

(2011) 10 MAD CK 0076

In the Madras High Court

Case No : A.S. (MD) No. 220 of 2010 and M.P. (MD) No. 3 of 2010

K. Raman

APPELLANT

Vs

I. Karuppu Thevar (Died) Muthulakshmi (Died) and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Evidence Act, 1872 — Section 68
Land Acquisition Act, 1894 — Section 18, 30

Citation : (2011) 10 MAD CK 0076

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : G.R. Swaminathan, for the Appellant; G. Mariappan for R1, R2 and R6, Mr. M.V. Venkataseshan for R4, Mr. Kumar, Addl. Govt. Pleader for R12 and R13 and No representation for R3, R5, R7 to R11, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice G. Rajasuria

1. This appeal is focussed by the appellant/6th petitioner animadverting upon the award dated 20.01.2009 made in L.A.O.P. No. 41 of 1996 by the learned Principal Subordinate Judge, Dindigul, insofar as it holds that the respondents 6 to 9 herein are entitled to the award amount.

2. Broadly, but briefly, narratively, but succinctly, the germane facts absolutely necessary for the disposal of this appeal would run thus:

The Government vide notification dated 30.12.1992 displayed its proposal to acquire the lands in S. Nos. 528/7A, 529/5 and 530/5 in Pallapatti village, whereupon after complying with the formalities as contemplated under the Land Acquisition Act, the lands were acquired and ultimately, the compensation was assessed by the Special Tahsildar (Land Acquisition).

3. Being aggrieved by and dissatisfied with the same, the deceased original owner of the land acquired, sought enhanced compensation.

4. The fact remains that the original owner namely Karuppu Thevar was alive at that time and he disputed the quantum assessed by the Special Tahsildar concerned, whereupon the matter was referred to the Principal Sub Court, Dindigul, u/s 18 of the Land Acquisition Act, in respect of the claim for enhanced compensation.

5. Before the learned Principal Sub Judge, C.W.1 to C.W.5 were examined and Exs.C.1 to C.11 were marked on the side of the claimants. R.W.1 was examined and Exs.R.1 to R.6 were marked on the side of the respondents.

6. Ultimately, the learned Principal Sub Judge passed the order enhancing the compensation and also directing that the compensation amount shall be taken by all the descendants of the original owner, without considering the fact that only the male descendants of the original owner claimed the compensation amount as per the Will dated 05.12.1993 executed by the said Karuppu Thevar excluding his daughters, even though they also happened to be the parties before the Sub Court.

7. Being aggrieved by the said judgment, one of the male descendants of the original owner filed this appeal expressing his cri de coeur and grievance that as per the order of the Sub Court, the daughters of the original owner would also be able to get shares in the compensation amount which they are not entitled to get so, as per the said Will.

8. The point for consideration in this appeal is of whether the Sub Court was not justified in ordering that both the male and female descendants of the deceased original owner Karuppu Thevar are entitled to get the compensation amount?

9. The learned Counsel for the appellant by inviting the attention of this Court to various portions of the records available before this Court, would submit that despite the Will dated 05.12.1993, having been marked before the Sub Court, he simply ignored it and ordered as though both the male and female descendants of the original owner were entitled to get shares in the compensation amount.

10. In a bid to mince meat and torpedo and pulverise such contentions of the appellant, the learned Counsel for the sixth respondent, so to say, one of the daughters, would put forth and set forth his arguments thusly:

The beneficiaries under the alleged said Will should have proved it strictly in accordance with Section 68 of the Indian Evidence Act, but they failed to do so, whereupon the Sub Court was justified in ordering to the effect that all the descendants of the original land owner should take the compensation amount assessed and adjudged by him.

11. It would not be out of place to recollect the scope of Sections 18 and 30 of the Land Acquisition Act.

12. No doubt, as on the date of reference u/s 18 of the Act, the original owner was alive, wherefore, there could not have been any title dispute at all and

obviously and axiomatically, the Special Tahsildar referred the matter u/s 18 of the Act, in view of the original owner having raised the objection to the quantum assessed by the Officer. Subsequently, the original owner died, whereupon all the legal heirs of the deceased original owner were impleaded.

13. It appears that none of the legal representatives/heirs of the deceased original owner filed any statement detailing and delineating all the relevant facts which they are now urging and pressing before me by way of highlighting the inter se dispute among them based on the Will. So only the Sub Court observed as though there was no dispute relating to the apportionment of the compensation amount and there was only dispute relating to the quantification of the compensation amount.

14. The learned Counsel for the appellant, in all fairness, would submit that the beneficiaries under the Will did not file any separate claim asserting their right under the Will, however, they marked the Will and that itself was indicative of the fact that they wanted the compensation amount to be disbursed to the beneficiaries under the Will which the Sub Court ignored.

15. The learned Counsel for the sixth respondent would submit that his client was not duty bound to invite the attention of the Court by giving importance to the Will which the sixth respondent did not want to give any credence or credibility.

16. The learned Counsel for the appellant would submit that it is still open for his client so to say, the appellant/beneficiary under the Will to approach the Special Tahsildar for getting the matter referred u/s 30 of the Land Acquisition Act, or to file a separate suit. Whereas the learned Counsel for the sixth respondent would submit that at the relevant time of referral, the original owner was alive and now the Special Tahsildar has got no jurisdiction to refer the title dispute u/s 30 of the Land Acquisition Act. In this appeal, I do not want to decide on that issue as to what further course of action would be tenable or untenable. It is for the parties to work out their remedy legally.

17. As such, the nitty-gritty, the gist and kernel of the arguments of the learned Counsel for the appellant is that his client is aggrieved by the ultimate verdict of the Sub Court to the effect that both the male and female descendants of the deceased original owner could take the compensation amount and he wants that the said finding to be erased leaving the parties to fight out their respective rights over the compensation. I could see considerable force in the submission of the learned Counsel for the appellant.

18. Accordingly, I would like to set aside the finding and direction of the lower Court that both the male and female descendants of the deceased original owner under the said Will altogether are entitled to take the compensation amount and it is open for the parties aggrieved to approach the appropriate forum for getting their rival rights over the compensation amount decided and till such time, the compensation amount on having deposited or already deposited by the

Government, shall be invested in an interest bearing fixed deposit in any one of the Nationalised Banks and renewed periodically till such time the actual eligible claimants could produce the Court order in their favour.

19. In the result, the appeal is allowed to the extent indicated above. Consequently, the connected Miscellaneous Petition is closed. No costs.