

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2020

CORAM :

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.No.17051 of 2011

1. Mahadevan
2. Selvi Sylva Shri.
3. Selvi Bhuvaneswari
4. Selvi Sudha Sri.
5. Dhanapal
6. Samu @ M. Chamundi ... Petitioners

v.

- 1.The Government of Tamil Nadu,
Rep. By its District Collector,
Krishnagiri District.
2. The Land Acquisition Officer and
Sub Collector,
Hosur. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuing a Writ of Mandamus to direct the respondent No.1 to pay the compensation to the petitioners as determined by the Subordinate Judge, Krishnagiri in L.A.O.P. Nos. 212/1992, 213/1992 and 216 of 1992, dated 31.3.1994 to the petitioners herein for acquisition of their lands in S.Nos.413/2 measuring 0.12.00 hectares, Mookandapalli Village, Hosur Taluk.

For Petitioners : Mr.Avinash Wadhwani
for Mr.V.Raghavachari

For Respondents : Mr. M. Elumalai
Addl. Govt. Pleader

O R D E R

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus , directing the 1st respondent to pay the compensation to the petitioners as determined by the Subordinate Judge, Krishnagiri in L.A.O.P. Nos. 212/1992, 213/1992 and 216 of 1992, dated 31.3.1994 to the petitioners for the acquisition of the lands in S.Nos.413/2 measuring an extent of 0.12.00 hectares at Mookandapalli Village, Hosur Taluk.

2. The only contention raised in the present Writ Petition is that the petitioners have given their application under section 28(A) of the Land Acquisition Act, within three months from the date of the order passed in L.A.O.P. Nos. 212/1992, 213/1992 and 216 of 1992, dated 31.3.1994 and therefore, they are entitled to get enhanced compensation as awarded to the other land owners.

3. However, Mr. M. Elumalai, learned Additional Government Pleader, appearing for the respondents submitted that the petitioners have given their application under section 28(A) of the Land Acquisition Act only on 12.01.1998, which is beyond the period of limitation. In support of his case, the learned Additional Government Pleader also submitted that he is having the original of the application dated 12.01.1998 and to that effect the respondents also filed the counter stating that the application was given on 12.01.1998. However, in support of his contention, the petitioner has not produced a single document to establish that the application was given within three months from the date of the order.

4. In the absence of any document produced before this court by the petitioners, the submission made by the learned counsel for the petitioners cannot be accepted. When the respondents are able to establish that the application was given only on 12.01.1998, which is beyond the period of limitation, the prayer sought for in the writ Petition cannot be granted. That apart, the learned Additional Government Pleader also relied upon a Judgment of the Hon'ble Supreme Court reported in 2018 (7) Scale [Ramsinghbhai (Ramsangbhai) Jerambhai v. The State of Gujarat and anr], wherein the Hon'ble Supreme Court 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 Signature Not Verified amount of compensation in excess of the Digitally signed by NARENDRA PRASAD 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 Sections 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 & another¹). In its recent judgment in Bharatsing and others v. The State of Maharashtra and others², this Court has surveyed the decisions on this issue and reiterated the legal principle.

4. 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.

5. The appeal is accordingly dismissed. Pending application (s), if any, shall stand disposed of. No costs."

5. The ratio laid down in the judgment relied upon by the learned Additional Government Pleader is squarely applies to the facts and circumstances of the present case. Following the same, I do not find any reason to grant the relief sought

for in the Writ Petition to the petitioner. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Rj

To

1.The District Collector,
Government of Tamil Nadu,
Krishnagiri District.

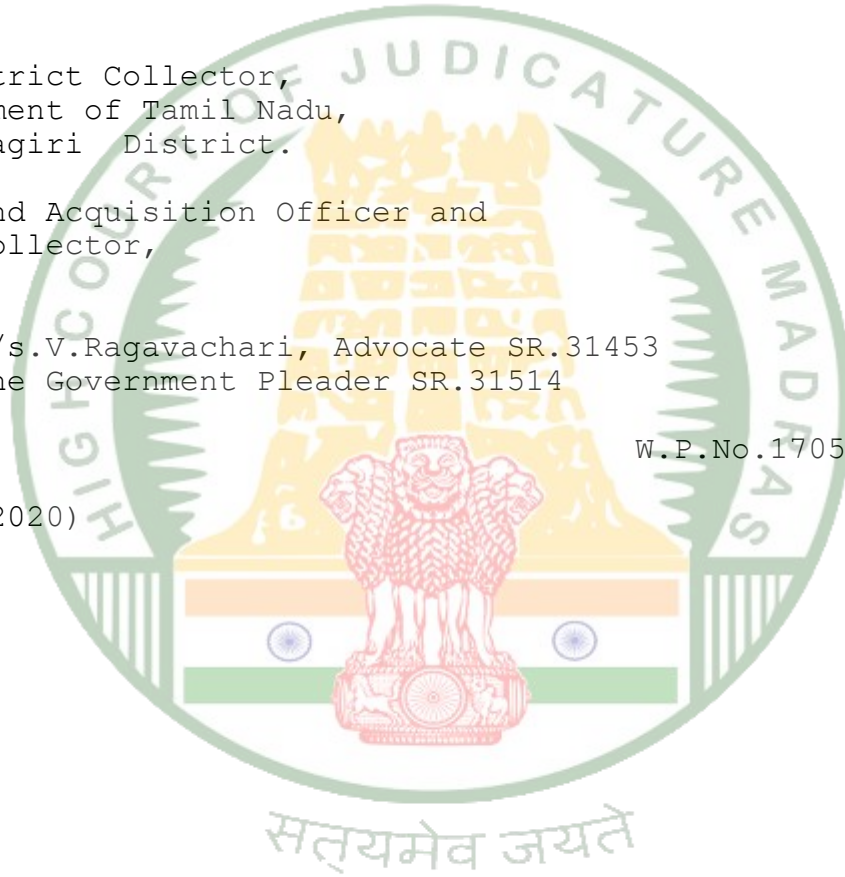
2.The Land Acquisition Officer and
Sub Collector,
Hosur.

+1cc to M/s.V.Ragavachari, Advocate SR.31453

+1cc to the Government Pleader SR.31514

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VSN II(CO)
CB(16/10/2020)



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