



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.9918 of 2012

M.Celestine

...Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by the District Collector,
Nagercoil, Kanyakumari District.

2. The land Acquisition Officer /
Special Tahsildar (LA),
Kalkulam Taluk,
Kanyakumari District.

... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the first respondent to redetermine the compensation amount of the petitioner's land in Award No.7/90-91, dated 20.09.1990, on the file of the Land Acquisition Office under Section 28 of the Land Acquisition Act, 1894, on the basis of L.A.O.P.No.43 of 1991, dated 17.03.2003, on the file of the Sub Judge, Padmanabhapuram.

For Petitioner : Mr.V.M.Balamohan Thambi

For Respondents : Mr.M.Lingadurai,
Government Advocate

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus directing the first respondent to redetermine the compensation amount under Section 28 A of the Land Acquisition Act, 1894, (hereinafter referred to as "the Act") on the basis of the order passed in L.A.O.P.No.43 of 1991, dated 17.03.2003.

2. Heard Mr.V.M.Balamohan Thambi, learned counsel appearing on behalf of the petitioner and Mr.M.Lingadurai, learned Government Advocate appearing on behalf of the respondents.

3. The case of the petitioner is that the subject property originally belonged to one Chellamma Nadachi and two of her daughters. One of the daughter, namely, Suseela @ Saroja was married by the petitioner and on her demise, her 1/3rd share devolved



upon the petitioner and his son.

4. The respondents initiated acquisition proceedings and the property belonging to the petitioner was also acquired. The compensation was determined and an award was passed on 06.09.1990. The other co-owners of the property submitted their objections on the inadequacy of the compensation awarded by the second respondent and the matter was referred under Section 18 of the Act, before the Sub Court, Padmanabhapuram.

5. The Sub Court, Padmanabhapuram, entertained the claim in L.A.O.P.No.43 of 1991 and an order was passed on 17.03.2003, wherein, the compensation was enhanced from Rs.1,100/- per cent to Rs.4,500/- per cent.

6. The petitioner soon after coming to know of the order passed in L.A.O.P.No.43 of 1991, filed a petition before the first respondent on 01.10.2003, seeking for redetermination of the compensation under Section 28 A of the Act. Since the same was not considered, the present Writ Petition has been filed before this Court seeking for appropriate directions.

7. In the considered view of this Court, even where a claimant has not made a reference under Section 18 of the Act, he will be entitled to claim compensation on par with others by taking advantage of the enhanced award made by a Court by virtue of Section 28 A of the Act. Useful reference can be made in this regard to the Judgment of the Hon'ble Supreme Court in the case of **V.Ramakrishna Rao Vs. Singareni Collieries Company Limited** reported in **2011 (1) MLJ 351**.

8. The Act specifically provides that an application under Section 28 A must be made within a period of three months from the date of the order of the Court. The Proviso to Section 28 A (1) of the Act makes it very clear that while calculating the period of three months, the day, on which the order was pronounced and the time requisite for obtaining the copy of the order shall be excluded. The Hon'ble Supreme Court has made it very clear that the Collector can entertain such application under Section 28 A of the Act, only, if it is filed within the time limit stipulated under the Act and the Collector has no powers to condone the delay. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in the case of **Popat Bahiru Govardhane Vs. Land Acquisition Officer** reported in **2013 (10) SCC 765**.

9. The petitioner in the affidavit filed in support of the Writ petition has stated that the application was filed before the first respondent / District Collector, immediately, after obtaining a copy of the order passed by the Sub Court, Padmanabhapuram, on time.



10. In view of the above, there shall be a direction to the first respondent to consider the application submitted by the petitioner on 01.10.2003 and deal with the same under Section 28 A of the Act and pass appropriate orders within a period of eight (08) weeks from the date of receipt of a copy of this order.

11. The petitioner is directed to make a fresh representation to the first respondent along with all the relevant documents and also a copy of this order.

12. The Writ Petition stands disposed of with the above directions. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Collector,
State of Tamil Nadu,
Nagercoil, Kanyakumari District.
2. The land Acquisition Officer /
Special Tahsildar (LA),
Kalkulam Taluk,
Kanyakumari District.

+1 CC to M/s.SPL GP (SR-20045[F] dated 23/06/2021)

**W.P. (MD) .No.9918 of 2012
22.06.2021**

pm(CO)

TR(30.06.2021) 3P 4C