

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

CORAM :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No.24314 of 2017

Ramesh

...Petitioner

Vs

1. Union of India, rep. by its
Secretary to Government (Revenue),
Government of Puducherry,
Puducherry.

2. The Deputy Collector (Revenue)
(North)-cum-Land Acquisition
Officer, Puducherry.

3. The Principal District Court,
Pondicherry.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari and Mandamus to call for the records relating to impugned order bearing No.7807/DC(R)N/LA/2016/248 dated 23.1.2017 made by 2nd respondent, quash the same as highly illegal and violative of Articles 300A & 21 and violative of principle of natural justice and consequently direct the 2nd respondent to refer the petitioner's representation dated 07.11.2016 under section 18 of Land Acquisition Act to Civil Court for enhancement of compensation, jointly tried along with L.A.O.P. No.239 of 2009 pending on the file of 3rd respondent.

For Petitioner : Mr. E. Anbarasan

For Respondents 1 & 2 : Mrs. Mala, SGP (P)

ORDER

I have heard Mr. E. Anbarasan, learned counsel for the petitioner and Mrs. Mala, learned Special Government Pleader (Pondy) appearing for respondents 1 and 2.

2. This writ petition has been filed seeking to quash the order passed by the second respondent dated 23.12.2017, by which, the petitioner's request vide letter dated 07.11.2016 to make a reference under Section 18 of the Land Acquisition Act, 1894 (for short, the Act) for enhancement of compensation was rejected on the ground that it had been submitted beyond the

period of limitation prescribed under Section 12(2) of the Act or within six months from the date of the Collector's award.

3. The following are the undisputed facts :

The lands in question were notified for acquisition for a public purpose i.e. for construction of a coast guard station. The Notification under Section 4(1) of the Act was issued on 30.10.2007, the Declaration was published on 29.2.2008 and an award was passed on 30.9.2008. The possession of the property was taken over on 27.2.2009 and handed over to the Requisitioning Body on 02.3.2009. The lands were fully utilized for the project, for which, they were acquired. On 17.4.2009, the compensation amount was deposited into the civil court because the notice for award enquiry sent to the land owner was received by his wife, but none appeared and therefore, the award came to be passed on 30.9.2008. Since the entitlement for withdrawal of the compensation had to be established, the Authorities deposited the compensation amount before the civil court.

4. The case of the petitioner is that he purchased the property from one Ms.Angallamal by a registered sale deed dated 09.3.1998 and that he is entitled to compensation and also entitled to seek for a reference under Section 18 of the Act for enhancement of compensation. The claim of the petitioner is on the ground that in a reference made under Section 30 of the Act to the Principal District Court, Puducherry in LAOP.No.239 of 2009, the petitioner impleaded himself as the sixth respondent and contended that he is entitled to receive a part of the compensation, which had been awarded because he purchased a portion of the land, which was acquired for a public purpose.

5. This claim made by the petitioner was adjudicated by the Principal District Court and taking into consideration the registered sale deed executed in favour of the petitioner, which was marked as Ex.R5, the Principal District Court held that the petitioner is entitled to a compensation amount of Rs.6,493/-.

6. It is the further case of the petitioner that soon after the copy of the order passed by the Principal District Court was received i.e. on 23.7.2019, the petitioner made a representation on 30.7.2019 claiming enhanced compensation and this has not been considered and even prior to that, the impugned order has been passed on the ground that the application filed by the petitioner is beyond the time limit prescribed under Section 18 of the Act.

7. The question is as to whether the petitioner can take advantage of the order passed by the Principal District Court in LAOP.No.239 of 2009 in a reference under Section 30 of the Act.

8. Considering the facts and circumstances of the case, this Court is of the firm view that the petitioner is not entitled to take advantage of the said order dated 06.6.2019 for the following reasons :

The original land owner is one Mr.Arumugam, in whose name, the revenue records stood. However, as early as 1995, the said Mr.Arumugam executed a general power of attorney in favour of one Ms.Sorna Gandhi empowering her to deal with the property including to alienate the same. The said power agent sold an extent of 12 ares to the said Ms.Angalammal by a registered sale deed dated 18.11.1997. The petitioner purchased a part of the property from the said Ms.Angalammal by a sale deed dated 09.3.1998. Apart from that, there are four other purchasers from the said Ms.Angalammal. The reference, which was made under Section 30 of the Act to the Principal District Court, Puducherry and which was taken on file as LAOP.No.239 of 2009, was to decide as to how the compensation had to be apportioned among the legal heirs of the land owners because as on the date of the award, the land owner - the said Mr.Arumugam was no more. He had left behind four legal heirs namely his wife Thilagavathi and his children Hema, Harish and Usharani.

9. Therefore, after the compensation amount was deposited into the civil court on 17.4.2009, a reference was made by the Union of India and the Land Acquisition Officer to the District Court to decide the apportionment of the compensation and the original reference was only to decide as to how the amount should be apportioned among the legal heirs of the said Mr.Arumugam. In the said petition, the petitioner and others impleaded themselves contending that they purchased a meager extent of land from the purchaser of the original land owner. This claim was adjudicated by the Principal District Court and it was held that the petitioners and others are purchasers of various extents and therefore, the compensation was accordingly apportioned and a sum of Rs.6,493/- was held to be the compensation amount, for which, the petitioner would be entitled to.

10. Thus, the scope of the petition under Section 30 of the Act was entirely different and the petitioner herein cannot take advantage of the said order and now seek to reopen a stale claim, which had become hopelessly time barred and there is no power under the Act to extend the period stipulated under Section 12 of the Act.

11. The learned counsel for the petitioner has referred to the decision of the Hon'ble Supreme Court in the case of Bhagwan Das Vs. State of UP [Civil Appeal Nos.2069-2070 of 2010 dated 26.2.2010].

12. After going through the facts of the said case, it is evidently clear that the petitioners in that case had discharged the onus cast upon him that they did not have knowledge of the contents of the award during a period of six months prior to filing of the application for reference. The Hon'ble Supreme Court, having found that the entire onus had been discharged by the petitioners therein, held that they cannot be expected to prove the negative. Ultimately, the Hon'ble Supreme Court

proceeded to pass an order directing reference.

13. In the instant case, the petitioner has no locus standi to seek for a reference. Admittedly, he is not a direct purchaser of the original land owner, since he had purchased the land from the said Ms.Angalammal. Further, neither the name of the said Ms.Angalammal nor the name of the petitioner stood mutated in the revenue records. Therefore, the Land Acquisition Officer cannot be blamed for not having sent the notice to the petitioner or his vendor.

14. In the light of the above factual position, the petitioner cannot seek for varying the conditions laid down in Section 18 of the Act and more particularly with regard to limitation. If the application is not made within time, then the Collector will have no power to make an order of reference in the light of the statutory embargo. Thus, a Writ of Mandamus cannot be issued contrary to the Statute. That apart, though the petitioner is stated to have purchased the property on 09.3.1998, his name was not mutated in the revenue records nor any steps were taken to do so. In such a situation, the petitioner cannot blame the Land Acquisition Officer for non service of notice on the petitioner.

15. As observed earlier, the scope of the order dated 06.6.2019 passed in LAOP.No.239 of 2009 is only to decide as to how the compensation amount ordered to be paid to the said Mr.Arumugam has to be apportioned initially to his legal heirs because by that time the award was passed, the said Mr.Arumugam was no more. In that land acquisition original petition, the petitioner got impleaded himself and stated that a portion of the compensation had to be paid to him. Hence, the order in LAOP.No.239 of 2009 dated 06.6.2019 cannot be used as a tool to extend the time limit for the petitioner to make out an application. Above all, the petitioner has no locus standi to seek a reference for claiming compensation.

16. The learned counsel for the petitioner has placed reliance on the order passed by a learned Single Judge of this Court dated 12.2.2018 in W.P.No.6416 of 2015 [A.Munisamy Vs. Union of India, rep.by the Secretary to Government, Department of Revenue & Disaster Management, Government of Union Territory of Puducherry, Puducherry] wherein a prayer was made to direct respondents 1 and 2 to make a reference under Section 18 of the Act.

17. From the facts noted by the learned Single Judge of this Court in the said order dated 12.2.2018, I find that there was no dispute with regard to the ownership of the property nor there was anything to indicate that the factual situation, which prevailed in the instant case, was there in the other case as well. In any event, the Court has not taken into consideration the specific embargo placed under Section 18 of the Act. That apart, this Court has considered the effect of the order passed in LAOP.No.239 of 2009. However, in the said writ petition,

though there was a reference to LAOP.No. 21 of 2013 on the file of the same Court namely the Principal District Court, Puducherry, the Court has not considered as to the effect of such order vis-a-vis the claim for reference under Section 18 of the Act. Therefore, the decision contained in the order dated 12.2.2018 will not, in any manner, advance the case of the petitioner in this writ petition.

18. For all the above reasons, the writ petition fails and is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government (Revenue), Government of Puducherry,Puducherry.
- 2.The Deputy Collector (Revenue) (North)-cum-Land Acquisition Officer, Puducherry.
- 3.The Principal District Court, Pondicherry.

+1 cc to Government Pleader Sr.No. 104759

+1cc to Mr.E.Anbarasan , Advocate SR.No. 104106 (13/02/2020)

W.P.No.24314 of 2017

A.SK(03/02/2020)

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