

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.28524 of 2018

Mrs.Zareen Taj Choudhry ... Petitioner
Vs.

- 1.The Secretary,
Industries (SIPCOT-LA) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
- 2.The Managing Director,
SIPCOT, Egmore,
Chennai - 600 008.
- 3.The District Collector,
Kancheepuram District,
Kancheepuram.
- 4.The Special Tahsildar (L.A),
SIPCOT, Unit-I,
Sriperumbudhur Expansion Scheme-II,
Sriperumbudhur,
Kancheepuram District. ... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, directing the respondents to refer the matter to the Civil Court for determination of adequate compensation for the petitioner's land acquired by the Government under Section 8 of the Tamil Nadu Acquisition of the Land for Industrial Purposes Act 1997 (Act No.10 of 1999).

For Petitioner : Ms.Greetha Senthilkumar

For Respondents : Mr.Sudharshana Sundar
Standing Counsel for R1 & R2

Mr.M.Elumalai
Government Advocate for R3 & R4

O R D E R

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Mandamus, directing the respondents to refer the matter to the Civil Court for determination of adequate compensation for the petitioner's land acquired by the Government under Section 8 of the Tamil Nadu Acquisition of the Land for Industrial Purposes Act 1997 (Act No.10 of 1999) (In short "the Act").

2. The case of the petitioner is that his land in Survey Nos.2/2B, 1/3, 2/2A, 2/3, 32/18, 32/17B, 32/11, 16/6, situated at Vadakkal "A", Palnallur Village, Sriperumbudur, Kancheepuram District, was acquired by the respondents for the purpose of establishing "SIPCOT, Sriperumbudur Expansion Scheme-II", by invoking the provisions of the Act and possession was also taken by passing the Gazette Notification Nos.454 & 459, dated 07.12.2011. The further case of the petitioner is that the third respondent issued a notice under sub-Section (2) of Section 4 of the Act directing the petitioner to surrender the possession. Thereafter, the petitioner appeared for enquiry and entered into an agreement under Section 7(2) of the Act and during the enquiry, the petitioner had signed the agreement "under protest" and received the compensation amount. According to the petitioner, he subsequently made representations to the respondents, for referring the matter to Civil Court for enhancement of compensation on 05.04.2016, 20.07.2016 and on 17.10.2016 and till date, no order has been passed.

3. The learned counsel for the petitioner submitted that so far the respondents have not referred the matter to the Civil Court for determination of adequate compensation to the petitioner. Therefore, in this petition, the petitioner seeks for direction to the respondents to refer the matter to the Civil Court for determination of adequate compensation for his acquired land by the Government.

4. The learned Government Advocate appearing for the respondents would submit that when the petitioner had entered into the agreement under Section 7(2) of the Act, now he cannot raise an objection seeking to refer the matter before the Civil Court for enhancement of compensation. According to the learned Government Advocate, as per the Award dated 28.09.2015, the petitioner received the entire compensation amount and therefore, his prayer for direction to the respondents to refer the matter before the Civil Court for determination of adequate compensation is not maintainable and prays for dismissal of the Writ Petition.

5. Heard both sides and perused the materials placed on record.

6. From a bare perusal of original agreement entered into between the parties on 18.09.2015 in Form 'F' under Rule 10 of the Act, it is crystal clear that the petitioner has signed the agreement by writing "with protest I surrender land and receive amount" and thus, "with protest", the petitioner surrendered and received the compensation amount. Thereafter, i.e., on 28.09.2015, the respondents 3 & 4 have passed the Award under Section 7(3) of the Act. The objection of the petitioner clearly indicates that he is aggrieved by the compensation amount fixed by the Department as mentioned in the agreement Form 'F' under Rule 10 of the Act. Therefore, once the petitioner with protest surrendered and received the compensation amount, the matter has to be referred before the Civil Court for determination of adequate compensation.

7.1. The Division Bench of this Court in the case of The District Collector, Kanchipuram and Ors. Vs. EVP Estates and Properties Development Ltd., reported in MANU/TN/3835/2018 [2018 2 Writ LR 150] held as under:-

" 14. The respondent must be under the impression that in case there is no agreement under 7 (2) of the Act before passing the award, claim for reference under Section 18 is maintainable even after receiving the compensation without protest. There is no statutory basis for the claim made by the respondent.

15. The Land Acquisition Officer in the respective awards determined the compensation payable to the respondent. The respondent could have accepted the award amount with protest. It was essentially a choice. The respondent agreed to receive the compensation and in token of acceptance of the awards, executed individual agreements. The respondent is bound by the terms of agreement. It cannot unilaterally be cancelled by the respondent.

' The binding precedent :-

16. The maintainability of the claim for reference to civil court against consent award was considered by the Supreme Court in State of Karnataka and Anr. vs. Sangappa Dyavappa Biradar & Ors. (2005(3) Scale 424). While setting aside the judgment of the Division Bench of Karnataka High Court, directing reference in a matter covered by the consent

agreement, the Supreme Court indicated the legal position in the following words :-

12. A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the civil court. An agreement between the parties as regards the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding. It is one thing to say that agreements are void or voidable in terms of the provisions of the Indian Contract Act having been obtained by fraud, collusion, etc., or are against public policy but it is another thing to say that without questioning the validity thereof, the respondents could have maintained their writ petitions. We have noticed hereinbefore that even in the writ petitions, the prayers made by the respondents were for quashing the order dated 23-8-1999 passed by the Special Land Acquisition Officer and for issuance of a direction upon him to refer the matter to the civil court. The High Court while exercising its jurisdiction under Article 226 of the Constitution, thus, could not have substituted the award passed by the Land Acquisition Officer by reason of the impugned judgment. Furthermore, the question as regards the validity of the agreements had not been raised before the High Court. As indicated hereinbefore, the Division Bench of the High Court had also rejected the contention raised on behalf of the respondents herein to the effect that the agreements did not conform to the requirements of Article 299 of the Constitution or had not been drawn up in the prescribed pro forma.

13. An award under the Act is passed either on consent of the parties or on adjudication of rival claims. For the purpose of passing a consent award, it was not necessary to comply

with the provisions of Article 299 of the Constitution. An agreement between the parties need not furthermore be strictly in terms of a prescribed format.

14. The respondents having accepted the award without any demur were estopped and precluded from maintaining an application for reference in terms of Section 18 of the Act. It is also trite that by reason of such agreement, the right to receive amount by way of solatium or interest, etc. can be waived.'

17. The condition precedent for making a reference under Section 18 of the Land Acquisition Act is missing in the subject case. The expression of protest, either express or by implication, is a pre-condition for reference. The expression of consent to the award would preclude the landowner from making a request later for reference. This aspect was not considered by the learned Single Judge, while directing the Land Acquisition Officer to make a reference under Section 18(1) of the Act. The impugned order is therefore factually and legal unsustainable.

(emphasis supplied)

18. For the reasons aforesaid, we set aside the order dated 4 January 2017. The Writ Petition in W.P.No.21283 of 2015 is dismissed."

7.2 Further, in "Ajit Singh v. State of Punjab" (1) 1994 LACC 365 S.C., the Hon'ble Supreme Court held that inasmuch as the appellants have filed an application for reference under Section 18 of the Act that will manifest their intention and therefore, the protest against the award of the Collector is implied notwithstanding the acceptance of compensation.

8. In the case on hand, it is evident from the perusal of the agreement signed by the petitioner that "with protest", the petitioner has surrendered the land and received the compensation amount. Therefore, the petitioner has every right to seek a reference under Section 8 of the Act. Therefore, the contention of the respondents that the petitioner is not entitled for referring the matter before the Civil Court for determination of adequate compensation is not maintainable and

there is no justification to make such a stand taken by the respondents, when the petitioner had signed the agreement "with protest". Further, when the petitioner has not accepted for the compensation amount at the time of surrendering the possession, he is entitled for compensation based on the market value of the property. Therefore, the petitioner can seek adequate enhancement of compensation before the Civil Court based on relevant documents. Hence, by accepting the contention of the learned counsel for the petitioner and in the interest of justice, the respondents are directed to refer the matter under Section 8(1) of the Act to the concerned Civil Court for determination of adequate compensation, within a period of eight weeks from the date of receipt of a copy of this order.

9. With the above direction, the Writ Petition is disposed of. There is no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary,
Industries (SIPCOT-LA) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Managing Director,
SIPCOT, Egmore,
Chennai - 600 008.

3.The District Collector,
Kancheepuram District,
Kancheepuram.

4.The Special Tahsildar (L.A),
SIPCOT, Unit-I,
Sriperumbudhur Expansion Scheme-II,
Sriperumbudhur,
Kancheepuram District.

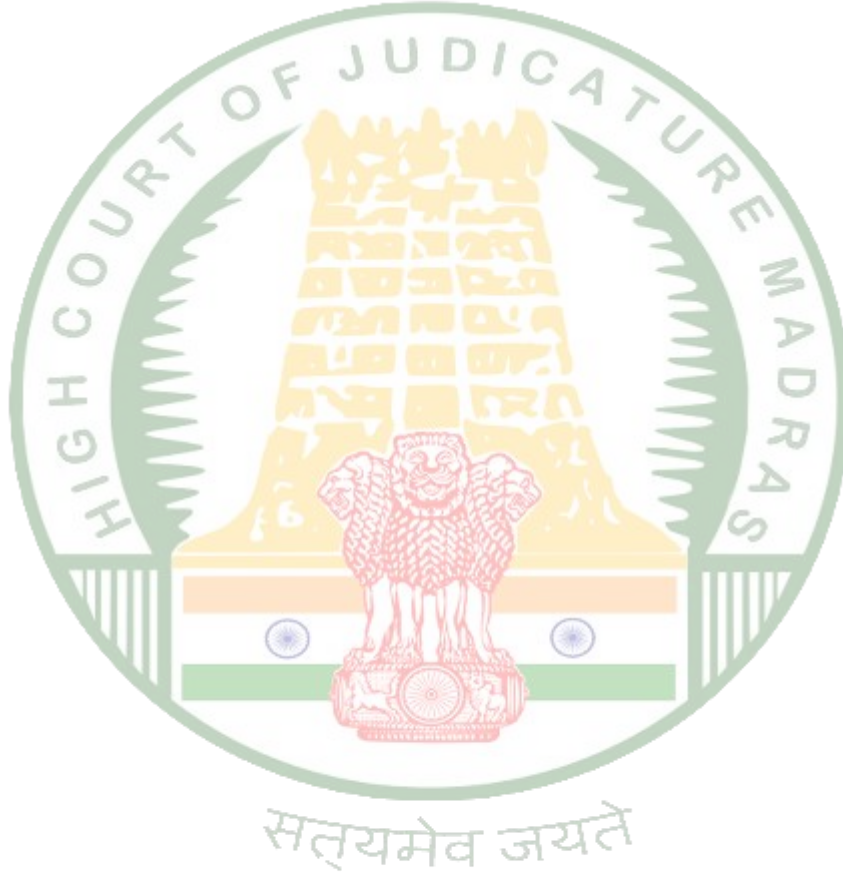
+1cc to Ms.Greetha Senthilkumar, Advocate SR.No.31536

+1cc to Mr.Sudharshana Sundar, Advocate SR.No.31548

+1cc to Government Pleader SR.No.32013

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RJ(CO)
GMY(06/06/2019)



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