

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

**Rev.Appl.Nos.64 to 66 of 2016
against
W.P.Nos.22713 to 22715 of 2012**

1. Karunakaran ... Petitioner in Rev.Appl.No.64 of 2016
2. Shokku
3. Muthu
4. Sathya ... Petitioners in Rev.Appl.No.65 of 2016
5. C.Kannappa Mudaliar ... Petitioner in Rev.Appl.No.66 of 2016

Vs.

Land Acquisition Officer & Sub Collector,
District Revenue Officer,
Tiruvallur.

... Respondent in all Rev.Appls

Review Applications filed under Order XLVII Rule 1 r/w Section 114 of C.P.C r/w Article 226 of Constitution of India, to review the judgments of this Court in W.P.Nos.22713 to 22715 of 2012 dated 17.12.2013.

For Petitioners
in all Rev.Appls : Mr.G.Karthikeyan

For Respondent
in all Rev.Appls : Mr.M.R.Gokul Krishnan
Government Advocate

COMMON ORDER

These Review Applications have been filed to review the orders of this Court in W.P.Nos.22713 to 22715 of 2012, dated 17.12.2013.

2. The lands which belonged to the petitioners were acquired by the respondent for the purpose of laying 3rd and 4th Railway track between Thiruvallur and Arakkonam. After Section 4(1) notification under the Tamil Nadu Land Acquisition Act, 1984 (hereinafter referred to as 'the Act' for short) was issued on 06.09.2007 and the same was published in the Tamil Nadu Extraordinary Gazette No.257 on 07.09.2007. Thereafter, notices under Sections 9(3) and 10 of the Act were served on them on 18.06.2008, directing them to appear for enquiry on 25.07.2008. Accordingly, the petitioners have attended the award enquiry on 25.07.2008 and made a claim of compensation at Rs.1,30,000/- per cent. However, the respondent determined the value of the property at Rs.3,500/- per cent and the award was passed on 27.08.2009. Though the petitioners have received the compensation under protest, the respondent failed to refer the petitioners protest to the Court under Section 18 of the Act. Therefore, the petitioners filed writ petitions before this Court for a

direction, directing the respondents to refer the petitioners' objections to the Court relating to the award in Award No.3 of 2009 dated 11.08.2009 for determination of proper valuation for the land which was acquired by the respondent. This Court, by order dated 17.12.2013, dismissed all the writ petitions for the reason that 80% of the compensation amount as awarded in Award No.3 of 2009, dated 11.08.2009 was received by the petitioners under protest on 08.09.2008. The balance 20% of the award amount was also received under protest on 13.01.2011. However, they had not mentioned in their sworn statements with regard to the innate desire/intention in seeking a reference or made a specific request to refer the matter to the Civil Court. Only if they had made a request for making a reference/seeking a reference to the Civil Court at the earliest point of time viz., when they made their sworn statements before the Land Acquisition Officer on 25.07.2008, then, the petitioners in law are entitled to demand their reference being made to the Civil Court by the Land Acquisition Officer. Only on 03.11.2011, the petitioners had submitted a petition seeking reference under Section 18 of the Act, viz., after expiry of more than two years from the date of award enquiry or date of passing the award. The petitioners, at the earliest point of time, had not expressed their desire/intention in writing to refer the matter to the Civil Court.

Hence, all the Writ Petitions failed and the same were dismissed.

3. The learned counsel for the petitioners submitted that, at the time of hearing the writ petitions, the petitioners failed to cite the judgment of the Hon'ble Division Bench of this Court reported in CDJ 2006 MHC 1587 (***The Managing Director vs. Chinnasamy & others***). In the said judgment the Hon'ble Division Bench of this Court referred various judgments and held as follows:-

“7. In this context, it is useful to refer to a recent decision rendered by the First Bench of this Court reported in 2006-1-L.W-347 (Steel Authority of India Limited, Salem Steel Plant, Salem vs. The Salem Urukklai Thittathal Nilam Ilanthor Sangam & Others). While considering similar objection raised by a public body, viz., Steel Authority of India Limited, after referring to the decision of the Supreme Court in Ajit Singh v. State of Punjab ((1994) 4 SCC 67), the Bench held that the protest against the award of the Collector is implied notwithstanding the acceptance of compensation. The Division 18.12.1990 (Pachaianna Gounder and another vs. Special Tahsildar, Land Acquisition, Salem Steel Plant and another). The following conclusion of the Division Bench is very relevant and the same is extracted here-under,

“21. Having regard to this settled legal position laid

down by the Apex Court as well as various High Courts it is clear that mere protest or expression of dissatisfaction to the award of compensation without there being anything in writing may be sufficient and that the authority concerned is under an obligation to refer the matter to the court in accordance with Section 18(2) of the Act. In view of this legal position various categories as indicated hereinabove, expressing their protest and filing their applications for reference and some having not even received notices under Section 12(2) of the Act, cannot be denied the right to refer their cases to the Court under Section 18(2) of the Act, and therefore, we do not find any ground to interfere with the judgment of the learned single judge.”

Thus, it is clear that even without a formal application, if the land owner expresses his protest or dissatisfaction to the award of compensation, the authority is under an obligation to refer the matter to the Court under Section 18(2) of the Act.”

4. From the above judgment, it is clear that even without formal application, if the land owner expresses his protest or dis-satisfaction to the award of compensation, the authority is under an obligation to refer the matter to the Court under Section 18(2) of the Act.

5. The learned Government Advocate appearing for the respondent submitted that provisions under Section 18(2) of the Act categorically, says that; (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. He further submitted that admittedly, the petitioners submitted their applications only on 03.03.2011 seeking reference under Section 18 of the Act, that too, after expiry of more than two years from the date of the award dated 11.08.2009. Therefore, this Court rightly dismissed the writ petitions.

6. Though the award was passed on 11.08.2009, the petitioners received 80% of the compensation amount under protest on 08.09.2008 and the balance 20% of the award amount was also received by them under protest on 13.01.2011. Though the petitioners made request on 03.03.2011 for reference under Section 18 of the Act, from the above judgement cited by the learned

counsel for the petitioners, it is clear that even without a formal application, if the land owner expresses his protest or dis-satisfaction to the award of compensation, the authority is under an obligation to refer the matter to the Court under Section 18(2) of the Act. Under these circumstances, it cannot be contented that, without a formal application, reference cannot be made to the Civil Court for enhancement of the compensation.

7. The learned counsel for the petitioners also relied upon the judgment of the Hon'ble Division Bench of this Court reported in CDJ 2013 MHC 947 (*Syed Abubacker vs. State of Tamil Nadu*) and the Hon'ble Division Bench of this Court referring the judgment reported in 2006 (1) M.L.J.252 (*Steel Authority of India Ltd., Salem Steel Plant vs. Salem Urukklai Thittathal Nilam Illanthor Sangam, Salem & 7 others*), wherein it was held that, for making a reference under Section 18(2) of the Land Acquisition Act, 1894, mere protest, expression of dis-satisfaction of the award amount without there being anything in writing is sufficient and the authorities are under obligation to refer the matter to the Court under Section 18(2) of the Act. It was further held that, it is sheer common sense that, in no case, the land owner will be satisfied with the compensation awarded by the Land Acquisition Officer.

Therefore, the above judgments are squarely applicable to the case on hand. However, the petitioners failed to bring to the notice of those judgments before this Court while passing the order. Therefore, the petitioners made out a case for review applications.

8. In view of the above discussion, the orders passed by this Court in W.P.Nos.22713 to 22715 of 2012 dated 17.12.2013 are set aside. The respondent is directed to refer the award passed in Award No.3 of 2009 dated 11.08.2009 before the Civil Court under Section 18(2) of the Act, within a period of two weeks from the date of receipt of a copy of this order. On such reference, the referral Court is directed to dispose of the petition within a period of three months thereafter. No costs.

9. In the result, these Review Applications are allowed. No costs.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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To

The Land Acquisition Officer & Sub Collector,
District Revenue Officer,
Tiruvallur.



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