



W.P(MD)No.18827 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18827 of 2014

A.Gorijan (Died)

1.P.Karthan

2.K.Suresh Bacon

3.K.Sharmila Banu

*(P.1 to P.3 are substituted vide order
of this Court dated 08.03.2023 in
W.M.P(MD)No.5458 of 2022)*

... Petitioners

Vs

1.The Revenue Divisional Officer,
Madurai District,
Madurai – 625 020.

2.The District Collector,
Madurai District,
Madurai – 625 020.

3.The Executive Engineer cum
Administrative Officer,
Madurai Housing Unit,
Tamil Nadu Housing Board,
Madurai – 625 016.



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4.The Secretary to Government,
Housing and Urban Development
Department,
Fort St.George,
Chennai – 600 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent order dated 03.07.2014 and the order dated 05.08.2014 passed by the first respondent, quash the same and consequently direct the respondents to recovery 1482 square feet of land to the petitioner and to initiate fresh proceedings for payment of enhanced compensation for the lands which was already utilized by the respondents.

For Petitioners : Mr.M.Senthilkumar

For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader
for R.1, R.2 & R.4

Mr.R.Siva Kumar for R.3

ORDER

Heard the learned counsel on either side.

2. The original writ petitioner owned 7 cents and 8 sq.ft of house site in the petition-mentioned survey number in S.F.No.5/3-B-2 A1B, Ponmeni



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Village, Madurai District. Along with other lands, the petitioner's land was also acquired for Ellis Nagar Housing Scheme to be implemented by Tamil Nadu Housing Board. The acquisition proceedings took place in the year 1982. A large number of persons filed writ petitions before the Madras High Court questioning the acquisition proceedings. Vide order dated 15.07.1982, the batch of writ petitions was allowed. Unfortunately, the petitioner failed to question the acquisition. She instead took part in the award enquiry. It is relevant to note here that the Hon'ble High Court vide order dated 15.07.1982 even while allowing a batch of writ petitions challenging the acquisition proceedings, non-suited some of the petitioners who had agreed to receive compensation. The erstwhile land owners, therefore, cannot now contend that the authorities must be directed to reconvey the acquired land.

3. During the pendency of this writ petition, the original petitioner passed away and her legal heirs (husband, son and daughter) have been brought on record. It is seen that the award was passed on 25.03.1982. The enquiry officer had mentioned that the petitioner agreed to receive compensation under protest. The proceedings took place under the repealed Land Acquisition Act, 1894. As per the statutory scheme, if the erstwhile land owner agreed to receive compensation under protest, then it is the duty of the Department to make reference under Section 18 of the Act for enhancement of compensation.



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Even though in the award dated 25.03.1982, it has been categorically mentioned that the original writ petitioner had agreed to receive compensation only under protest, still, no reference was made. The mistake is entirely on the part of the Department. Of course, the petitioner could have moved this Court for issuing Writ of Mandamus to make reference under Section 18 of the Act. She failed to do so. I can understand the omission on her part. Instead of tendering the award amount, reference was made under Section 31(2) of the Land Acquisition Act, 1894. Such reference is made when there is dispute as regards apportionment. The reference made vide L.A.O.P.No.52 of 1988 was pending till 19.11.2008 when it suffered a summary closure. The said order reads as follows:

Fair Order

This reference has been made under Section 30 of Land Acquisition Act for dispute in the ownership of the property in S.No.5/3B2A 1B Extent 0.74 in Ponmeni Village, Taluk, Madurai South Taluk, reference No. SSR. 77/82.A dated 19.1.88 Award No. 1/82-83, dated 25.3.82 for the purpose of the construction of houses under the housing and Development Scheme.

2. On perusal of order copy of Honourable High Court, Madras in W.P.No.11957/83 dated 7.11.1991, it finds that the Honourable High Court has quashed writ petition. As per the above said order of Honourable High Court, the reference of this land acquisition proceedings is closed.



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That is why, the present writ petition came to be filed for reconveyance. The petitioner thereafter filed W.P(MD)No.3326 of 2010 for directing the authorities to pay her compensation. The said writ petition was disposed of on 20.03.2014 in the following terms:

“2. The learned counsel appearing for the fourth respondent has submitted that compensation had already been deposited in L.A.O.P. proceedings. The second respondent in turn filed a counter affidavit reiterating the same in para-5 of the counter affidavit by furnishing the details connected with L.A.O.P.No.52 of 1988.

3. Upon perusal of the details, the learned counsel appearing for the petitioner confined his prayer to consider the representation of the petitioner to furnish complete details with regard to the compensation so far sanctioned and remitted in L.A.O.P.No.52 of 1988. Hence, the respondent is directed to furnish the details to the petitioner as prayed for. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. Upon receipt of the details, it is open to the petitioner to work out his remedy.”

Since nothing transpired even thereafter, the present writ petition for reconveyance came to be filed.



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4. It is submitted by the respondents that the land in question had been handed over to BSNL and that the petitioner's request for reconveyance is not feasible of compliance. The stand of the respondents can very well be understood. The petitioners' land had been acquired and was handed over to the Tamil Nadu Housing Board by the Revenue Department and from the hands of the TNHB, the land has passed on to BSNL. In these circumstances, third-party rights have been intervened. The question of directing reconveyance does not arise. The request for reconveyance is rejected.

5. At the same time, the petitioners cannot be left high and dry. The land belongs to Mrs.Gorijan. Not even a pie was paid. That is on account of the reference made under Section 31(2) of 1894 Act. As I already held, the petitioner's right to seek enhancement of compensation remains intact. The respondents cannot take advantage of their own wrong. The learned counsel appearing for the petitioner states that similarly placed individuals had moved this Court and obtained a handsome compensation. It is not as if the land taken from the petitioner had been retained for public purpose or given away in charity. On the other hand, it was sold for market consideration in favour of BSNL. If the respondents do not pay the fair compensation to the petitioner, that would certainly amount to unjust enrichment on the part of the respondents. It is not as if the respondents are bereft of details. They very well



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know how much for the contiguous land owners, compensation was paid. It is the Government that had acquired the lands of the petitioner has to pay compensation to the legal heirs of the original writ petitioner. By giving this direction, I am only upholding the principle of equality enshrined in Article 14 of the Constitution of India.

6. The learned counsel appearing for the petitioners would draw my attention to the object for which Section 28(A) of the 1894 Act was introduced. Though the person whose land has been acquired has the right to seek enhancement of compensation, not all land owners are diligent enough. Therefore, Section 28(A) was introduced for those who missed the bus by applying the principle of parity. In this case, it is not necessary to invoke Section 28(A). Because the stage for making reference individually never arose in this case. Failure on the part of the petitioner to seek enhancement of compensation under Section 28(A) of the Act cannot be put against the land owners.

7. I direct the fourth respondent to collect all the particulars from the respondents 1 and 2 and ensure that the writ petitioners are paid compensation on par with the adjacent land owners whose lands had been acquired. This shall be done within a period of sixteen weeks from the date of receipt of a



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copy of this order. The petitioners will be entitled to 1/3rd share each. The Government can very well raise the said amount from the Housing Board.

8. This writ petition is allowed on these terms. It goes without saying that the respondents will bear in mind the usual principles relating to disbursement of compensation such as payment of solatium, additional compensation and interest. There shall be no order as to costs.

25.07.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

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Madurai District,
Madurai – 625 020.
- 2.The District Collector,
Madurai District,
Madurai – 625 020.
- 3.The Secretary to Government,
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G.R.SWAMINATHAN, J.

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