

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **SUBRAMONIUM PRASAD**

Cont.P.No.2224 of 2017

1. S.Ezhumalai.
2. Tmt.E.Jothi @ Oli .. Petitioners

Versus

Mr.S.Kanakaraj
The Deputy Collector (Revenue),
North-cum-Land Acquisition Officer,
Puducherry. .. Respondent

Prayer: This Contempt Petition filed under Section 11 of the Contempt of Court Act, 70/71 to punish the respondent for having committed contempt of Court for disobeying the order dated 29.11.2016 made in WA No.1568 of 2016.

For Petitioners : Mr.C.Samivel

For Respondent : Ms.N.Mala
Additional Government Pleader

ORDER

(Order of the Court was made by **S.MANIKUMAR, J.**)

On 11.12.2018, we ordered as hereunder.

"Contending inter alia that an order made by this Court in WA No.1568 of 2016 dated 29.11.2016, which held that the respondents are entitled to seek for reference before the Civil Court for enhanced compensation under Section 18 of the Land Acquisition Act,

1894, has been disobeyed, despite notice dated 10.10.2017 issued, instant Contempt Petition has been filed.

2. Perusal of the material on record shows that respondents have filed a petition dated 03.03.2014 under Section 18 of the Land Acquisition Act, 1894 for reference to the Civil Court. Vide order dated 08.10.2004, the Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry, has declined to refer. Being aggrieved, respondents have filed W.P.No.27431 of 2015 for a writ of certiorarified mandamus, calling for the records of the respondent in proceedings No.1525/DC(R) N/LA/2014 dated 08.10.2014 and quash the same, and for a further direction to the 2nd respondent to refer the petition once again before the Civil Court for deciding the enhancement of compensation under Section 18 of the Land Acquisition Act, 1894. सत्यमेव जयते

3. Writ Court while setting aside the order impugned therein directed the official respondents to refer the matter to the Civil Court for claiming enhanced compensation within 8 weeks from the date of receipt of a copy of the order made in the writ petition.

4. Being aggrieved, official respondents filed WA No.1568 of 2016. After hearing the learned Government Advocate (Pondy), vide order in WA No.1568 of 2016 dated 29.11.2016, a

Hon'ble Division Bench of this Court, sustained the order of the writ Court.

5. Alleging disobedience of the order in not referring the matter to the Civil Court for enhanced compensation, learned counsel for the writ petitioner has sent a notice dated 10.10.2017 to the Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry. In the said letter, learned counsel has also indicated that if reference is not made, then his clients have no other option except to initiate contempt proceedings against him. Though, said contempt notice has been acknowledged, no action has been taken, hence the present Contempt Petition.

6. On 02.11.2018, we permitted the learned counsel for the writ petitioner to take notice on the respondent viz., Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry.

7. Responding to the notice, Ms.N.Mala, learned Additional Government Pleader (Pondy), reiterated the submissions made before the writ Court with reference to Section 30 of the Act. Learned Additional Government Pleader further submitted that within six weeks from today, the order would be implemented.

8. Preliminary objections to the Contempt Petition is not maintainable. There is a prima facie case of contempt. Hence, **issue statutory notice to the respondent, returnable by 08.01.2019.**

9. Post on 08.01.2019.

2. Contempt Petition has been filed against Mr.S.Kanakaraj, the Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry. Since the said officer has been transferred, incumbent, Mr.T.Sudhakar, Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry, is present in Court.

3. Denying the allegations made in the Contempt Petition, except those specifically admitted, Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry, has filed an affidavit, explaining the reasons as to how the order made in WA No.1568 of 2016 dated 29.11.2016, could not be implemented immediately and detailed the same hereunder.

(i) A piece of land at R.S.No.188/3W/2 measuring to an extent of 0-00-25(H.A.Ca) at Pillaichavady Revenue Village, Oulgaret Taluk, Puduchery along with other lands

<https://hcservices.ecourt.gov.in/hcservices/> were acquired for the purpose of improvement of East Coast Road. An amount of Rs.4,319/- was awarded by the Land

Acquisition Officer for the said land vide Award No.24/95 dated 22.12.1995.

(ii) The petitioner filed a Writ Petition No.43337 of 2002 for direction to the respondent therein viz., The Deputy Collector (Land Acquisition) to pay sum of Rs.10,00,000/- as compensation for demolition of the dwelling house situated at East Coast Road near Pillaichavady. However, the said petition was dismissed by the Court on 23.01.2003 with liberty to approach the appropriate civil court.

(iii) The petitioner submitted his representation for referring the case u/s.18 of the Land Acquisition Act, 1894 on 06.10.2004 i.e. after a lapse of more than eight years after the award.

(iv) The then Land Acquisition Officer (LAO) referred the said case u/s.30 of the Land Acquisition Act, 1894 to the learned Principal District Judge, Pondicherry on 17.12.2004. Accordingly, a sum of Rs.4,319/- was deposited in the Civil Court Deposit vide Challan No.5/DCR/N/LA/2004 dated 22.11.2004. Reference was numbered as LAOP No.3/2005 in the Court of the learned II Additional District Judge Court, Puducherry.

(v) For the above said LAOP, Award was passed by the learned Additional District Judge on 12.07.2013, wherein the Court has declared that Thiru. Ezhumalai, S/o.Subbrayan and Tmt. E.Jothi @ Oli W/o. Ezhumalai were the rightful claimants and they were entitled to receive the compensation amount of Rs.6,165/- for an extent of 420 sq.ft for the land comprised in Survey No.188/3W/2 and R.S.No.189/K/L/M at Pillaichavady Revenue Village.

(vi) Few discrepancies were found in respect of the compensation amount, Resurvey Numbers and the extent mentioned in the Award in LAOP No.3/2005.

i) Compensation awarded by the Court was Rs.6,165/- but the actual compensation awarded by the LAO was Rs.4,319/- vide Award No.24/1995 dated 22.12.1995.

ii) The Survey number mentioned in the Award of the Court reads as R.S.No.188/3W/2 & 189/K/L/M whereas the land at R.S.No.188/3W/2 alone was acquired.

iii) An extent of 420 sq.ft was mentioned in the Award, however, the actual extent of land acquired as per the Award passed by LAO is only 00-00-25 (H.A.Ca) or 269.09 sq.ft.

petitioner in 17(3A) notice was only 80% of the compensation that was arrived at during the draft award. Further the award was revised, considering the value of the structures as Nil and the final total amount was arrived at Rs.4,319/- for the land at R.S.No.188/3W/2 in the award passed vide Award No.24/1995. But the learned Additional District Judge, Puducherry erroneously mentioned the amount of compensation to be paid as Rs.6165/- in LAOP No.3/2005. It is to be noted that a sum of Rs.6165/- communicated in 17(3A) notice to Thiru.Subarayan S/o. Raghava Counder was 80% of the compensation on 01.03.1994 i.e. before passing the final award.

(viii) A fresh representation was received from the petitioner on 03.03.2014 requesting to make reference under Section 18 of the Act. Based on the said representation, this office had replied to the petitioner on 08.10.2014 stating that the application could not be considered citing that earlier representation was not made within the statutory time limit.

(ix) In the meanwhile, the petitioner approached this Court and filed W.P.No.27431 of 2015 praying for a direction to the respondent viz., Deputy Collector (Revenue) North-cum-Land Acquisition Officer to once again refer the petition to the Civil Court for enhanced compensation under

Section 18 of the said Act.

(x) This Court allowed the writ petition and directed the respondents to refer the matter to the Civil Court for enhanced compensation. This office preferred an appeal against the said order.

(xi) A Hon'ble Division Bench of this Court, vide order dated 29.11.2016 confirmed the order made in the writ Petition and stated that the respondents in the Writ Appeal viz., Thiru.Ezhumalai S/o. Subrayan and Tmt.E.Jothi @ Oli W/o.Ezhumalai were entitled to seek for reference before the Civil Court for enhanced compensation and the Hon'ble Bench found no material irregularity in the impugned order warranting interference, and thus dismissed the Writ Appeal, in favour of petitioners.

(xii) After obtaining the opinion of the Law Department, a Special Leave Petition was filed before the Hon'ble Supreme Court bearing SLP (Diary) No.2965/2018 against the order made in W.A.No.1568/2016. On 05.03.2018, the Hon'ble Supreme Court dismissed the Special Leave Petition, on the ground of delay as well as on merits on 05.03.2018. Certified copies of the said Order was received by this office on 23.04.2018.

(xiii) Before this office could refer the matter under Section 18 of the Land Acquisition Act, 1894 to the Civil Court for determining the enhancement of compensation, there was a need for amendments in the Award passed by the learned II Additional District Judge, Puducherry, in LAOP No.3/2005 for the errors as stated supra. Therefore, the then Land Acquisition Officer filed a petition for amendments, before the Civil Court on 27.04.2018 which was numbered as I.A.No.560/2018 in LAOP No.3/2005. The same was allowed by the Civil Court on 03.01.2019.

(xiv) Thus the respondent has submitted that the delay in referring the matter to the Civil Court under Section 18 of the Land Acquisition Act, 1894 is neither willful nor wanton but due to the bonafide reasons stated above. Respondent has submitted that he would refer the matter for enhancement of compensation to the Reference Court within two weeks after the receipt of the Certified copy of the Amended Application in LAOP No.3 of 2005.

(xv) The delay in complying with the order passed in WA.No.1568 of 2016 dated 29.11.2016 is due to the reason that the reference court award had to be amended with reference to the compensation amount, extent and survey

number."

4. Added further, on the above facts, Ms.N.Mala, learned Additional Government Pleader (Pondicherry), made submissions that reference to the Civil Court for enhancement of compensation would be made within two weeks from the date of receipt of the certified copy of the order made in IA No.560 of 2018 in LAOP No.3 of 2005 dated 03.01.2019. Submission of the learned Additional Government Pleader is placed on record.

5. Accepting the explanation offered in the affidavit filed by the Deputy Collector (Revenue), North-cum-Land Acquisition Officer, Puducherry, the alleged contemnor is purged. Reference for enhancement be made within a period of two weeks, as stated supra. Contempt Petition is dismissed. No Costs.

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

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//Certified to be true copy//

Dated at Madras this the day of 2019.

COURT OFFICER (O.S.)

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