



IN THE HIGH COURT OF JUDICIATURE AT MADRAS

DATED : 02.09.2021

CORAM:

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THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.No.2273 of 2018 and C.M.P. No.18149 of 2018

P.Sethupathy

... Appellant/2nd Respondent

versus

1.Nallammal

2.Poovathal

3.Sarasthal

4.Ramasamy @ Thattukarar Chinnarasu

5.K.Saraswathy

6.Competent Authority and Special District
Revenue Officer (LA),
NH 47 & 67, Coimbatore.

7.The Project Director,
Project implementation Unit,
Coimbatore, National Highways Authority of India,
No.11/1, Kongu Nagar (Backside of Appasamy apt),
Ramanthapuram,
Coimbatore - 641 045

...Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order dated 15.02.2018, passed in
W.P.No.29228 of 2016.

Prayer in W.P.29228/2016:

Writ Petition filed under Article 226 of the Constitution of
India praying for issuance of a Writ of Certiorarified Mandamus
to call for the records of the first respondent in proceedings
Spl.DRO.Roc.319/2010 (NH-47) dated .01.2013 and quash the same
as illegal, incompetent, and wholly without jurisdiction and
consequently to direct the first respondent to pay the
compensation to the petitioner for the lands in Survey No.727/2,
Karumathampatti Village, Sulur Taluk, Coimbatore District.

For Appellant :Mr.J.Rajmohan

For Respondents:Mr.V.Raghavachari for R1 to R5

Mr.T.Arunkumar

Government Advocate for R6

No Appearance for R7



JUDGMENT

(Judgment of the Court was delivered by T.RAJA,J.)

This Writ Appeal has been filed, questioning the correctness of the impugned order dated 15.12.2018, passed in W.P.No.29228 of 2016, by a learned Single Judge of this Court.

2. Learned Counsel appearing for the appellant would submit that the Government of India, in the Gazette of India, have notified the Special District Revenue Officer (L.A), N.H-47, Coimbatore, as Competent Authority for building (widening/six laning etc.) maintenance, management and operation of N.H.47 in Coimbatore and Tiruppur District and the said notification was published in the Gazette of India No.2441 Extraordinary issue of Part II Section - 3, Sub-section (ii) and S.O.No.2879(E), dated 01.12.2010 under Section 3D (1) of N.H.Act 1956. While so, an award was passed for the acquisition of an extent of 71251 Sq.Mts of agricultural land and 6160 Sq.Mts of plot land including an extent of 581 Sq. Mts. of agricultural land in S.F.No.727/2 of Karumathampatti Village, Tiruppur District. Subsequently, the appellant appeared for an enquiry claiming ownership of the land covered in S.F.No.727/2 of Karumathampatti Village among other Survey numbers as per the gift settlement deed dated 06.10.2006 made by the appellant and his two brothers. At the time of the said enquiry, the appellant has also filed the following documents in support of his claim:

a) Ownership Report dated.02.03.2011 given by V.A.O., Karumathampatti in f/o Thiru.P.Sethupathy as per Doc.No.11212/2006;

b) Computerized Chitta, 'A' Register extract and Adangal Extract for S.F.No.727/2 in Patta No.2276 of Karumathampatti Village in f/o.Thiru.P.Sethupathy; and

c) Encumbrance Certificate No.2771 for the period from 01.01.1982 to 31.12.1986 and E.C.No.2770 dated 09.02.2011 for the period from 01.01.1987 to 08.02.2011.

3. Learned Counsel for the appellant would further submit that objecting the same, the writ petitioner No.4/4th respondent herein also presented a petition dated 03.02.2011 in favour of himself and in favour of the other writ petitioners stating that one Thiru.Rangasamy, the grandfather-in-law of the first writ petitioner-Nallammal and the 5th writ petitioner K.Saraswathy and the grandfather of the 2nd writ petitioner Poovathal, 3rd writ petitioner - Sarasathal and the 5th writ petitioner - Ramasamy and the grandfather of one another



Mylathal W/o.Subramaniya Gounder, claiming ownership of the property as per patta No.883. The appellant, who appeared for enquiry, on 23.12.2011, presented all the necessary documents showing his ownership and title of the land-in-question covered in S.F.No.727/2, situated at Karumathampatti Village. The appellant also requested the writ petitioners to produce the patta and other revenue records. But till date, not even a single document was produced.

4. Learned Counsel for the appellant would also submit that firstly, since the writ petitioners were able to get patta behind the back of the appellant from the Tahsildar, Sulur, aggrieved by the same, the appellant filed an appeal before the Revenue Divisional Officer, Coimbatore, which was dismissed. After the dismissal of the appeal by the Revenue Divisional Officer, Coimbatore, by proceedings dated 28.09.2012, the same was also put to challenge before the District Revenue Officer by way of revision. The District Revenue Officer, after entertaining the relevant documents proving the ownership and the title of the land in favour of the appellant herein and finding nothing from the side of the writ petitioners, finally passed a detailed order holding that the appellant is the owner of the land-in-question. Accordingly, the District Revenue Officer set aside the order, passed by the Tahsildar dated 16.09.2011 and the another order passed by the Revenue Divisional Officer on 28.09.2012. Since the District Revenue Officer has finally passed the order dated 25.05.2016, till date, the writ petitioners have not questioned the correctness of the said order, hence, the said order has become final. Thus, such an approach of the writ petitioners shows that they have accepted the entry made by the Revenue Authorities in the Revenue records in respect of land-in-question.

5. Learned Counsel for the appellant would further submit that secondly, the Competent Authority accepting the various documents produced by the appellant and also finding no iota of evidence in support of the writ petitioners, passed a detailed order holding that the appellant is the owner of the land. While so, it is not known as to why the writ petitioners have not even approached the competent Civil Court to establish the title of land in question in their favour. Thirdly, learned Single Judge has also passed an order, directing the parties to approach the Civil Court. When the writ petitioners having lost before the competent authority and also before the Revenue Authorities namely, Tahsildar, Revenue Divisional Officer and District Revenue Officer respectively, it is not known why they have not even taken any steps to file a Civil suit for obtaining decree for declaration of title in their favour. This aspect has been completely overlooked by the learned Single Judge.



6. Learned Counsel for the appellant would also submit that fourthly, the justification shown in the impugned order passed by the learned Single Judge directing the parties to approach the Civil Court under Section 3H(4) of the National Highways Act, 1956, for apportionment of the compensation, cannot reach its finality, unless the writ petitioners get a decree of declaration in their favour, especially, when the competent authority has already given a finding on the basis of the sale deed dated 22.06.1990, holding that the appellant is the absolute owner of land in question. With these submission, he prayed for allowing the appeal,

7. Mr.V.Raghavachari, learned counsel appearing for the writ petitioners/respondents 1 to 5 herein would submit that the District Revenue Officer, Coimbatore has already passed an order by setting aside the orders passed by the Tahsildar and Revenue Divisional Officer and therefore, it is not necessary to file any appeal, since the learned Single Judge directed both parties to approach the competent reference Court and to get an order for the apportionment of the compensation deposited by the competent authority. Therefore, the present appeal is liable to be dismissed.

8. But, we are unable to find any merit on the submissions of the learned counsel for the respondents 1 to 5. It is to be noted that the competent authority/Special District Revenue Officer (LA), NH-47&67, Coimbatore, has held against the writ petitioners that they have not produced any documentary evidence to prove their ownership of the acquired land. Unfortunately, again, it is to be noted that the writ petitioners have not filed any documentary evidence either before the learned Single Judge or before us. Therefore, when the writ petitioners have not substantiated their case, a direction issued by the learned Single Judge to refer the matter to the Civil Court under Section 3H(4) of the National Highways Act is unnecessary. When the award was not questioned by the respondents 1 to 5/writ petitioners, they cannot challenge the disbursement of compensation to the appellant. A perusal of the order of the competent authority shows that the appellant is the absolute owner of the land acquired. It further states that the land held by the appellant was originally sold by one Rangasamy. On the other hand, the case of the respondents 1 to 5 would show that Tmt.Nallammal who is the wife of grandson of Rangasamy, Tmt.Poovathal, Tmt.Sarasthal, Tmt.Mylathal who are granddaughters of Rangasamy, Thiru.Ramasamy, grandson of Rangasamy and Tmt.K.Saraswathi, filed a petition on 03.02.2011 through Ramasamy stating that they are the legal heirs of Thiru.Rangasamy. Thereafter, accepting the said petition, a notice for enquiry was sent on 09.04.2012, but, the writ



petitioners did not produce any documentary evidence to prove their ownership. Therefore, the findings of the learned Single Judge that the competent authority has not given reasons is erroneous. Even, if we accept the argument of the appellant for a moment that they can approach the Competent Civil Court under Section 3H(4) of the National Highways Act, 1956, for considering the question of apportionment of the compensation deposited by the competent authority, yet we will not be in a position to pass orders in favour of the writ petitioners for the simple reason that there is no documentary evidence produced to show that the land acquisition proceeding is against the appellant, secondly, when the competent authority has given a specific finding on the basis of the sale deed and revenue records produced by the appellant, ironically, the writ petitioners have not produced any evidence contrary thereto. Therefore, in our considered opinion, the learned Single Judge has committed an error.

9. Thus, for the reason stated above, we are unable to find any justification in the order of the learned Single Judge, therefore, we have no hesitation to set aside the said order.

10. Accordingly, the writ appeal stands allowed by setting aside the order of the learned Single Judge. It is made clear that the appellant is entitled to receive the compensation. Consequently, C.M.P. No.18149 of 2018 is closed. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The Competent Authority and Special District
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Project implementation Unit,
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+1 CC to Mr.I. Periyasamy, Advocate sr 44753.
+1 Cc to The Government Pleader sr 44565.

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W.A.No.2273 of 2018

NK(CO)
SP(10/11/2021)