



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM:

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.22600 OF 2016

1. Habeebunissa Begum
2. Shamshad Begum
3. I.Mohammed Jalaludeen
4. I.Mohammed Salahudeen
5. Zakira Begum
6. I.Mohammed Rafi
7. I.Mohammed Ameenudeen

... Petitioners

.Vs.

1. State of Tamil Nadu,
Represented by its Secretary to Government,
Highways Department, Secretariat,
Fort St.George,
Chennai - 600 009.
2. The Collector,
Kancheepuram District,
Kancheepuram.
3. The Special Deputy Collector,
(Land Acquisition),
Highways Department, TNUDP - III,
New Street, Alandur,
Chennai - 600 016.
4. The Special Deputy Collector,
(Land Acquisition),
Highways Department, TNUDP-III
Poonamallee,
Chennai - 600 056.
5. G.Kasturi
6. Pramila
7. Geetha Raja
8. Prabha Vivekanandan
9. Shanthi
10. Durga

... Respondents



PRAYER:-

Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus to direct the 3rd respondent to refer the dispute pertaining to the compensation payable in respect of lands situate at S.No.78/29A1B and S.No.78/29A2B, E.C.R. Road, Palavakkam Village, Sholinganallur Taluk, Kancheepuram District, to the Civil Court as mandated under Sections 20 & 21 of the Tamil Nadu Highways Act, 2001 and to consequentially direct that the sums paid illegally to the respondents 5 to 10 at the instance of the 4th respondent, be recovered and deposited before the Civil Court till the disposal of the reference.

For Petitioners	:	Ms.Abirami For Mr.V.Raghavachari
For Respondents 1 to 3	:	Mr.Richardson Wilson Counsel for Government
For Respondents 5, 8 to 10	:	Mr.S.Sethuraman
For Respondents 6 & 7	:	Mr.Magalingam For M/s.F.Kamal Baig

ORDER

The prayer sought for herein is for a writ of mandamus to direct the 3rd respondent to refer the dispute pertaining to the compensation payable in respect of lands situate at S.No.78/29A1B and S.No.78/29A2B, E.C.R. Road, Palavakkam Village, Sholinganallur Taluk, Kancheepuram District, to the Civil Court as mandated under Sections 20 & 21 of the Tamil Nadu Highways Act, 2001 and to consequentially direct that the sums paid illegally to the respondents 5 to 10 at the instance of the 4th respondent, be recovered and deposited before the Civil Court till the disposal of the reference.

2. That for the expansion of East Coast Road between Thiruvannamiyur and Akkarai as a six lane road, there had been land acquisition proceedings, where, the land situated at S.No.78/29A1B and S.No.78/29A2B at Palavakkam Village were also acquired.

3. According to the petitioners, the said land belongs to the petitioners father one Alhaj Rajjab Mohammed Ibrahim who is no more, therefore, as the legal heirs of the original owner, it is the claim of the petitioners that, they become the owners and therefore, since they have inherited the property in question,



they are entitled to get the compensation.

4. After the land acquisition proceedings was over, compensation was determined by the Competent authority i.e., the District Collector concerned under Section 19 of the Tamil Nadu Highways Act, 2001 (in short 'the Act').

5. In this context, it is to be noted that, insofar as the property in S.No.78/2A1B is concerned, there is a dispute between the petitioners and the private respondents 5 to 10 herein, where, it is the claim of the private respondents that, the property belongs to them, therefore, it has been wrongly quoted as if the land belongs to the petitioners through his father, therefore, the private respondents are entitled to get the compensation.

6. Be that as it may, insofar as the property at S.No.78/29A2B is concerned, there is no controversy from the point of view of the private respondents as they did not claim ownership over the said property, however, it has become an issue among the legal heirs of the original owner Alhaj Rajjab Mohammed Ibrahim who are the petitioners herein as to which legal heir has to get which apportionment of the determined compensation.

7. In this regard, it seems that, the petitioners/legal heirs of the said original owner had filed a civil suit in O.S.No.236 of 2014 before the District Munsif Court, Chengalpattu and it is stated to be pending.

8. In the meanwhile, pursuant to the award passed by the District Collector under Section 19 of the Act, the award amount had been deposited in the same Civil Court, where, the said O.S.No.236 of 2014 was pending. As the said amount has to be paid to the legal heirs of the original owner, since there has been interse dispute among the legal heirs i.e. the petitioners, therefore, in this regard, since they approached the Civil Court and filed the civil suit, the said amount claimed to have been deposited in the said Court itself.

9. Only in that circumstances, the petitioners sent a representation to the respondents to refer the award/compensation pertaining to both lands i.e., at S.No.78/29A1B and at S.No.78/29A2B to the Reference Court under Section 20 of the Act, since that reference has not been made by the respondents, the present writ petition has been filed.

10. Heard Ms.Abirami, learned counsel appearing for the petitioners, who, would submit that, the petitioners being the legal heirs of the original owner Alhaj Rajjab Mohammed Ibrahim,



inherited both the properties i.e., S.Nos.78/29A1B and 78/29A2B as referred to above and in this regard, the dispute raised by the private respondents 5 to 10 is untenable or cannot be accepted. Therefore, insofar as both the properties, only the petitioners are entitled to receive the compensation and in this regard, even though there is an interse dispute among the legal heirs i.e., the petitioners, for which, civil suit has been filed and it is pending, that will not preclude the petitioners from seeking for reference for enhancement of compensation for both the lands under Section 20 of the Act, therefore, that has been sought for by these petitioners and that request since has not been considered, they approached this Court by filing the present writ petition. Therefore, the learned counsel appearing for the petitioners seeks indulgence of this Court to issue a suitable direction to refer the matter for enhancement of compensation as well as apportionment of compensation to the Reference Court under Section 20 of the Act.

11. On the other hand, Mr.Magalingam, learned counsel appearing for the private respondents 5 to 10 submits that, the land at S.No.78/29A1B belongs to them. Since it is an adjacent land at S.No.78/29A2B, the original owner made a settlement in favour of the legal heirs taking into account both S.Nos.78/29A1B and 78/29A2B, that means the land belongs to the private respondents also have been wrongly settled by the original owner and in the guise of such wrong settlement, the legal heirs of the original owner, who are the petitioners herein, are claiming title over the property and in that guise, they seek for reference under Section 20 of the Act, not only for their land in S.No.78/29A2B, but also the land of the private respondents in S.No.78/29A1B, therefore, that kind of prayer at the instances of the petitioners cannot be granted as that would give unnecessary advantage and leverage to the petitioners, as the property in S.No.78/29A1B definitely belongs to the private respondents.

12. On the other hand, Mr.Richardson Wilson, learned Government Counsel appearing for the official respondents has relied upon the following averments made in the counter affidavit filed by the third respondent.

"2.It is submitted that in order to expand the highway as six lane from Thiruvanniyur to Akkarai on ECR acquisition of lands for an extent of 11445 square meter have been notified in Palavakkam Village and award was passed in award No.4/2015 dated 04.12.2015. An extent of 132 Square Meter in S.No.78/29A2B of Palavakkam Village belongs to petitioner's father was acquired in award 4/2015 dt.4.12.2015. A sum of Rs.6879277/- has been awarded as compensation for above



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land and the compensation amount deposited in civil court u/s.22(3) of the Act as these in a suit O.S.No.236/2014 pending before DMC Court Chengalpattu as there is dispute between the legal heirs of petitioner's father. An extent of 42 square meters belongs to G.Kasturi and six others in S.No.78/29A1B was acquired in award No.4/2015 dated 04.12.2015. It is submitted that G.Kasturi one of the respondents has sold two plots in S.No.78/29B1 and 78/29B2 measuring 2266 Square feet and 2310 Square feet respectively and her husband Thiru.Gunasekharan has sold the plots in S.No.78/2A1 and 78/29A2 measuring 2741 Square feet and 3059 Square feet in Palavakkam Village, Sholinganallur Taluk vide Document No.4272/92 dt:9.11.1992 Document 4752/92 dt:30.11.1992, Document No.4271/92 dt:9.11.1992 and Document No.4253/92 dt:30.11.1992."

13. By relying upon the said averments made in the counter, the learned Government Counsel appearing for the official respondents would submit that, insofar as the S.No.78/29A2B is concerned, no doubt, it belongs to the petitioners father, which was acquired and Award No.4 of 2015 was passed on 04.12.2015, a sum of Rs.68,79,277/- has been awarded as compensation for the said land and the compensation amount was deposited in Civil Court under Section 22(3) of the Act as the suit in O.S.No.236 of 2014 was pending before the District Munsif Court, Chengalpattu as there is dispute between the legal heirs of the petitioners father.

14. The learned Government Counsel would further submit that, however, insofar as the land at S.No.78/29A1B is concerned, it cannot be claimed ownership exclusively by the petitioners as it is the claim of the private respondents that, the land belongs to them. Therefore, if at all the petitioners want to refer the matter to the Reference Court for enhancement of compensation as well as apportionment of compensation among the legal heirs are concerned under Section 20 of the Act, no doubt, the reference could be made by the District Collector concerned under Section 20 of the Act, but that should be confined only to S.No.78/29A2B and not with regard to S.No.78/29A1B.

15. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

16. Now, it has become clear that, insofar as the property at S.No.78/29A1B is concerned, there has been a dispute between the petitioners and the private respondents and it is a definite case of private respondents that the land belongs to them.



17. Even though this is disputed by the learned counsel appearing for the petitioners, in view of the stand taken by the official respondents that, the said land not belongs to the petitioners since there is dispute between the petitioners and the private respondents, that can be resolved by themselves in the manner known to law. Therefore, insofar as S.No.78/29A1B is concerned, no reference can be sought for by the petitioners, as has been claimed through this writ petition, to refer the matter to the competent Reference Court under Section 20 of the Act.

18. However, insofar as S.No.78/29A2B is concerned, absolutely there is no dispute that the land belongs jointly to the petitioners, who are the legal heirs of the original owner Alhaj Rajjab Mohammed Ibrahim.

19. Though there is an interse dispute between the petitioners who are the legal heirs of the original owner and in this regard, since a civil suit had already been filed and it is pending, it is for the petitioners to resolve those issues. However that interse dispute among themselves, would not in any way hamper the petitioners from jointly seeking the reference of the Award passed by the District Collector under Section 19 of the Act insofar as S.No.78/29A2B is concerned for reference under Section 20 to the competent Reference Court.

20. In that view of the matter, this Court is inclined to dispose of this writ petition with the following orders.

(i) That there shall be a direction to the second respondent District Collector to refer the compensation already awarded towards the petitioners in respect of acquired land in S.No.78/29A2B at Palavakkam Village, Sholinganallur Taluk, Kancheepuram District to the Reference Court under Section 20 of the Tamil Nadu Highways Act, 2001.

(ii) Insofar as S.No.78/29A1B is concerned, no such reference can be made at the instances of the petitioners. Insofar as the claim made by the petitioners, with regard to the ownership of the said land i.e., S.No.78/29A1B is concerned, it is a matter to be relegated for decision by a competent Civil Court, if there is really any dispute with regard to the ownership of the said land between the petitioners and the private respondents and therefore, that can be resolved by the respective parties in the manner known to law and this Court has not expressed any view on that aspect.



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(iii) Therefore, insofar as the reference is concerned, as indicated above, the District Collector i.e., second respondent shall complete the task by referring the matter, within a period of four weeks from the date of receipt of a copy of this order.

21. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Secretary to Government,
State of Tamil Nadu,
Highways Department, Secretariat,
Fort St.George, Chennai - 600 009.
2. The Collector,
Kancheepuram District,
Kancheepuram.
3. The Special Deputy Collector,
(Land Acquisition),
Highways Department, TNUDP - III,
New Street, Alandur,
Chennai - 600 016.
4. The Special Deputy Collector,
(Land Acquisition),
Highways Department, TNUDP-III
Poonamallee,
Chennai - 600 056.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.30729
+1cc to the Government Pleader, S.R.No.30851

W.P.NO.22600 OF 2016

PCH(CO)
PBS/17/08/2021