

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 28.01.2020

Pronounced on : 20.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.4655 of 2010

and

MP.No.1 of 2010

1. The Secretary, Revenue Department,
Government of Puducherry,
Puducherry.
2. The Land Acquisition Officer,
D.C.R Office, Karaikal. ... Petitioners/Petitioners

Versus

Fathima & Co.,
rep.by its Managing Partner Ave.aM.A.Abdul Sukur,
Beach Road, Karaikal. ... Respondent/Respondent

Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the Order dated 23.12.2009 in E.A.No.98 of 2009 in E.P.No.35 of 2008 in LAOP.No.5 of 1990, on the file of the Additional District Judge, Puducherry at Karaikal.

For petitioners: Mrs.N.Mala
Additional Government Pleader (Pondicherry)
For Respondent : Mrs.Rita Chandrasekar
for M/s.Aiyar & Dolia.

ORDER

The Secretary, Revenue Department, Pondicherry along with the Land Acquisition Officer, Karaikal have filed the present revision petition.

2.The brief facts of the above CRP are under:-

(i) The petitioners have acquired certain lands for the formation of Brackish Water fish farm in Karaikal under Section 4(1) notification, dated 26.02.1987. The total extent of land acquired by the petitioners was 8.48.50 H.

(ii) In pursuance of the award of the Land Acquisition Officer/the second petitioner passed in LAOP.No.5 of 1990, dated 30.11.1989, the respondent herein received the compensation amount of Rs.3,23,473/- on 26.03.1990 under the receipt in Form-C, for acquisition of land to an extent of 7.64.96 H.

(iii) The respondent had sought for reference under Section 18 of the Land Acquisition Act, 1984 and the same was referred in LAOP.No.5 of 1990, before the Additional District Judge, Karaikal. The learned District Judge by order dated 21.12.1990 enhanced the land value from Rs.260 per Are to Rs.2000/- per Are.

(iv) Aggrieved by the enhancement of the compensation ordered by the learned Additional District Judge, the petitioners filed an appeal in A.S.No.945 of 1991 before this Court.

(v) This Court by Judgment dated 17.06.2002 was pleased to reduce the market value to Rs.1500/- per Are as against Rs.2000/- fixed by the learned Additional District Judge.

(vi) It is the case of the petitioners that while making the reference the petitioners had erroneously referred the case for the total extent acquired i.e., 8.48.50 H instead of 7.64.96 H.

(vii) The matter was again taken up to this Court and this Court by its judgment and decree dated 17.06.2002 was pleased to fix the market value at Rs.1500/- per Are.

(viii) The respondent filed E.P.No.13 of 2006 and by an order dated 16.11.2007, the Additional District Judge, Puducherry at Karaikal was pleased to direct the petitioners to deposit a sum of Rs.16,31,690/- being the value for the extent of 7.64.96 H.A.Ca for which extent alone the petitioners had established their title.

(ix) for the remaining extent the respondent herein was permitted to file a fresh execution petition, if he had title for the same. Instead of challenging the order passed in E.P.No.13 of 2006, the respondent herein had chosen to file the present E.P.No.35 of 2008.

(x) On notice, the above E.A.No.98 of 2009 has been filed by the petitioner for rejecting the second EP.No.35 of 2008 on the grounds inter alia that it is barred by resjudicata. The trial court dismissed the E.A. No. 98 of 2009 against which the present Civil Revision Petition has been filed.

3.Heard, the learned Government Advocate, Pondicherry for the petitioners and the learned counsel for the respondent herein.

4.On a perusal of the reference under Section 18 of the Land Acquisition Act, 1894, in the form of reference issued by the petitioners herein, the total extent of land acquired from the respondent herein is mentioned as 8.48.50 H, so also in the order passed in LAOP No.5 of 1999 dated 21.12.1990 as prescribed therein. As against the said order, the Government has preferred an appeal before this Court and this Court by Judgment dated 17.06.2002 in A.S. No. 945 of 1991 and Cross Objection No.148 of 1993, has observed as hereunder in paragraph No.2:-

"2.The subject lands in Survey Nos.G/9/13/3, G/9/13/4, G/9/13/5 and G/9/13/6 wet in Keezavely Village Karaikal of a total extent of 8.48.50 Hectares were sought to be acquired for formation of Brackish Water fish farm in Karaikal, 4(1) notification was issued on 26.02.1987. The Land Acquisition Officer, Karaikal Passed the award on 30.11.1989 fixing the compensation at Rs.200 per Are. Aggrieved, the claimants sought reference under Section 18 of Land Acquisition Act and the learned Additional District Judge, by order dated 21.12.1990, increased the award amount from Rs.260/- per Are to Rs.2000/- per Are. It is as against that, the present appeal has been filed. "

As per the Judgment of this Court, the compensation has been reduced and the cross objection was dismissed.

5.Pursuant to the Judgment, the first execution petition in E.P.No.13 of 2009 was filed under Order XXI and Rule 43 r/w Rule 66 of CPC., by the respondent herein, claiming compensation to an extent of 8H.48A.50Ca instead of 7H.64A.96Ca in which the Execution Court namely the learned Additional District Judge, Puducherry by an order dated 16.11.2007 has directed the petitioners herein to pay the compensation of Rs.16,31,690/- as per the calculation, within a period of one month, if they fails to pay, then the respondent herein is entitled to attach the properties of the petitioners herein. The respondent herein was also permitted to file a fresh Execution Petition, if he is having title for the rest of the land to an extent of 83A.54Ca., which is available in R.S.No.131/6.

6.Pursuant to the said order, the respondent herein has again filed the second EP. No.35 of 2008 for compensation in respect of portion left out in the earlier Execution Petition. On notice, the Government has filed an E.A.No.98 of 2009 under

Section 47 of CPC to dismiss the petition viz., EP.No.35 of 2008 on the ground that the petitioner has no title to the property over and above 7H.64.-AR-96-CA.

7.The learned Additional District Munsif Pondicherry at Karikkal, after perusing the same and taking note of the fact that the extent of land acquired from the landlord mentioned in the order of reference under Section 18 of the Land Acquisition Act and the order in LAOP.5 of 1999 and order in Appeal before this Court are the same. Therefore, the Execution Application was dismissed and the petitioners herein were directed to deposit the balance amount. Hence, the Civil Revision Petition.

8.Heard both sides and perused the materials available on record.

9.After going through the records and the order passed by the Execution Court, it is seen that the Government, cannot now turn around to say only a lessor extent of land was acquired on the ground that the landlord is not having title to the entire extent of the land but only for a portion of the land acquired by the petitioners.

9.In all the reference and in all the proceedings in LAOP. No.5 of 1999 and in the Judgment of this Court in the Appeal suit, the total extent of the land in respect of the respondent is mentioned as 8H.48A.50Ca. Therefore, at this juncture, it is not open for the Government to call upon the respondent to prove the title to the entire extent of land. However, in the execution proceedings the petitioner has taken a different stand to go beyond the decree passed in favour of the respondent, besides the order of reference made under Section 18 of the said Act. Hence the order passed by the Trial Court in EA No.98 of 2009, does not call for interference, thus, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District Judge, Puducherry, Karaikal.

2.The Secretary,Revenue Department,
Government of Puducherry,
Pondicherry.

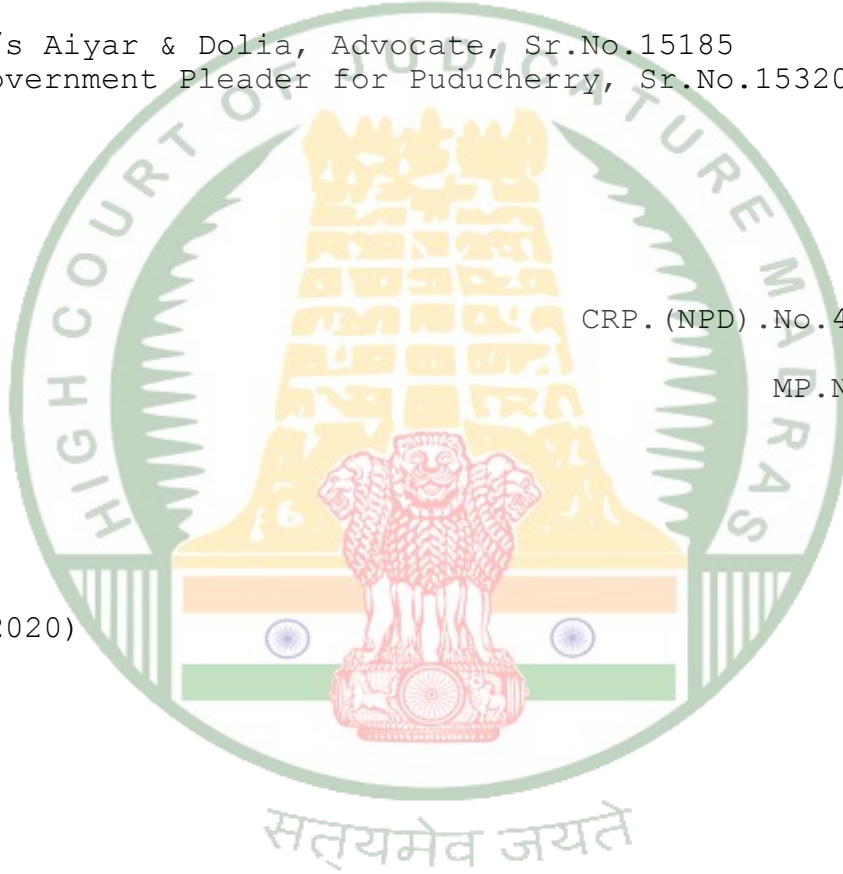
3.The Land Acquisition Officer,
D.C.R Office, Karaikal.

+1cc to M/s Aiyar & Dolia, Advocate, Sr.No.15185

+1cc to Government Pleader for Puducherry, Sr.No.15320

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and
MP.No.1 of 2010

VBA (CO)
GS(01/06/2020)



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