



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.421 of 2019

A.Wilson

... Appellant/Petitioner

-vs-

- 1.The District Collector,
Nagercoil,
Kanniyakumari District - 629 001.
- 2.The Revenue Divisional Officer,
Collectorate Complex,
Nagercoil,
Kanniyakumari District.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 06.02.2019, made in W.P.(MD) No.23930 of 2018, on the file of this Court.

Prayer in WP(MD). 23930/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in his proceedings in VU.3/13762/2018 dated 05.06.2018 and quash the same, consequently directing the respondents to grant fair and just compensation to the petitioner for the land acquired for constructing the Poigai Dam Project at Aralvoimozhi Village in Survey number 38/2 and directing the respondent to grant enhanced compensation with 18% interest per annum as per with the adjacent land owner is same Survey No.38/3 compensation received as per award dated 29.01.1998 in LAOP.No.23/1995.

For Appellant : Mr.D.Selvanayagam

For Respondents : Mr.A.K.Baskarapandian
Special Government Pleader



J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

Heard Mr.D.Selvanayagam, learned counsel appearing for the appellant and Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents.

2.The Writ Appeal is directed against the order of this Court dated 06.02.2019, made in W.P.(MD) No.23930 of 2018.

3.The appellant filed the Writ Petition challenging the proceedings of the first respondent dated 05.06.2018, whereby the request made by the appellant for grant of enhanced compensation for the lands acquired from the appellant on par with the compensation awarded by the Additional Sub Court, Nagercoil in L.A.O.P.No.23 of 1995 dated 29.01.1998, was rejected on the ground that the application filed by the appellant under Section 28-A of the Land Acquisition Act, 1895 for re-determination of the amount of compensation was beyond the period of three months fixed under the said provision.

4.It is not in dispute that the appellant's lands were acquired for the public purpose for putting up construction for Poigai Dam. During the course of land acquisition proceedings, the appellant participated in the enquiry conducted under Section 5-A of Land Acquisition Act, 1894 and stated that if the lands in which the agricultural activities carried out by the appellant were acquired, their livelihood would be affected and therefore, requested payment of compensation at the market value of Rs.2,500/- per cent. It is no doubt true that the appellant received the amount much prior to the award. The award was passed by the Land Acquisition Officer on 07.04.1995 in Award No.1/94-95. Three other persons whose lands were acquired for the very same project and awarded compensation under the very same award had filed petition for enhancement of compensation in L.A.O.P.No.23 of 1995. The Reference Court enhanced the compensation to Rs.1,200/- per cent apart from interest and solatium on 29.01.1998. The appellant came to know about the said judgment in the year 1999 and submitted his representation on 19.05.1999. Thereafter, the appellant sent a representation dated 09.12.2016 through the Hon'ble Chief Minister Special Cell, in which the appellant had stated that he had objected for fixation of Rs.100/- per cent. The appellant also stated that much prior to the award they requested awarding of compensation at the rate of Rs.2,500/- per cent. Apart from that, they stated that after they came to know about the judgment of the reference Court in the case of 3 others as owners, whose lands were also acquired only in the year 1999. Under the same representation it is stated by the appellant that since the representation of the appellant dated 19.05.1999 was not considered, the said representation dated

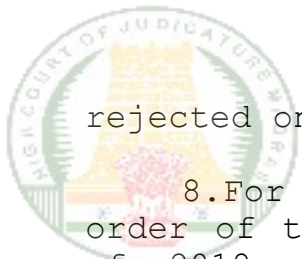


09.12.2016 was sent. Since the said representation dated 09.12.2016 was also not considered, reminders were sent and ultimately the appellant has approached this Court and filed W.P.(MD) No.3587 of 2019. The said Writ petition was disposed of by directing the first respondent to consider the representation. Pursuant to the said direction, the representation was considered and the same was rejected primarily on the ground that the application filed by the appellant for re-determination of compensation is beyond the period of three months as stipulated under Section 28-A of the Land Acquisition Act, 1894. Challenging the same, the appellant has filed the Writ Petition, which was dismissed by the impugned order.

5.It is no doubt true that the statute does not provide for condonation of delay of the period stipulated thereunder. For a person, who has suffered on account of the land acquisition proceedings, an application for re-determination of compensation can be made only on the basis of the judgment of the Reference Court. Admittedly the reference Court has passed judgment in L.A.O.P.No.23 of 1995 on 29.01.1998. On 19.05.1999, the first representation was made by the appellant. It is made well beyond the period of limitation. Admittedly, the appellant is not a party to the proceedings and having resettled in a different place, in all probability would not have been aware of the judgment immediately. As soon as the appellant came to know about the judgment a representation has been made. Further more, we note that at the earliest point of time the appellant objected to the compensation that will be paid i.e., even at the time of enquiry. Therefore, it is not correct to plead that the appellant has not objected for fixation of Rs.100/- per cent. Though it may be true that there may not be any written objection given, the conduct of the appellant shows that he has contested for enhanced compensation and he had been pursuing the claim for enhanced compensation.

6.Considering the facts and circumstances of the case, we deem it appropriate to rely on the decision of the Hon'ble Apex Court in Civil Appeal No.17323 of 2017 dated 27.12.2017 between Karam Chand (Dead) by Lrs. & Another and State of Himachal Pradesh & Another. In the said case also appellant sought for redetermination of compensation under Section 28-A of the Act, which was rejected on the ground of delay. The Hon'ble Supreme Court pointed out that even though the limitation is prescribed and it is expected that the aggrieved party takes remedies within such prescribed time, the delay can be extended in appropriate cases, subject to declining the interest for the delayed period, the compensation can be re-determined and paid to the appellants.

7.We find from the facts that it is a bonafide case, where the compensation to the appellant can be enhanced. The appellant in all his representation stated that he was uprooted from the source of livelihood. Therefore, it is a fit case, where the application under Section 28-A of the Act ought to be considered and should not be



rejected on the ground of limitation.

8. For the above reasons, the Writ Appeal is allowed and the order of the Writ Court dated 06.02.2019 made in W.P.(MD) No.23930 of 2018 is set aside. Consequently, the order of the first respondent dated 05.06.2018 is quashed and a direction is issued to the respondents to apply the judgment of the Additional Subordinate Court, Nagercoil in L.A.O.P.No.23 of 1995 to the case of the appellant and redetermine the enhanced compensation payable and disburse the same. However, it is made clear that the appellant shall not be entitled for interest for the delayed period. The above direction be complied with within 8 weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

sj

To

1.The District Collector,
Nagercoil,
Kanniyakumari District - 629 001.

2.The Revenue Divisional Officer,
Collectorate Complex,
Nagercoil,
Kanniyakumari District.

+1 CC to M/s.SPL GP (SR-93127[F] dated 18/10/2019)

+1 CC to M/s.D.SELVANAYAGAM, Advocate (SR-93084[F] dated 18/10/2019

W.A. (MD) No.421 of 2019
17.10.2019

JMN(06.11.2019) 4P : 5C