

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

W.P.No.9445 of 2020

Sadasivam

... Petitioner

Vs.

1.The District Collector cum Arbitrator
under the National Highways Act
Collectorate
Kancheepuram
Kancheepuram District.

2.The Competent Authority &
Special District Revenue Officer (L.A.)
National Highways
Kancheepuram
Kancheepuram District.

3.The National Highways Authority of India
Rep by its Chairman
G-5 & 6, Sector-10, Dwarka
New Delhi - 110 075.

..... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent, District Collector cum Arbitrator in Na.Ka.No.11143/2016/F5 dated 30.12.2016 and quash the same and consequently direct the first respondent to determine the compensation in the light of the judgment passed by the Hon'ble Apex Court in Union of India Vs. Tarsem Singh, reported in [(2019) 9 SCC 304].

For Petitioner : M/s.Paul & Paul

For Respondents 1 & 2: Mr.D.Raja
Additional Government Pleader

For Respondent-3 : Mr.Su.Srinivasan

ORDER

This Writ Petition has been filed challenging the award passed by the first respondent dated 30.12.2016 and for a consequential direction to the first respondent to determine the compensation in line with the judgment of the Hon'ble Supreme Court.

2. When the matter came up for hearing on 27.08.2020, this Court passed the following order:-

"The case of the petitioner is that the Government had acquired his property and has appointed the second respondent to determine the compensation for the acquired lands. Aggrieved by the fact that the compensation amount fixed was very minimal, the petitioner made a representation to the first respondent on 03.11.2014, seeking enhancement of compensation. Thereafter, the petitioner was called for enquiry by the first respondent on 16.04.2016 and 23.06.2016 respectively. He had participated in the enquiry conducted by the first respondent and thereafter, the impugned award came to be passed, rejecting his application seeking enhancement of compensation, stating that no valid documents were produced by him to substantiate his claim of higher market value for the property acquired by the Government. Hence, the petitioner was made to approach this Court to file the present writ petition.

2. According to the petitioner, if the entire award has been set aside by this Court, nothing remains to be agitated in the present writ petition, in view of the fact that the award itself is no more in force.

3. It is seen from the award dated 30/12/2016 that it was a common award that was passed in favour of the petitioner and two others, who are the co-owners of the property. Two of the co-owners filed WP.No.15471 of 2017 and WP.No.15472 of 2017, and this Court has quashed the award vide order dated 19.02.2018, and remitted the matter back to the first respondent, who will offer opportunity to the parties and pass a fresh award within a period of six months.

4. Mr.D.Raja, learned Additional Government

Pleader appearing on behalf of the respondents 1 and 2; and Mr.Su.Srinivasan, learned Senior Standing Counsel appearing on behalf of the third respondent submitted that they want to take instructions in this case.

5. The learned counsels appearing on behalf of the respondents 1 to 3 are directed to take instructions on the following two issues :

a) Whether any appeal was filed against the order passed by this Court on 19.02.2018 in the two writ petitions viz., WP.No.15471 of 2017 and WP.No.15472 of 2017?

b) If no appeal has been filed, then what is the stage of the case after the matter was remanded to the first respondent ?

Post this case under the caption "for orders" on 07.09.2020."

3. When the matter was taken up today, Mr.Su.Srinivasan, learned counsel appearing on behalf of the third respondent submitted that the District Collector, Kancheepuram has passed a final order dated 03.09.2019 and has rejected the claim made by other two co-owners seeking for enhancement of compensation. The learned counsel, therefore, submitted that the reasoning that was given in the order passed by the third respondent will equally apply to the petitioner and also if at all the petitioner is aggrieved by the same, he has to work out his remedy in the manner known to law and the relief claimed by the petitioner in the present Writ Petition cannot be granted by this Court.

4. The learned counsel appearing on behalf of the petitioner submitted that when this Court had set aside the award of the third respondent by order dated 19.02.2018, there was no requirement for the petitioner to independently challenge this award. The learned counsel further submitted that the petitioner ought to have been given an opportunity by the first respondent when the enquiry was conducted. The learned counsel further submitted that the petitioner is entitled for solatium by virtue of the subsequent judgment passed by the Hon'ble Supreme Court on 19.09.2019 and therefore, the petitioner will confine his claim only insofar as the solatium is concerned and the matter can be remanded back to the file of the third respondent insofar as the petitioner is concerned.

5. Heard Mr.D.Raja, learned Additional Government Pleader appearing on behalf of the respondents 1 and 2.

6. The original award was passed by the third respondent on 30.12.2016. A careful reading of the award shows that it was a common award that was passed with regard to the claim made by the co-owners, in which the petitioner was also one of the co-owner. The other two co-owners had chosen to challenge the award passed by the third respondent by filing independent Writ Petitions in W.P.Nos.15471 and 15472 of 2017. While considering those Writ Petitions, this Court came to a conclusion that the award was passed without affording opportunity to the parties to put forth their stand by placing the necessary materials. During that point of time, the petitioner did not choose to challenge the said award. The petitioner came before this Court only in the year 2020 questioning the award passed by the third respondent on 30.12.2016. The specific stand taken by the respondents is that the petitioner had received the compensation that was fixed by the competent authority and thereafter, did not choose to challenge the award passed by the third respondent and now, the petitioner is trying the piggyback on the orders that was passed by this Court insofar as the other two co-owners are concerned, in W.P.No.15471 and 15472 of 2017.

7. The National Highways Act provides for a procedure under Section 3(G) of the Act to challenge the award passed by the Collector. Section 3(G)(6) specifically provides that the provisions of Arbitration and Conciliation Act, 1996 will apply to every arbitration under this Act. In view of this provision, any award that is passed by the Collector can be challenged only by way of filing an appropriate petition under Section 34 of the Arbitration and Conciliation Act, 1996.

8. The learned counsel for the petitioner submits that the latest order passed by the third respondent on 03.09.2019 was passed without affording any opportunity to the petitioner. The learned counsel further submitted that as on the date when the award was passed by the third respondent, the judgment of the Hon'ble Supreme Court in Tarsem Singh and others reported in 2019 (9) SCC 304 was not available and this was the judgment wherein, it was held that the solatium is payable and the petitioner is entitled for the benefit of this judgment of the Hon'ble Supreme Court. The learned counsel further submitted that the petitioner will confine his claim before the third respondent only insofar as the solatium is concerned. Therefore, the learned counsel wanted this Court to remand the case of the petitioner to the third respondent in order to enable the third respondent to determine the entitlement of the petitioner for payment of solatium.

9. The petitioner had approached this Court by challenging the award passed by the third respondent dated 30.12.2016 after nearly four years. The petitioner wants to take advantage of

the judgment passed by the Hon'ble Supreme Court in Tarsem Singh and others reported in 2019 (9) SCC 304 referred supra. For reasons best known to the petitioner, he did not choose to challenge the award immediately like it was done by the other two co-owners. Therefore, the petitioner cannot be allowed to create a new cause of action based on the judgment of the Hon'ble Supreme Court, which was rendered on 19.09.2019. The law settled by the Hon'ble Supreme Court at a later point of time cannot become a cause of action for the petitioner to challenge an earlier award that was passed on 30.12.2016. Therefore, the request made by the petitioner that the matter has to be remanded to the third respondent to enable the petitioner to work out his remedy by claiming solatium in terms of the judgment of the Hon'ble Supreme Court is not sustainable.

10. The Act itself provides for an alternative remedy of challenging the award passed by the District Collector. This alternative remedy must be resorted to and a Writ Petition cannot be filed before this Court under Article 226 of the Constitution of India. The reasoning given by the third respondent while rejecting the claim made by the other two co-owners seeking for enhancement of compensation will equally apply to the petitioner also. No useful purpose will be served by again remitting the matter to the file of the third respondent only to consider the claim made by the petitioner. The petitioner has to necessarily challenge the order passed by the second respondent and seek for whatever relief he is entitled for in law.

11. In view of the above discussion, the relief claimed by the petitioner cannot be granted by this Court. It is made clear that the order passed by the third respondent dated 03.09.2019 will also equally apply to the petitioner, since he is also a co-owner of the property. If the petitioner is aggrieved by the same, it is always open to the petitioner to work out his remedy in the manner known to law by filing an appropriate petition challenging the order passed by the third respondent dated 03.09.2019. Except giving this liberty, no further orders can be passed by this Court.

12. This Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS I)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector cum Arbitrator
under the National Highways Act
Collectorate
Kancheepuram
Kancheepuram District.

2.The Competent Authority &
Special District Revenue Officer (L.A.)
National Highways
Kancheepuram
Kancheepuram District.

3.The Chairman
National Highways Authority of India
G-5 & 6, Sector-10, Dwarka
New Delhi - 110 075.

+1 cc to M/s.Pail& Paul, Advocate Sr.No. 29419

+1 cc to The Government Pleader, Sr.No. 29654

W.P.No.9445 of 2020

KK(CO)
RMP(28/10/2020)



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