



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.A(MD)No.68 of 2019
and
C.M.P. (MD) .No.396 of 2019
in
WP(MD)No.3085 of 2018

1. The Special Tahsildar,
(Land Acquisition),
National Highways 226,
Sivagangai.
2. The Special Tahsildar (ADW),
Sivagangai. ... Appellants/Respondents

Vs.

K.Kumar ... Respondent/Petitioner

Prayer:- Writ Appeal is filed under Clause 15 of Letters Patent, against the order made in W.P.(MD).No.3085 of 2008, dated 25.10.2018.

Prayer in WP(MD). 3085/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records pertaining to the 1st respondent in his proceedings No. Na.Ka.A1/3/2013 dated 26.10.2017 and quash the same and consequently directing the respondents to release the amount held by them (Rs.8,90,494) with 18% of interest from the date of award passed by the competent authority dated 29.07.2016.

For Appellants

: Mr.A.Thiyagarajan
Government Advocate

For Respondent

: Mr.RM.Arun Swaminathan

J U D G M E N T

(Judgment of the Court was delivered by **S.S.SUNDAR, J.**)

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This writ appeal is directed against the order passed by the



learned single Judge in W.P.(MD).No.3085 of 2008, dated 25.10.2018. The writ petition was filed by the respondent to quash the proceedings of the first appellant, dated 26.10.2017 and to direct the appellants to release a sum of Rs.8,90,494/- to the respondent with interest at 18% from the date of award.

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2. The respondent's father purchased a land measuring an extent of 3 cents (Plot No.56 in Survey No.192/1 in K.K.Pallam Village, Manamadurai Taluk) under a sale deed, dated 19.12.2003 from one Gokila, W/o. Devi Murugan. Thereafter, the property was settled in favour of the respondent on 09.03.2012, vide Document No.1111/2012. Originally the property was allotted in favour of the said Gokila, W/o. Devi Murugan, by an order dated 03.09.1991, free of cost. Later, the property was acquired by the National Highways Authority under the National Highways Act, in the year 2015. Though an award was passed on 29.07.2016 in respect of the respondent's property by fixing the compensation at Rs.38,44,294/-, no notice was given to the respondent before the award. By notice dated 09.12.2014 issued by the Special Tahsildar, Land Acquisition, Manamadurai, the respondent was asked to appear before the Special Tahsildar, on 06.01.2015. This indicates that the appellants had acknowledged the ownership of respondent. Though a sum of Rs.38,44,294/- was awarded in favour of the respondent, partial amount of Rs.29,53,800/- alone was credited to the respondent's savings account on 14.09.2016. The balance amount payable as per the award had not been credited for a very long time, despite several representations were made to the appellants. The respondent finally sent a representation to the appellants, on 23.10.2017. However, the request of the respondent was turned down by the impugned order of the first appellant, dated 26.10.2017. The claim for the balance amount of compensation was rejected by the first appellant / the Special Tahsildar, Land Acquisition, National Highways, Sivagangai only on the ground that the land was assigned in favour of one Gokila, free of cost and that the land has been purchased by the respondent's father without permission or no objection from the Adi Dravidar Welfare Department. The writ petition was allowed by the learned single Judge of this Court, accepting the case of the respondent that he is entitled to receive the entire compensation. Since the respondent's father had purchased the land for a valid sale consideration and that the status of the assignment remains the same, the learned Single Judge set aside the impugned order and directed the first respondent to pay the balance compensation amount payable to the respondent with interest at the rate of 7.5% from the date of award till the date of payment. Aggrieved by the same, the above writ appeal has been preferred by the appellants.

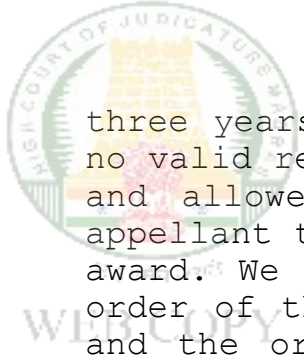
3. Sum and substance the contention of the appellants was relying upon the assignment in favour of one Gokila, on 03.09.1991, stating that the assignment was free of cost and that the same was subject to condition_restricting alienation. The learned Government Advocate submitted that the sale obtained by the respondent without permission from the Adi Dravidar Welfare Department is void and



therefore, the compensation for the land is not payable to the respondent. It is further stated that the land has been classified as Government Natham (Adi Dravidar Colony). Since the land has been classified as Government Punja and that though the assignment was made in favour of Gokila, the revenue records were not mutated in the name of the assignee nor in the name of the father of the respondent, it is submitted that the respondent is not entitled to any compensation for the land. Before this Court it was suggested that the land which was classified as Natham belongs to the Government and that the respondent is not entitled to any compensation for the land.

4. The submissions of the learned Government Advocate has no substance. The land classified as Natham is not a property for which the Government can claim any title. Merely because the assignment was originally made in favour of one Gokila, free of cost, subject to certain conditions restricting alienation, the right of the respondent on the basis of the sale deed obtained by the original assignee cannot be questioned by the Land Acquisition Officer, who is exercising his power under a Special Enactment viz., National Highways Act. No proceedings has been initiated for resumption of land from the respondent by the competent authority of the State. It is to be noted that there is no absolute prohibition for alienation even as per the terms and conditions of assignment. It is seen that the alienation had taken place in this case ten years after assignment. It is also stated that the alienation was in favour of the person belonging to Adi Dravidar Community. It is seen that the appellants had already paid nearly 77% of the compensation. The total compensation payable for the building owned by the respondent is only Rs.15,00,000/-. The acquisition was also in respect of several plots in Survey No.192/1. The value of all the buildings in S.No.192/1 was determined by the Land Acquisition Officer at Rs.29,70,200/. In such circumstances, the contention that part payment of compensation representing the value of the building alone is paid to respondent is incorrect. Having paid substantial amount of compensation both for the land and building, it is not open to the appellants to contend that the respondent has no title to the property.

5. The first appellant, who is the Land Acquisition Officer under the National Highways Act and authorised to exercise the power under the Central Legislation namely National Highways Act, after acquiring the land from respondent cannot deny the title of respondent by stating that the respondent has purchased the property contrary to the terms and conditions of assignment. The first appellant is not competent to decide as to the right of the land owners from whom the lands were acquired. There is no rival claim disputing the respondent's right to claim compensation for the land acquired from him. It is not in dispute that the entire acquisition proceeding was over and possession was also taken pursuant to the award. It is not in dispute that the possession had been taken by the appellant in 2016 from the respondent. Even after a lapse of



three years, the appellants have not disbursed the compensation for no valid reason. The learned Judge has rightly appreciated the facts and allowed the writ petition with a specific direction to the appellant to pay compensation with interest at 7.5% from the date of award. We find no merit in the writ appeal to interfere with the order of the learned single Judge and the writ appeal is dismissed and the order of the learned single Judge in W.P.(MD).No.3085 of 2008, dated 25.10.2018 is confirmed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Special Tahsildar,
(Land Acquisition),
National Highways 226,
Sivagangai.
2. The Special Tahsildar (ADW),
Sivagangai.

+1cc to Mr.RM.Arun Swaminathan, Advocate, SR.No. 44214

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01.02.2019

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