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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.23357 of 2017 and
W.M.P.No.24452 of 2017

1.A.Malathi
2.M.Kalyani

... Petitioners

Vs.

Sub Collector,
Revenue (North) cum Land Acquisition Officer,
Saram, Puducherry.

... Respondent

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus directing the respondent to pass orders on merits on the Petition No.17250 of 2015 and Petition No.17252 of 2015 dated 23.10.2015 and Petition No.316 dated 12.1.2017 as provided under Section 28-A(2) of the Land Acquisition Act, 1894, within the reasonable time fixed by this Court.

For Petitioners : Mr.K.Sukumaran

For Respondent : Ms.G.Djearany
Government Advocate (Pondy)

ORDER

The prayer sought for herein is for a writ of mandamus directing the respondent to pass orders on merits on the Petition No.17250 of 2015 and Petition No.17252 of 2015 dated 23.10.2015 and Petition No.316 dated 12.1.2017 as provided under Section 28-A(2) of the Land Acquisition Act, 1894.

2.That the land to the extent of 16 ares in R.S.No.246/2 originally belonged to the mother of the petitioners one Sarojiniammal. The said land along with some other lands totally an extent of 13.96.50 hectares situated at Kathirkamam in Oulgaret Revenue Village in the District of Puducherry was sought to be acquired for a public purpose by the respondent Government and in this regard, a notification under Section 4(1) of the Land Acquisition Act (In short "the Act") was issued by the Gazette of the respondent Government on 07.06.2005.



3.While issuing the notification, emergency provision i.e., Section 17 of the Act was invoked and thereafter a declaration also came to be issued under Section 6 of the Act by issuance of Gazette on 14.06.2005.

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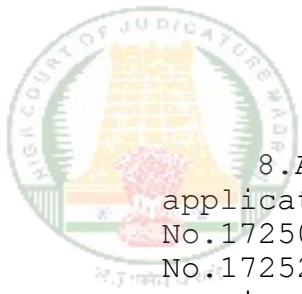
4.Thereafter, compensation has been awarded under Section 11 of the Act on 12.06.2007, accordingly the compensation was fixed at the rate of Rs.60/- per sq.ft. Therefore, based on the said fixation of compensation amount having been calculated, was paid to the said Sarojammal, who received the same under protest.

5.Subsequently, it seems that an another landholder, for whose land also the same rate of Rs.60/- per sq.ft. was fixed, approached the Court by filing L.A.O.P.No.243 of 2009 under Section 18 of the Act against the award passed in this regard and the said L.A.O.P. was pending disposal for sometime.

6.During the pendency of the L.A.O.P., there has been a family arrangement in the family of the petitioners which came to be executed on 20.10.2010, where, it has been specifically mentioned that, since there is likelihood of enhancement in the compensation to be made in this regard, in view of the pendency of the L.A.O.P., of course triggered by another landholder, and based on the expected enhancement of the compensation in the event of order is passed in Reference under Section 18 of the Act, such enhanced compensation also to be given to the petitioners, who are the legal heirs of the original owner and pursuant to the said family arrangement or partition made on 20.10.2010, these petitioners being the legal heirs of the original owner have become eligible to claim the enhanced compensation.

7.Subsequently, on 29.07.2015, the L.A.O.P.No.243 of 2009 filed by another landholder as stated supra before the II Additional District Judge, Puducherry was disposed of, where, an award was passed, whereby, the compensation fixed by the authorities in Award No.5 of 2007 i.e., Rs.60/- per sq.ft. has been enhanced to Rs.125/- per sq.ft.

8.Since the compensation has been enhanced under the L.A.O.P. filed by the similar landholder under the same notification, the petitioners also become entitled to claim the similar enhanced amount within the meaning of Section 28-A of the Land Acquisition Act as the said provision enabling the other landholders, whose lands also have been acquired under the same notification, but have not approached the Court for getting an enhanced compensation by way of reference under Section 18 of the Land Acquisition Act, to seek for similar enhanced compensation under Section 28-A of the Act.



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8. Accordingly, on 23.10.2015 the petitioners made application under Section 28-A of the Act in Application No.17250 of 2015 by the first petitioner and Application No.17252 of 2015 by the second petitioner, the same having been received by the respondent as a token of acknowledgement, the office seal has been affixed on 23.10.2015, thereby, it has become clear that within the limitation period as contemplated under Section 28-A of the Act, the said applications had been filed by the petitioners.

9. However, for all these years, i.e., upto the filing of the writ petition in 2017, the said applications filed by the petitioners under Section 28-A of the Act had not been considered and nothing was forthcoming from the respondent for giving enhanced compensation, therefore, the petitioners filed this writ petition with the aforesaid prayer in the year 2017.

10. Heard Mr.K.Sukumaran, learned counsel appearing for the petitioners, who, after having reiterated the aforesaid facts, on instructions, would submit that even till date no orders have been passed and no enhanced compensation has been given by considering the application of the petitioners dated 23.10.2015 made under Section 28-A of the Act.

11. Therefore, the learned counsel appearing for the petitioners seeks indulgence of this Court to issue a suitable direction by way of mandamus to the respondent to act upon on the applications of the petitioners dated 23.10.2015 and accordingly, to calculate the enhanced compensation as per the order passed by the concerned Court on 29.07.2015 in a related L.A.O.P. on the same notification and accordingly, the calculated amount shall be directed to be paid within a time frame that may be stipulated by this Court.

12. I have heard Ms.G.Djearany, learned Government Advocate appearing for the respondent, who, on instruction, would submit before this Court that, no doubt, the land of the petitioners had been acquired, for which, compensation was initially fixed and award was passed on 12.06.2007, however subsequently the other landholder had filed L.A.O.P. and got an enhanced compensation.

13. In this regard, even though the petitioners had given applications under Section 28-A of the Act on 23.10.2015, since the original owner of the land was one Sarojiniammal, who is no more, it seems that, therefore whether these petitioners are the legal heirs of the said Sarojiniammal who was the original landholder and in order to establish the same, no documents, especially, the legal heir certificate, had been produced by the petitioners, therefore, for want of production of legal heir



certificate, the file could not be moved further, therefore the said applications submitted by the petitioners dated 23.10.2015 had been kept pending and once they come forward to produce the legal heir certificate establishing that, the petitioners are the legal heirs of the original owner Sarojiniammal, there can be no further impediment on the part of the respondent to proceed with the said applications of the petitioners under Section 28-A and accordingly, the enhanced compensation would be calculated and be paid within a time frame that may be stipulated by this Court, she contended.

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

15.Insofar as the said facts submitted by the petitioners side till the filing of the application dated 23.10.2015 under Section 28-A of the Act, absolutely there is no controversy, as all these factors are accepted by the respondent.

16.The only reason now has been stated by the respondent side for not acting upon on the applications of the petitioners from 2015 till date is, since the original owner was Sarojiniammal who is no more and therefore, on whose behalf whether the petitioners can claim the enhanced compensation as legal heirs and in order to ascertain the same, they should have filed the legal heir certificate which they have not filed. That is the only reason, on which, the application of the petitioners have been kept pending without showing any further progress.

17.If that is the reason, this Court feels that, in the year 2015 itself on receipt of the applications from the petitioners, the respondent could have asked for production of legal heir certificate from the petitioners, but no such communication seems to have been issued from the respondent to the petitioners requiring them to produce the legal heir certificate.

18.Be that as it may, now the issue has been narrowed down, where, the only impediment is the production of legal heir certificate, for which, the learned counsel appearing for the petitioners is readily agreed to produce the same within a shortest possible time.

19.In that view of the matter, this Court is inclined to dispose of this writ petition with the following directions:

- (i) That there shall be a direction to the respondent to receive the legal heir certificate from the petitioners, which they shall file it within a period of two weeks from the date of receipt of a copy of this order and on receipt of such legal heir



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certificate from the petitioners, the respondent shall act upon on their applications dated 23.10.2015 separately filed by them in this regard in Application Nos.17250 and 17252 of 2015 respectively and accordingly calculate the enhanced compensation as has been awarded by the competent Court i.e., II Additional District Judge, Puducherry dated 29.07.2015 made in L.A.O.P.No.243 of 2009 and after calculating the enhanced amount that shall be paid to the petitioners immediately.

(ii) It is needless to mention that on paying the compensation whatever shall be the additional compensation, solatium or interest in this regard, for which, the petitioners are entitled to, the same also shall be calculated and be paid to the petitioners.

(iii) It is further made clear that, the partition effected among the family members or the legal heirs of the deceased Sarojiniammal on 20.10.2010 shall be taken into account while accepting the legal heir certificate of the petitioners. The needful, as indicated above, shall be undertaken by the respondent within a period of eight weeks from the date of receipt of legal heir certificate from the petitioners as indicated above.

20. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

The Sub Collector,
Revenue (North) cum Land Acquisition Officer,
Saram, Puducherry.

+1cc to Mr.K.Sukumaran, Advocate, S.R.No.29295
+1cc to the Government Pleader, S.R.No.29219

W.P.No.23357 of 2017

PCH(CO)
CB(20/07/2021)