



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2020

CORAM

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THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

W.P. (MD) No.16646 of 2015

M.Subbulakshmi

... Petitioner

Vs.

1.The District Collector,
Dindigul District.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Palani.

3.The Tahsildar,
Ottanchathiram Taluk,
Dindigul District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to make a reference to the Land Acquisition Tribunal the claim for enhanced compensation in respect of the petitioner's mother's land as per the award No.1 of 1992 or in the alternative pay enhanced compensation to the petitioner in respect of the property in Survey No.44/1 in Ottanchathiram Village on the basis of the compensation awarded by the Land Acquisition Tribunal, Palani in L.A.O.P.Nos.2/1998, 3/1998, 4/1998, 5/1998 and 6/1998 dated 19.12.2012.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondents : Mr.A.Muthu karuppan
Additional Government Pleader
R1 to R3

ORDER

This writ petition has been filed to direct the respondents to make a reference to the Land Acquisition Tribunal the claim for enhanced compensation in respect of the petitioner's mother's land as per the award No.1 of 1992 or in the alternative to pay enhanced compensation to the petitioner in respect of the property in Survey No.44/1 in Ottanchathiram Village on the basis of the compensation awarded by the Land Acquisition Tribunal, Palani in L.A.O.P.Nos.2/1998, 3/1998, 4/1998, 5/1998 and 6/1998 dated 19.12.2012.



2.The petitioner's land measuring to the extent of of 1 acre and 45 cents was acquired by the Government for the purpose of constructing integrated/regulated market in the year 1989. It is admitted that the acquisition was completed and award was passed on 24.04.1992. Thereafter, enquiry was conducted and the petitioner's mother at the time of enquiry submitted that a sum of Rs.10,000/- should be fixed as market value per cent of land. Though the claim of the petitioner's mother was rejected by the Acquisition Officer, on the basis of the objections of the petitioner's mother, the matter can be referred to civil Court under Section 18 of the Land Acquisition Act for just compensation.

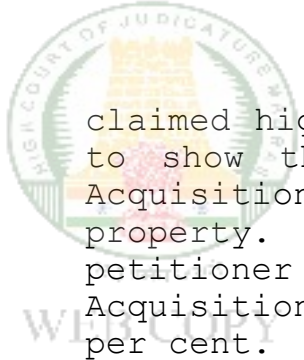
3.It is also the case of the petitioner that the Land Acquisition Officer failed to refer the matter to civil Court under Section 18 of the Act despite an observation was made by the Land Acquisition Officer in the award while considering the quantum of compensation in respect of land acquired from the petitioner's mother. Since the petitioner's protest to compensation is recorded even in the order, the learned counsel for the petitioner submitted that the Land Acquisition Officer ought to have referred to civil Court by treating petitioner's protest to receive compensation as a request in term of Section 18 of the Act.

4.It is further stated that the petitioner's mother received amount only under protest and that therefore, she was under the impression that her case will be referred to the civil Court under Section 18 of the Land Acquisition Act.

5.The Land Acquisition Officer has referred to the civil Court for fixing just compensation in respect of other land owners. After the matter was referred to the civil Court in terms of Section 18 of the Land Acquisition Act, it is stated that civil Court has enhanced the compensation as against the compensation fixed by the Land Acquisition Officer at the rate of Rs.74, 989/- per hectare. Market value has been fixed by the Civil Court at the rate of Rs.7,500/- per cent and after deducting 33% towards lump sum payment, a sum of Rs.5025/- has been arrived by the Land Acquisition Tribunal namely civil Court while deciding the matter. Referring to the fact that compensation has been determined by enhancing by atleast 15 times, the learned counsel for the petitioner submitted that petitioner is entitled to get just compensation in equity.

6.The petitioner's land has been acquired in 1989 and possession was taken on 28.05.1992. Less than 7% of the compensation fixed in respect of other lands has been paid to the petitioner's mother. The mother of the petitioner is no more and the petitioner is the legal heir and she is entitled to prosecute the case.

7.For the same land, the petitioner as well as the petitioner's mother participated in the award proceedings and both of them



claimed higher compensation. The petitioner has produced no record to show that she assisted her mother to claim before the Land Acquisition Officer to get compensation as the owner of the property. It is admitted that the petitioner's mother and the petitioner claimed compensation for the lands and requested the Land Acquisition Officer to fix market value at the rate of Rs.10,000/- per cent.

8.The Land Acquisition Officer noticed rival claims and observed that right to share the property is in dispute and that the matter will be referred to the civil Court, Dindigul under Section 30 of the Land Acquisition Act. However, it is seen from the award that the petitioner's mother also claimed compensation.

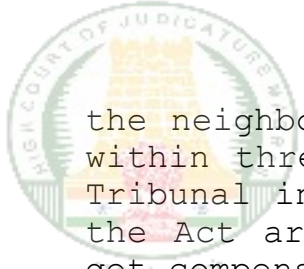
9.It is contended by the petitioner that she got right and that she had filed suit before the civil Court. The Land Acquisition Officer found that there is dispute regarding the title and observed that the civil dispute between the petitioner and her mother will be decided by the civil Court. Though the Land Acquisition Officer declined to accept the petitioner's claim, observed that the petitioner's claim will be referred to civil Court under Section 18 of the Land Acquisition Act for enhanced compensation.

10.It is worthwhile to extract the observation of the Land Acquisition Officer, which reads as follows:

The land owner also insists for the payment of compensation for the lands under acquisition at Rs.10,000/- per cent. Though the rate of compensation is not reflecting the actual price prevailing in this area, yet according to the provisions of the Act, her claim will be referred to the competent Civil Court U/S 18 of the Land Acquisition Act (ie) for enhanced compensation.

11.Though no material is placed before this Court to show that the compensation amount was received by the petitioner's mother or petitioner under protest, the observation of the Land Acquisition Officer in the award makes any one believe that the land owner's claim for higher compensation would be referred to civil Court under Section 18 of the Land Acquisition Act.

12.The petitioner is also entitled to seek re-determination of the amount as per the award of the compensation in respect similar land which was acquired for the same purpose, which was acquired by the same notification. No doubt, there is stipulation regarding time both under Section 18 or under Section 28(A) of the Land Acquisition Act. Hence, the petitioner is expected to file a petition for reference within six weeks from the date of award. Similarly, Section 28(A) indicates the land owner has to seek re-determination of the compensation on the basis of the award thus passed by the civil Court in relation to the some other lands. Even if a person fails to seek reference, it is open to the land owner to seek re-determination on the basis of the amount fixed in respect of



the neighboring land owners. This application also should be filed within three months from the date of award of the Land Acquisition Tribunal in respect of other land owners. Sections 18 and 28(A) of the Act are meant to protect the interest of every land owners to get compensation at the market value determined by the civil Court.

13. Though it is held that the application under Section 18 of the Act is in writing and within 6 weeks from the date of award, this Court has interpreted the provision to enable the person, who receive compensation under protest to get the benefit under Section 18. Section 18 of the Land Acquisition Act reads as follows

18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

14. Considering the facts in the present case, this Court is of the view that the petitioner's request for reference under Section 18, should be considered.

15. Applying the principles of equity, this Court find no reason to reject the plea of the petitioner. Petition is not submitted in time as stated earlier. The Land Acquisition Officer himself, has stated in the award that the petitioner's application for enhanced compensation would be considered by referring the matter to the civil Court under Section 18 of the Act.

16. Statement recorded in the award is a promise made to the petitioner and therefore, the respondent by their conduct made the petitioner to believe that request for higher compensation would be referred to the civil Court in terms of Section 18 of the Act.

17. In the present circumstances, this Court is inclined to allow the writ petition and the respondents are directed to make reference to the civil Court for enhanced compensation in respect of land



belonging to the petitioner's mother in survey No.44/1, Ottanchathiram Village, within a period of two weeks from the date of receipt of a copy of this order. On such reference, civil Court also expected to consider the issue and determine the compensation by following the judgment of the civil Court earlier fixing compensation for the lands acquired under the same notification, within a period of three months, thereafter. Accordingly, this writ petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

- 1.The District Collector,
Dindigul District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Palani.
- 3.The Tahsildar,
Ottanchathiram Taluk,
Dindigul District.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-5212[F] dated 07/02/2020)

+1 CC to M/s.SPL GP (SR-5410[F] dated 10/02/2020)

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