

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.2233 of 2018
and
C.M.P.No.17746 of 2018

A.Kalaparipoorna Appellant

-vs-

- 1.The State of Tamil Nadu,
Rep.by the Secretary to Government,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Special Tahsildar (Land Acquisition)
Unit - 4, Outer Ring Road Project,
Chennai Metropolitan Development Authority,
Koyambedu, Chennai - 600 092.
- 3.The Chennai Metropolitan Development Authority,
Rep by its Member Secretary,
Egmore, Chennai - 600 008.
- 4.The Tamil Nadu Road Development Company Ltd.,
Rep by its Managing Director,
No.171, 2nd Floor, Tamil Nadu Maritime Board Building,
Pasumpon Muthuramalingam Road,
Raja Annamalaipuram, Chennai - 28.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order made in W.P.No.5133 of 2016 dated 31.07.2018 and prays that the same be set aside.

Prayer in W.P.No.5133 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Ceterari calling for the records relating to the order of the 2nd Respondent issued in

RC.No.6/2011/A1/ ORR/Unit IV in Award No.4 of 2013 dated 12.12.2013 and quash the same.

For Appellant : Mr.N.R.Chandran, Senior Counsel for
Mr.B.S.Jhothiraman

For Respondents: Mr.V.Anandhamoorthy, Additional
Government Pleader for R1 & R2.
Mr.S.Thiruvengadam for R3.
Mr.Sivarthan for R4.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appeal has been preferred by the appellant/petitioner aggrieved over the award dated 12.12.2013 passed for acquiring lands viz., 0.15.0 hectare in Survey No.125/3B, 0.10.0 hectare in Survey No.126/1A, 0.31.5 hectare in Survey No.127/1B, 0.04.0 hectare in Survey No.127/5 and 0.10.5 hectare in Survey No.127/6B at Minjur Village standing in the name of one Mr.Jayarama Reddy and Nagarathinammal. The said lands were acquired for formation of Outer Ring Road, Phase - II.

2.According to the appellant, she came to know about the proceedings only on 02.09.2013 and she wrote to the 2nd respondent/Special Tahsildar (Land Acquisition) enclosing the death certificates of her parents as well as Legal Heir Certificate. However, no reply was received.

3.Since, no information was received, she was compelled to apply under Right to Information Act regarding the acquisition proceedings. The reply was given on 29.12.2015 in which, it was informed that a sum of Rs.1,71,97,351/- was deposited before the Sub Court, Ponneri on 02.06.2015 in the name of Mr.Jayarama Reddy S/o Mr.Senjurama Reddy.

4.After getting the said information, the appellant filed a Writ petition stating that neither the notice under Section 4 (1) of the Land Acquisition Act, 1894 nor a notice under Section 5 A was issued. It is stated that the appellant's father Mr.Jayarama Reddy expired on 17.01.2002 and her mother Nagarathinammal expired on 13.07.2012, 5 days prior to the issuance of notification under Section 4 (1) of the Land Acquisition Act, 1894 dated 18.07.2012. Therefore, it was contended that the award has to be set aside for non issuance of notice for enquiry under Section 5 A of the Land Acquisition Act, 1894 and award enquiry.

5. However, the learned Single Judge, declined to interfere with the award and only directed the 2nd respondent to make a reference to the Civil Court under Section 18 of the Land Acquisition Act, 1894 based on the petitioner's representation dated 18.08.2017 and to decide the enhancement based on the old Act. The said order is being challenged before this Court stating that the reference could have been made under the new Act and she is entitled for enhancement under the new Act.

6. Heard Mr.N.R.Chandran, learned Senior Counsel for the petitioner and Mr.V.Anandha Moorthy, learned Additional Government Pleader for R1 and R2, Mr.S.Thiruvengadam, learned Counsel for R3 and Mr.Sivarthanan, learned Counsel for R4.

7. It is evident from the records that notification under Section 4 (1) of the Land Acquisition Act, 1894 was issued as early as on 04.07.2012 and a publication was made in two dailies on 13.07.2012. Gazette publication was made on 18.07.2012 and a local publication was made on 30.07.2012. The enquiry under Section 5 A of the Land Acquisition Act, 1894 was conducted and the petitioner's husband Mr.Yugandhar appeared on 23.08.2012 and thereafter, a declaration was issued on 15.02.2013 and a Gazette publication was made on 04.07.2013 and the declaration was published in two dailies on 07.07.2013. The petitioner appeared for the award enquiry on 26.11.2013 and the award was passed on 12.12.2013.

8. After issuance of notification under Section 12 (2) dated 23.12.2013, the compensation amount was deposited on 02.06.2015 in L.A.O.P.No.168 of 2015 on the file of Sub Court, Ponneri, after the new Act came into force. It is very seriously contended by Mr.N.R.Chandran, learned Senior Counsel for the appellant that notice for award enquiry and notice of award were not given and in that event, the award is vitiated. He relied upon the Judgments of the Hon'ble Supreme Court in "Premji Nathu Vs. State of Gujarat and another" reported in "(2012) 5 Supreme Court Cases 250" and "Vijay Mahadeorao Kubade Vs. State of Maharashtra and another" reported in "AIR 2018 Supreme Court 3536". Relying upon those Judgments, he would submit that in the absence of service of award copy to the appellant, entire proceedings are vitiated.

9. However, Mr.V.Anandha Moorthy, learned Additional Government Pleader would produce the records to show that the appellant participated in the award enquiry held on 26.11.2013 and the award notice was also given to the appellant on 23.12.2013.

10.A perusal of the records would show that on 26.11.2013, the award enquiry was conducted and Mrs.A.Kalapariipoorna participated and put her signature in the records. Her mobile number 9840166536 is also noted in the records. Therefore, the contention that the appellant was not given notice for the award enquiry is liable to be rejected.

11.Similarly, relying upon the above said Judgements, the appellant argued that no notice was given under Section 12 (2) and the copy of the award was not given or served upon the appellant. However, it is seen that the appellant's husband viz., Mr.Yugandhar had given a letter dated 17.10.2014 and sought for compensation under the new Act. The letter has been produced before this Court. In the said letter, the said Mr.Yugandhar referred the letters written by the respondents dated 17.08.2012 and 11.11.2013 under Section 12 (2) of the Land Acquisition Act, 1894.

12.From the above, it is clear that notice has been served upon the appellant and that is the reason as to why it has been referred by the appellant's husband in the letter dated 17.10.2014. Though the said letter dated 17.10.2014 was produced, the records regarding the issuance of 12 (2) notice are missing in the Government records. It is not a new phenomenon that a syndicate is operating in the Government Departments to take away the material documents especially in Urban land Ceiling Department as well as in the Land Acquisition proceedings and the materials are either being destroyed or taken stealthily only to help the land grabbers or erstwhile owners to get back the possession of the property. It is very unfortunate that the Government servants who are paid from the people's tax money are indulging in corrupt practices which need to be deprecated. When the appellant has been served the notice of the award under Section 12 (2) of the Land Acquisition Act, 1894 as evident from the letter dated 17.10.2014, there is no occasion for missing of notice sent to the appellant. By sinister design, documents should have been taken away or destroyed only to see that the statutory compliances are not complied with while the acquisition proceedings were made.

13.Once the award notice is issued, it is deemed that award has also been served upon them. Even otherwise, the Hon'ble Supreme Court in the Judgment of "State of Telangana and others Vs.D.Mahesh Kumar and another" reported in "(2018) 15 Supreme Court Cases 703" held that the effective date of the award should be taken as the date on which it has been made or the date on which it was communicated.

14.Further, in the above cited Judgment of the Hon'ble Supreme Court in "Premji Nathu Vs. State of Gujarat and another" reported in "(2012) 5 Supreme Court Cases 250" , it has been held that there is no need for supplying copy of the award along with notice under Section 12 (2) of the Land Acquisition Act, 1894.

15.Moreover, in this case, if really the award has not been served upon them, it would have been made as a point in the letter written by the petitioner's husband dated 17.10.2014. In the said letter, he has referred to 12 (2) notice and has only sought for compensation under the new Act. Even after withdrawal of the amount by letter dated 18.08.2017, the appellant has only sought for enhancement of compensation and she has not made any complaint with regard to non service of award. For the first time the appellant is introducing the point about non service of award and therefore, she is precluded from raising that point. For the above reasons, there is no vitiation of the award proceedings.

16. It is seen that all the statutory requirements have been complied with. The learned Judge rightly referred the matter directing the 2nd respondent to make a reference to the Court concerned under Section 18 of the Land Acquisition Act, 1894. On such reference, the Court was directed to issue notice to Dr.V.Deepthi W/o. Dr.P.Sarath Reddy, Rama Reddy palayam Village and another by Dr.Sailaja, another sister of the appellant. The interest of the appellant has been safeguarded by the aforesaid direction to make the remarks under the old Act.

17.Therefore, there is no infirmity in the order passed by the learned Judge. The appeal fails and the same is dismissed. The concerned Court shall dispose of the case at the earliest. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
- 2.The Special Tahsildar (Land Acquisition)
Unit - 4, Outer Ring Road Project,
Chennai Metropolitan Development Authority,
Koyambedu, Chennai - 600 092.
- 3.The Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai - 600 008.

+2cc to M/s.B.S.Jhothiraman, Advocate Sr.61523
+1cc to Mr.S.Thiruvengadam, Advocate Sr.60645
+1cc to the Government Pleader Sr.61264

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