.No.15, Block 2, Ward C of Bhavani Municipal area, Bhavani Taluk, Erode District, based on the petitioner's representation dated 05.12.2011 within a time frame.

For petitioner : Mr.S.Sathia Chandran

For Respondents : Mr.M.Elumalai, GA

ORDER

The petitioner has filed this writ petition seeking for issuance of a writ of mandamus directing the respondents to re-convey her land having an extent of 610 sq.ft. in T.S.No.15, Block 2, Ward C of Bhavani Municipal area, Bhavani Taluk, Erode District, based on her pending representation dated 05.12.2011.

2. Learned counsel appearing for the petitioner submitted that the land in question along with the lands belonging to others were required for formation of pathway approaching Bhavani-Komarapalayam over-bridge and this was sanctioned by the Government in G.O.(Per) No.122, Highways (H.S.2) Department, dated 11.06.2005, permitting the authorities to purchase the land through private negotiation. The land value was also fixed for acquisition of the above said lands at Rs.301.50 per sq.ft. by the State High Level Committee.

3. It is further submitted that prior to the inheritance of the land in question by the petitioner, the said land was under the enjoyment and possession of her grandmother, Ponnammal. However, after the demise of her grandmother on 09.006.2005, the petitioner filed an affidavit dated 13.08.2005 requesting to pay the cost of the said land to her. Although the petitioner filed an affidavit to give the said land to the Government, she has not handed over the possession to the Government. Whilesso, the first respondent/District Collector, Erode, without paying any cost to the said land, vide proceedings dated 13.07.2005, had taken possession of the said land belonging to her and also an extent of 130 sq.ft. belonging to her mother. By following the same, the second respondent/the Tahsildar, Bhavani, vide Memo dated 23.03.2006, issued a notice to her and also to her mother/Tmt.S.Lakshmi directing them to execute a sale deed in respect of the above said lands. Subsequently, they have also issued a cheque bearing No.442423, dated 29.12.2006, however, as the validity of the cheque got expired, the petitioner was informed that after revalidation of the said cheque, the District Revenue officer, Erode, would issue a cheque on 19.02.2007. In the meanwhile, the petitioner submitted a representation dated 27.03.2006, requesting the second respondent to pay the interest at 12% and fix the present guideline value.

4. Adding further, learned counsel submitted that the State Government/Central Government cannot forcibly acquire the land belonging to a citizen without following the due process of law. In support such contention, he has also relied on a judgment of this Court in State of Tamil nadu and others Vs. B.Mary Selvam and another (W.A.No.2314 of 2002, dated 25.10.2010), whereby it is held that under the Land Acquisition Act, if no proceeding is initiated, no enquiry was conducted and no declaration was issued, then, in such circumstances, taking of possession by any authority cannot be considered to be lawful. Therefore, a direction may be issued to the respondents to pay the market value of the acquired land in question along with interest to the petitioner.

5. A detailed counter affidavit has been filed by the first respondent. Learned Government Advocate appearing for the respondents submitted that the petitioner had submitted a sworn affidavit dated 12.08.2005 before the Authorities, wherein, she had requested the respondents to pay the cost of the land in question to her. When a cheque bearing No.442423, dated 29.12.2006, was made ready to the petitioner and also to the similarly placed land owners, although similarly placed land

owners received the cheque amount determined on the basis of the market value as per G.O.Ms.No.122, Highways Department, dated 11.06.2005, she did not receive the said cheque and on the contrary, she rushed to the Civil Court and filed a suit in O.S.No.380 of 2006 and by that time, the cheque issued to her got expired and after the revalidation of the said cheque, the second respondent was directed to issue a valid cheque to the petitioner. But, the petitioner has not received the said cheque till date from the District Revenue Officer, Erode. With these submissions, he prayed for dismissal of the writ petition.

6. Heard both sides.

7. Admittedly, the land in question belonging to the petitioner was acquired by the respondents through private negotiations vide G.O.(Per) No.122, Highways Department, dated 11.06.2005. As could be seen from the sworn affidavit dated 12.08.2005 submitted by the petitioner, it is clear that she had expressed her willingness to receive the compensation for the land in question acquired by the respondents. Therefore, it is clear that she had no objection in giving the land to the Government for formation of a road approaching Bhavani-Komarapalayam over-bridge. Hence, I am of the considered view that the petitioner is entitled to receive the compensation from the respondents. But, although the cheque was made ready vide cheque No.442423, dated 29.12.2006, the petitioner has failed to collect the same. Therefore, as on date, it has to be seen whether the petitioner is entitled for the interest.

8. At this stage, learned Government Advocate for the respondent, producing the Rules for the payments of Compensations for land acquired under the Land Acquisition Act, 1 of 1894, namely, Subsidiary Rules 431 and 592, with regard to the payment of interest, would submit that the petitioner is not entitled to get the interest. For better appreciation, relevant portion of the same is extracted below:-

"8. In giving notice of the award under Section 12(2) and tendering payment under section 31(1) to such of persons interested as were not present personally or by their representatives when the award was made the officer shall require them to appear personally or by representatives by a certain date, to receive payment of the compensation awarded to them, intimating also that no interest will be allowed to them if they fail to appear if they do not appear and do not apply for a reference to the civil court under

section 18, the officer shall, after any further endeavor to secure their attendance that may seem desirable, cause the amounts due to be paid in the treasury as revenue deposits payable to the persons to whom they are respectively due and vouched for in the accompanying form (Form E) The office shall give also notice to the payees of such deposits, specifying the treasury in which the deposits have been made. When the persons interested under the award ultimately claim payment, the amounts will be paid to them in the same manner as ordinary revenue deposits. The officer should, as far as possible, arrange to make the payments due in or near the village to which the payees belong, in order that the number of undisbursed sums to be placed in deposits on account of non-attendance may be reduced to a minimum. Whenever the payment is claimed through a representatives, whether before or after deposit of the amount awarded, such representatives must show legal authority for receiving the compensation on behalf of his principal."

From the reading of the above said Rule position, it is clear that if the claimants do not appear or fail to appear or fail to apply for compensation, then, in such cases, they are not entitled for interest. Therefore, as stated above, although the cheque was made ready, the petitioner has failed to collect the same, hence, the petitioner cannot ask for any interest from the date of deposit made in the Treasury.

9. Thus, for the reasons stated above, the petitioner is directed to approach the Tahsildar, Bhavani, Erode District, along with a copy of this order, ID proof, copy of the award and other relevant documents, for payment of compensation. On receipt of the same, the second respondent/Tahsildar, Bhavani, Erode District, is directed to verify the identity of the land owner and release of compensation for the subject land acquired from the petitioner. With these directions, the writ petition stands disposed of. No Costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The District Collector,  
Erode District.

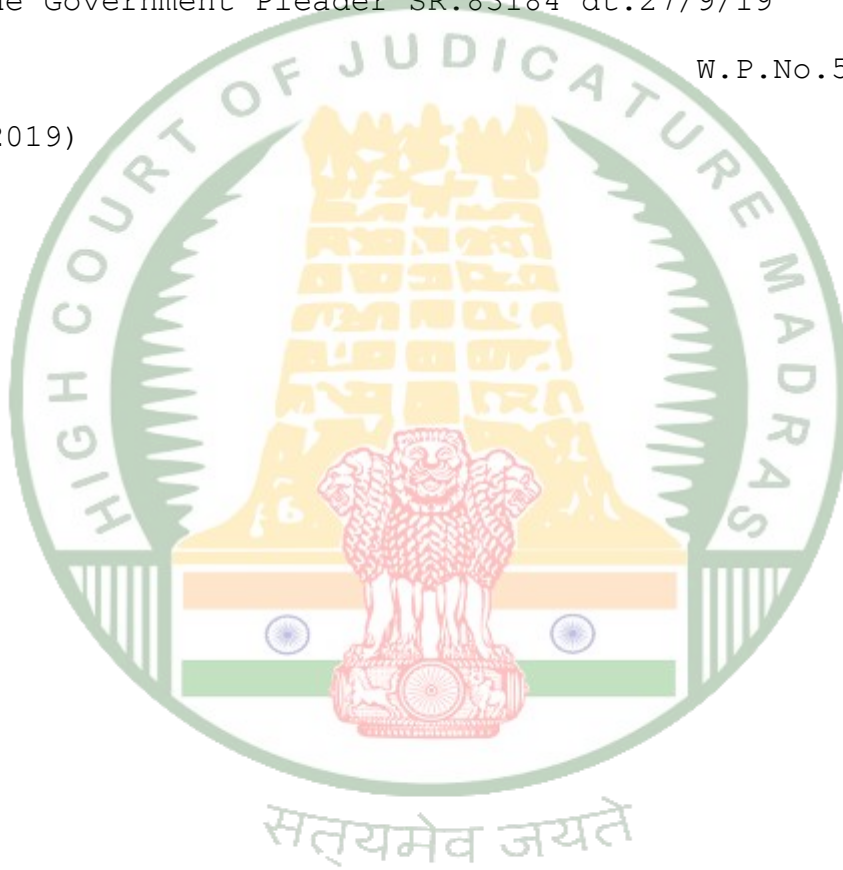
2.The Tahsildar,  
Bhavani, Erode District.

+lcc to Mr.S.Sathia Chandran, Advocate SR.82437 dt 25/9/19

+lcc to the Government Pleader SR.83184 dt.27/9/19

W.P.No.5509 of 2012

PM(CO)  
CB(22/11/2019)



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