

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.04.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.12845,12850,12858 & 12864 of 2019

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|-----------------------|--------------------------------------|
| 1. E.Munusamy | .. Petitioner in WP.No.12845 of 2019 |
| 2. K.Munivelu | .. Petitioner in WP.No.12850 of 2019 |
| 3. Thiru.Gangan Reddy | .. Petitioner in WP.No.12858 of 2019 |
| 4. E.Kanniappan | .. Petitioner in WP.No.12864 of 2019 |

Vs.

- | | |
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| 1. The District Collector,
Thiruvallur District
Thiruvallur. | |
| 2. The Special Tahsildar (Land Acquisition)
Krishna Water Supply Project Unit - IV,
Tiruvallur. | Respondents in
all the WPs. |

Prayer in W.P.No.12845 of 2019 :

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent's proceedings in Na.Ka.No.733/17 dated 10.04.2017 (10.04.2018) and quash the same and consequently, direct the respondents to pay enhanced compensation of Rs.1200/- per cent (Rs.2964/- per Ares) with respect to petitioner's land comprised in S.No.172/1 over an extent of 0.09.5 Ares and 172/2 over an extent of 0.20.0 Ares, in total 0.22.5 Ares of Pammadukulam Village, Avadi Taluk, Tiruvallur District.

Prayer in W.P.No.12850 of 2019 :

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent's proceedings in Na.Ka.No.733/17 dated 10.04.2017 (10.04.2018) and quash the same and consequently, direct the respondents to pay enhanced compensation of Rs.1200/- per cent (Rs.2964/- per Ares) with respect to petitioner's land comprised in S.No.172/2 over an extent of 0.07.5 Ares of Pammadukulam Village, Avadi Taluk, Tiruvallur District.

Prayer in W.P.No.12858 of 2019 :

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent's proceedings in Na.Ka.No.733/17 dated 10.04.2017 (10.04.2018) and quash the same and consequently, direct the respondents to pay enhanced compensation of Rs.1200/- per cent (Rs.2964/- per Ares) with respect to petitioner's land comprised in S.No.120/2 over an extent of 0.12.5 Ares of Pammadukulam Village, Avadi Taluk, Tiruvallur District.

Prayer in W.P.No.12864 of 2019 :

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the 2nd respondent's proceedings in Na.Ka.No.733/17 dated 10.04.2017 (10.04.2018) and quash the same and consequently, direct the respondents to pay enhanced compensation of Rs.1200/- per cent (Rs.2964/- per Ares) with respect to petitioner's land comprised in S.No.171/1 over an extent of 0.05.5 Ares, S.No.171/2 over an extent of 0.06.0 Ares, 171/3 over an extent of 0.06.0 Ares, 184/1A1 over an extent of 0.5.5 Ares and S.No.174/1A2 over an extent of 0.02.5 Ares in total 0.25.5 Ares of Pammadukulam Village, Avadi Taluk, Tiruvallur District.

For Petitioners : M.Muthappan
in all W.Ps

For Respondents in : Mr.D.Raja
W.P.Nos.12845 & 12858/2019 Additional Government Pleader

For Respondents in : Mr.M.Elumalai
W.P.Nos.12850 & 12864/2019 Government Advocate

ORDER

These Writ Petitions have been filed seeking to quash the proceedings of the second respondent in Na.Ka.No.733/17 dated 10.04.2017 (10.04.2018) and to direct the respondents to pay enhanced compensation of Rs.1200/- per cent (Rs.2964/- per Ares) with respect to petitioners' land situated at Pammadukulam Village, Avadi Taluk, Tiruvallur District.

2. Challenging the award passed by the Special Tahsildar, the petitioners filed a petition before the District Collector under Section 28A of the Land Acquisition Act 1894 for

enhancement of compensation. The claim made by the petitioners were rejected by the Special Tahsildar and therefore, the petitioners have filed these Writ Petitions before this Court.

3. According to the learned counsel for the petitioners, the time prescribed under Section 28A of the Act for representation is extended in the Judgment passed by the Appellate Court and therefore, the impugned order is illegal and the same is liable to be quashed.

4. The learned Government Advocate appearing for the respondents would submit that the petitioners are entitled for enhancement of compensation under Section 28A of the Land Acquisition Act 1894, if the petitioners submit the application within a period of three months from the date of award passed by the Reference Court. But, the said applications were made pursuant to the judgment passed in the appeal filed under Section 54 of the Act and therefore, the second respondent had rejected the claim of the petitioners. Hence, these Writ Petitions are liable to be rejected.

5. In support of his contention, the learned Government Advocate has relied upon the Judgment reported in the case of [Ramsingbhai (Ramsangbhai) Jerambhai Vs. The State of Gujarat and Anr], wherein, the Hon'ble Supreme Court in Paragraph Nos.3,4 and 5 has held as follows:-

"3. Section 28A(1) of the Act reads as follows :-

"28A. Redetermination of the amount of compensation on the basis of the award of the Court.

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court: Provided that in computing the period of three months within which an application to the Collector shall be made under

this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

(Emphasis supplied)

It is clear from the opening words of the provision that the redetermination under Section 28A is available only in respect of an "Award" passed by the "court" under Part III of the Act, comprising Sections 18 to 28A (both inclusive). The "court" referred to in Section 28A of the Act is the court as defined under Section 3(d) to mean "...a principal civil court of original jurisdiction...". Thus, the judgment of the appellate court is not within the purview of Section 28A. It is also to be noted that the appellate courts under Section 54 are under Part VIII of the Act whereas the redetermination is only in respect of the Award passed by the Reference Court under Part III of the Act. (See Jose Antonio Cruz Dos R.Rodriguese & another v. Land Acquisition Collector & another). In its recent judgment in Bharatsing and others v. The State of Maharashtra and others, this Court has surveyed the decisions on this issue and reiterated the legal principle.

4. However, if the State/authorities/claimants have approached the higher Courts for reduction/enhancement of quantum of compensation, as the case may be, the Collector, under Section 28A of the Act, shall wait till a decision is finally rendered and thereafter award the compensation as per the modified verdict of higher Courts.

5. What the appellant seeks is redetermination of compensation under the Act in terms of the judgment of the High Court passed under Section 54 of the Act. In view of the settled legal position which we have explained above, the appellant is not entitled to such a relief; his entitlement, if any, is only in terms of Section 28A of the Act based on the award of the Reference Court.

6. In view of the above order, these Writ Petitions are liable to be rejected at the admission stage itself, as the

petitioners herein had made the representation pursuant to the judgment passed in the appeal filed under Section 54 of the Act. Hence, there is no infirmity or illegality in the order dated 10.04.2017 passed by the second respondent.

7. Accordingly, these Writ Petitions are dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

raja

To

1. The District Collector,
Thiruvallur District
Thiruvallur.
2. The Special Tahsildar (Land Acquisition)
Krishna Water Supply Project Unit - IV,
Tiruvallur.

+4cc to M.Muthappan, Advocate, S.R.No.42779
+1cc to the Government Pleader, S.R.No.42555

W.P.Nos.12845,12850,
12858 & 12864 of 2019

GP(CO)
CS/01/07/2019

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