

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 05.02.2019
CORAM
THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.30434 of 2018

1.Dhamodharapillai
2.Sagunthala
3.Govindan
4.Chinnasamy
5.Dhanalakshmi
6.Govindaraja Pillai
7.Pushpa
8.Kanna Pillai
9.Pachai
10.Nataraj
11.Kishtan
12.Kulasekaran
All represented by their Power Agent
Y.Balakrishna Reddy.

... Petitioners

Vs

1.The District Collector,
Kanchipuram District,
Kanchipuram.
2.The Special Tahsildhar,
(Land Acquisition) SIPCOT Unit,
Irungattukottai Scheme,
Sriperumbudur.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records pertaining the impugned order passed by the 2nd respondent herein in Se.Mu.Na.Ka.13/2015, dated 08.01.2018, and quash the same and consequently direct the respondents 1 and 2 herein to pay compensation to the petitioners in par with the other land owners as per the Judgment of this Hon'ble Court dated 30.11.2009.

For Petitioners : Mr.E.Karthik Raja

For Respondents: Mr.C.Thirumaran,
Special Government Pleader

O R D E R

The Writ Petition has been filed to quash the impugned order passed by the 2nd respondent in Se.Mu.Na.Ka.13/2015, dated 08.01.2018, and to direct the respondents to pay compensation to the petitioners in par with the other land owners as per the judgment of this Hon'ble Court dated 30.11.2009.

2. The case of the petitioners is that their lands were acquired and an Award was passed in Award No.5 of 1998 dated 15.09.1998 and paid the compensation of Rs.250/- per cent. The other land owners/ claimants, whose land were also acquired, were referred under Section 18 of the Land Acquisition Act, 1984 (for brevity "the Act") and by an Award dated 09.09.2005, the Tribunal has enhanced the compensation at Rs.3,150/- per cent along with all other statutory benefits under Section 18 of the Act. Challenging the aforesaid Award, the appeals were preferred before this Court viz., A.S.Nos.255 to 342 etc. batch of cases and a Division Bench of this Court fixed the value of the land at Rs.2,100/- per cent, by judgment and decree dated 30.11.2009. Since the petitioners also entitled to get compensation at the rate of Rs.2,100/-, they submitted a joint representation in the form of lawyer's notice dated 25.08.2011 to the 2nd respondent. Pursuant to the direction passed by this Court in W.P.No.13928 of 2015 directing the 2nd respondent to consider the petitioners representation dated 25.08.2011, the respondent rejected the petitioners request for enhancement of compensation passing the impugned order dated 08.01.2018. Hence, the petitioners have come with this Writ Petition challenging the impugned order passed by the respondent.

3.The learned counsel for the petitioners would submit that even though the petitioners are entitled for the enhancement of compensation under Section 28-A of the Act on the ground that the said application was filed within three months time from the date of knowledge. He further contended that the said provision is discretionary and not mandatory and therefore, the Authority shall determine the compensation under Section 28-A of the Act.

4.On the contrary, the learned Special Government Pleader would submit that the application submitted by the petitioners is not maintainable. Firstly, the Award passed on 09.09.2005 by the Tribunal was challenged before this Court and the said Appeal Suit was disposed of on 30.11.2009. The petitioners have approached the 1st respondent seeking for determination of compensation under Section 28-A of the Act within the three months from the date of the Award passed by the reference Court. Secondly, the petitioners have submitted Application under

Section 28-A of the Act, after the disposal of the Appeal Suit on 30.11.2009 and there is also delay on the part of the petitioners. Even the present application is not maintainable on the ground that the petitioners have approached the Authority, after a delay of more than two years.

5. Heard the rival submissions of the parties concerned and perused the records.

6. The petitioners have submitted application on 25.08.2011 and on 25.06.2015 before the 1st respondent seeking enhancement of compensation under Section 28-A of the Act. The said applications were rejected by the 1st respondent, for the reason that the petitioners submitted their applications beyond the period of limitation.

7. The learned counsel for the petitioner would submit that the said application is maintainable by stating that the petitioners having knowledge about the disposal of the Appeal Suit on 30.11.2009, made an Application and therefore, there is no delay on the part of the petitioners. This Court has to interpret Section 28-A of the Act, which is discretionary and not mandatory under Section 28-A of the Act for enhancement of compensation. For entertaining the application under Section 28-A of the Act, it is well settled by catena of decisions of the Supreme court, the written applications to be submitted within three months from the date of award passed by the Reference Court. The latest decision of the Supreme Court in Ramsingbhai (Ramsangbhai) Jerambhai Vs The State of Gujarat and Another [2018(7) SCALE], it is held as follows:

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

"28A. Re-determination 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 Section 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 [(1996) 6 SCC 746]. In its recent judgment in Bharatsing and others v. The State of Maharashtra and others [(2017) SCC Online SC 1453], 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. "

8.Following the dictum laid down by the Hon'ble Supreme Court, the application submitted by the petitioners invoking Section 28-A of the Act is not maintainable and the same is liable to be rejected on the ground of laches.

In the result, this writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Kanchipuram District,
Kanchipuram.

2.The Special Tahsildhar,
(Land Acquisition) SIPCOT Unit,
Irungattukottai Scheme,
Sriperumbudur.

+lcc to Mr.G.Karthikeyan, Advocate sr.no.9939

+lcc to Government Pleader sr.no.10243

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nr 26/03/2019



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