



W.A.(MD)No.730 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.01.2025

DELIVERED ON : 29.01.2025

CORAM

THE HONOURABLE MR.JUSTICE **RMT.TEEKAA RAMAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

W.A.(MD)No.730 of 2020
and
C.M.P.(MD)No.4251 of 2020

1.The District Collector, Dindigul District.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer, Palani.

3.The Tahsildar, Ottanchathiram Taluk,
Dindigul District.

... Appellants

-vs-

Subbulakshmi

...Respondent

Prayer: This Writ Appeal is filed under Clause XV of Letters Patent, to set aside the order passed in W.P.(MD)No.16646 of 2015, dated 06.02.2020 on the file of this Court.



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For Appellants :Mr.J.Ravindran
Additional Advocate General
assisted by Mr.G.Suriyananth
Additional Government Pleader
For Respondent :Mr.H.Lakshmi Shankar

JUDGMENT

[Judgment of the Court was made by **N.SENTHILKUMAR, J.**]

Aggrieved by the order passed by the learned Single Judge in W.P(MD)No. 16646 of 2015, dated 06.02.2020, the State has preferred the above Writ Appeal.

2.It is the case of the Writ Petitioner/respondent that the property in S.No. 44/1 in Ottanchathiram Village measuring to an extent of 1 acre and 45 cents originally belonged to her mother, Anjalai Ammal. The said property was acquired by the Government in the year 1989 by Award No.1 of 1992, dated 24.04.1992 passed by the Land Acquisition Officer, namely, Revenue Divisional Officer, Palani, in which, the respondent's mother's property has been arrived as Item No.7. The Writ Petitioner/respondent's mother had claimed a sum of Rs.10,000/- per cent as compensation. However, the said claim was referred to the competent Civil Court under Section 18 of the Land Acquisition Act for



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enhanced of compensation.

3.It is the further case of the Writ Petitioner/respondent that her mother died on 29.12.2006 leaving behind her as her only legal heir and therefore, the Writ Petitioner/respondent claimed that she is entitled for all the claims over the subject property. The Writ Petitioner/respondent contended that as per the Award No.1 of 1992, the adjacent land owners, whose lands were also acquired and as per Section 18 Reference, the Subordinate Court, Palani, which is the Land Acquisition Tribunal, in L.A.O.P.Nos.2 to 6 of 1998, by award, dated 19.12.2012, has fixed the enhanced compensation as Rs.7,500/- per cent. As the claim made by the adjacent land owners was answered as Rs.7,500/- per cent, the Writ Petitioner/respondent contended that she also stands in the same footing and entitled for the same as awarded by the Land Acquisition Tribunal in L.A.O.P.Nos.2 to 6 of 1998, dated 19.12.2012. Hence, she has issued legal notices to the appellants dated 20.06.2015 and 07.08.2015 and as the same was not considered by the authorities, the respondent herein has filed the above Writ Petition.



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4.By order, dated 06.02.2020, after referring the entire proceedings of land acquisition and the award passed by the Land Acquisition Tribunal, the learned Single Judge had referred the reference made by Acquisition Officer, which is extracted hereunder:

“The land owner also insists for the payment of compensation for the lands under acquisition at Rs.10,000/- per cent. Though the rate of compensation is not reflecting the actual price prevailing in this area, yet according to the provisions of the Act, her claim will be referred to the competent Civil Court U/S 18 of the Land Acquisition Act (ie) for enhanced compensation.”

5.The Writ Court by relying upon Section 18 of the Land Acquisition Act had considered the principles of equity, where respondent stands on par with the claimants in L.A.O.P.Nos.2 to 6 of 1998, and held that “an award is a promise made to the Writ Petitioner/respondent and therefore, the appellants/respondents by their conduct made the Writ petitioner/respondent to believe that request for higher compensation would be referred to the civil Court in terms of Section 18 of the Act” and further directed that the said compensation amount shall be paid within a period of three months. Aggrieved by the same, the present Writ Appeal has been filed.

6.Mr.J.Ravindran, learned Additional Advocate General contended that an



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award was passed on 24.04.1992 in Award No.1 of 1992 and the respondent had made a representation only in the year 2015, ie., after a lapse of 23 years from the date of award. The learned Additional Advocate General drew our attention to Section 18 of the Land Acquisition Act, which mandates that the claimant should file a written application within a period of six weeks, if he/she is aggrieved by the award proceedings, whereas, the Writ Petitioner/respondent had made a representation after a lapse of 23 years and the inordinate delay without any explanation is contrary to the Act cannot be acted upon.

7.The learned Additional Advocate General further contended that the inordinate delay without any proper explanation and on the ground equity, the Writ Petitioner/respondent cannot claim parity on the ground of equity. The delay and laches will throw the case of the Writ Petitioner/respondent and the Writ Court has not considered the inordinate delay and in the absence of any proper explanation and hence, the order passed by the Writ Court is without out any reasons or rhyme. In support of the same, the learned Additional Advocate General had relied upon the following judgments:



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(1)The Hon'ble Supreme Court in the case of ***Mohammed Hasnuddin vs State of Maharashtra*** reported in ***(1979) 2 SCC 572***, held as follow:

“26.If an application is made which is not within time, the Collector will not have the power to make a reference. In order to determine the limits of his own power, it is clear that the Collector will have to decide whether the application presented by the claimant is or is not within time, and satisfies the conditions laid down in Section 18. Even if a reference is wrongly made by the Collector the court will still have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends on a proper reference being made under Section 18, and if the reference is not proper, there is no jurisdiction in the court to hear the reference. It follows that it is the duty of the court to see that the statutory conditions laid down in Section 18 have been complied with, and it is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It is only a valid reference which gives jurisdiction to the court and, therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference.”

(2)The Hon'ble Supreme Court in the case of ***Officer on Special Duty (Land Acquisition) and another vs Shah Manilal Chandulal and others***, reported in ***(1996) 9 SCC 414***, had held as follows:

“8.The right to make application in writing is provided under Section 18(1). The proviso to sub-section (2) prescribes the limitation within which the said right would be exercised by the claimant or dissatisfied owner. In Mohd. Hasnuddin v. State of Maharashtra [(1979) 2 SCC 572] , this Court was called upon to decide in a reference under Section 18 made by the Collector to the court beyond the period of limitation, whether the court can go



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behind the reference and determine the compensation, though the application for reference under Section 18 was barred by limitation? This Court had held that the Collector is required under Section 18 to make a reference on the fulfilment of certain conditions, namely, (i) written application by interested person who has not accepted the award; (ii) nature of the objections taken for not accepting the award; and (iii) time within which the application shall be made. In paragraph 22 after elaborating those conditions as conditions precedent to be fulfilled, it held that the power to make a reference under Section 18 is circumscribed by the conditions laid down therein and one such condition is a condition regarding limitation to be found in the proviso. The Collector acts as a statutory authority. If the application is not made within time, the Collector will not have the power to make reference. In order to determine the limitation on his own power, the Collector will have to decide whether the application presented by the claimant is or is not within time and specify the conditions laid down under Section 18. Even if the reference is wrongly made by the Collector, the court will have to determine the validity of the reference because the very jurisdiction of the court to hear a reference depends upon a proper reference being made under Section 18. If the reference is not proper there is no jurisdiction in the court to hear the reference. It was, therefore, held that it is the duty of the court to see that the statutory conditions laid down in Section 18 including the one relating to limitation, have been complied with and the application is not time-barred. It is not debarred from satisfying itself that the reference which it is called upon to hear is a valid reference. It has to proceed to determine compensation and if it is time-barred, it is not called upon to hear the same. It is only a valid reference which gives jurisdiction to the court. Therefore, the court has to ask itself the question whether it has jurisdiction to entertain the reference. If the reference is beyond the prescribed period by the proviso to sub-section (2) of Section 18 of the Act and if it finds that it was not so made, the court would decline to answer the reference. Accordingly, it was held that since the reference was made beyond the limitation, the court was justified in refusing to answer the reference.”

8. *Per contra*, the learned Counsel for respondent contended that in the



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award passed in No.1 of 1992, dated 24.04.1992, with regard to the respondent's claim is in Sl.No.7 in S.No.44/1 (0.67.0 hectares), the Land Acquisition Officer observed as follows:

“At the time of Award enquiry one Tmt.Subbulakshmi D/o.Muthusamy Pillai appeared and presenting a written statement objecting the acquisition as she got right over the land in S.No.44/1 and had also stated that she had filed suit in the Civil Court to establish her title over the land. But the mother and interested person of the acquisition land for S.No.44/1 (ie) Tmt.Anjalaiyammal represents in her written statement that she had already shared 0.54 cents to her daughter. But Tmt.Subblakshmi daughter of Anjalaiyammal stated in her statement that she had a right of 1.14 acres of land in S.No.44/1 and 45/2. The S.No.45/2 is not covered under the acquisition. As the right and share over the land over been disputed, the compensation amount will be deposited at Sub Court, Dindigul by making a reference under Section 30 of the Land Acquisition Act.”

9.The learned Counsel for the respondent contended that it is a promise made by the Land Acquisition Officer and the said promise cannot be thrown to whim and further contended that the said amount has been deposited under Section 30 of the Land Acquisition Act before the Subordinate Court, Dindigul.

10.The learned Counsel for the respondent contended that the judgment relied upon by the learned Additional Advocate General was considered by the



Hon'ble Supreme Court in the judgment reported in **(2009) 16 SCC 1** between ***Steel Authority of India Limited -vs- Sutni Sangam and others***, wherein, the Hon'ble Supreme Court had held as follows:

“79.The appeals preferred by the Tamil Nadu Housing Board, however, stand on a different footing. Therein, the writ petition was allowed by a learned Single Judge of the High Court. Pursuant thereto or in furtherance thereof, reference was made. A finding of fact had been arrived at. A prayer was also made for reference to the civil court. The Land Acquisition Officer assured them that a reference shall be made. The promise, however, was not kept. In the aforementioned situation, the writ petition was filed.

80.The judgment of the Single Judge having been acted upon and Tamil Nadu Housing Board, having participated in the proceedings without any demur whatsoever, cannot be permitted to turn round and contend that the proceeding was illegal. They not only participated in the proceedings but also questioned the adduction of evidence in regard to the quantum of compensation and preferred appeals against the judgment and award of the Reference Judge. The said proceedings having attained finality, the writ appeals preferred by them should not have been entertained.

81.In a case of this nature, in the absence of any material brought on record by the State and/or the appellant, we may assume that the Land Acquisition Officer is a Collector within the meaning of Section 3(c) of the Act. He was, therefore, bound by his promise.

82.In the aforementioned situation, it would not be a case where a statutory authority has been asked by a higher authority to perform his jurisdiction in a particular manner. No form of protest, as indicated hereinbefore, is prescribed under the Act. No form of application in writing has also been prescribed. In a given case, keeping in view the object and purport the statute seeks to achieve, a Collector being a statutory authority and having the jurisdiction to make a reference can waive the same.

83.We may consider it from another angle. Had a reference been made pursuant to the request made by the awardees, could it be held to be wholly illegal or without jurisdiction only because the



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protest made in regard to the quantum of compensation under the award is oral and not in writing? The answer to the said question must be rendered in the negative. The form, mode and manner of protest are procedural in nature. The statute does not provide for a thing to be done in a particular manner.

84.Submission of Mr.Krishnamurthy that the doctrine that where a statute prescribes a thing to be done in a manner as prescribed or not at all is applicable where a statutory authority is to perform his function in terms of the provisions of the statute. It is not meant to be applied to a litigant. A procedure, as is well known, is the handmaid of justice. A substantive provision providing for substantive right or a statutory provision providing for a substantive right shall prevail over the procedural aspect of the matter. In a situation of this nature, therefore, the Land Acquisition Collector could have been, having regard to the principles of promissory estoppel, held bound to fulfil his promise.”

11.In the aforesaid judgment, the Hon'ble Supreme Court had relied upon the judgment referred by the learned Additional Advocate General and had considered that the delay, laches and parity will not stand in the way of compensation.

12.It is not in dispute that the respondent's mother, Anjalaiyammal had died on 29.12.2006 and the respondent is the sole legal heir as per the legal heirship certificate issued by the revenue department in Pa.Mu.No.2658/2007 dated 21.03.2007. Admittedly, there is no dispute with regard to the acquisition of the



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land of the respondent's mother and the award in which though the claim was made for sum of Rs.10,000/- per cent, the Land Acquisition Tribunal had awarded a sum of Rs.7,500/- per cent which cannot be denied. Under Article 300A of Constitution of India, the right of having a property is guaranteed for the citizens of this country, which is extracted hereunder:

“300A. No person shall be deprived of his property save by authority of law.”

14.As per the dictum of the Hon'ble Supreme Court, we do not see any infirmity in the order passed by the learned Single Judge and with regard to the interest portion, on entirety of circumstance, to meet the ends of justice, 50% of the calculated interest be paid to the Writ Petitioner. The Writ Appeal is **partly allowed** to the limited extent. No costs. Consequently, connected miscellaneous petition is closed.

[T.K.R., J.] [N.S., J.]
29.01.2025

NCC : Yes / No
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