

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.07.2020
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
W.P No.17077 of 2019

Kannan
S/o. Anandhan,
No.227, Main Road,
Salamedu Village,
Villupuram Taluk and District. ...Petitioner

vs.

1. The Special Thasildar,
Tamil Nadu Housing Board,
Cuddalore.
2. The Executive Engineer,
Tamil Nadu Housing Board,
Maharajapuram,
Villupuram. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the first respondent to refer the case of the petitioner in respect of land in S.No.60/4 to an extent of 0.69 cents and 60/5 to an extent of 0.64 cents in Salamedu Village, Villupuram Taluk and District, based on the petition dated 10.04.2019.

For Petitioner : Mr.S.C.Vishwanth
For Respondents : Mr.D.Raja
Additional Government Pleader
for R1
: Mr.Tamil Priyan for R2

O R D E R

This writ petition has been filed for the issue of Writ of Mandamus directing the first respondent to refer the case of the petitioner under Section 18(1) of the Land Acquisition Act for enhancement of compensation.

2. The case of the petitioner is that the mother of the petitioner became the owner of the property in Survey No.60/4 and 60/5 by virtue of a final decree passed in O.S.No.198 of 1992. According to the petitioner, by virtue of this final decree, the mother of the petitioner became the owner of the property to an extent of 69 cents in Survey No.60/4 and 64 cents in Survey No.60/5. It is the further case of the petitioner that a settlement deed was executed in his favour by his mother on 23.05.2008.

3. The petitioner further claims that later he came to know that the subject property was already acquired and handed over to the housing board. The co-owner of the property had initiated proceedings and the matter was referred before the concerned court in LAOP.No.1 of 2012. According to the petitioner, the compensation was also enhanced. Even according to the petitioner the enhancement of compensation took place in the year 2013.

4. The petitioner has made a representation on 10.04.2019 to the respondents to refer the case to the concerned court for enhancement of compensation and the petitioner is placing reliance upon Section 18 and 28A of the Land Acquisition Act. Since the representation was not considered, the present writ petition has been filed seeking for appropriate directions.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. Before proceeding further to deal with the claim made by the petitioner, it will be more appropriate to extract paragraph 3 in the counter affidavit filed by the second respondent.

3. I submit that the averments in para 3 are denied as the petitioner mother Annapoorani would have executed her share in favour of the petitioner in 2008, but before 4(1) notification dated 19.09.1991 the petitioners paternal uncle Ramanatha Gowder along with your mother Annapoorni have got Power of attorney from actual land owner Thiru. Thiagarajan for the survey nos 60/4 & 60/5 mentioned by the petitioner and have sold the above mentioned property to nearly 100 peoples. The actual land owner got the entire compensation amount Rs.19,71,507/- vide Cheque No.597183, Syndicate Bank on 30.01.1995. So the petitioner is not entitled for Award amount as well as he is not eligible for seeking compensation under 18 & 28 (A)."

7. It is clear from the averments made in the counter affidavit that as early as on 30.01.1995, the compensation has been paid by the respondents to the owner of the property through cheque. Therefore, insofar as the payment is concerned, the petitioner cannot be heard to complaints that no compensation was paid after the lands were acquired.

8. The petitioner is seeking for enhancement of compensation on the basis of the award passed in LAOP No.1 of 2012 in favour of one Krishnamoorthy. According to the petitioner the said Krishnamoorthy is the co-owner of the very same survey numbers.

9. The land owner has to seek enhancement of compensation under Section 18 of the Land Acquisition Act by way of written statement within six weeks from the date of award or on the receipt of the notice under Section 12(2) of the Act failing which the claim will be barred by limitation. This Court in the Judgment in Vijai Pal vs. The State of Uttar Pradesh and others reported in 2011 2CTC 69 has categorically held that the Collector has no power to condone the delay in filling application under Section 18(1) and this Court also in exercise of writ jurisdiction cannot issue a General Mandamus to entertain the application filed beyond limitation.

10. Insofar as the claim raised under Section 28A of the Land Acquisition Act, the same has to be done within three months from the date of the award of the Court. In this case, the award was passed by the concerned Court on 27.02.2013. Admittedly the petitioner had made a representation only in the year 2019. Therefore the Collector will have no power to condone the delay of nearly six years since the statute itself provides for the period of limitation. The natural consequence will be that this Court also cannot issue a mandamus to extend the period of limitation. The new Land Acquisition Act has also come into force and the old act is no more in force and therefore there is no question of directing the authority to refer the claim made by the petitioner under the old act which is no more in force.

11. It is clear from the counter affidavit filed by the second respondent that the entire compensation has been paid to the original owner of the property whose name was found in the revenue records. It is unbelievable that the co-owner has prosecuted his rights on time and has got enhancement of compensation and the petitioner is feigning ignorance of the very acquisition itself. That apart the petitioner cannot claim any right for reference under Section 18 of the Land Acquisition Act or for enhancement of compensation under Section 28(A) of the Act.

12. This Court does not find any merits in the present writ petition. Accordingly, this writ petition is dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Thasildar,
Tamil Nadu Housing Board,
Cuddalore.

2. The Executive Engineer,
Tamil Nadu Housing Board,
Maharajapuram,
Villupuram.

W.P No.17077 of 2020

sks

A.SK (09/09/2020)



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