
(2015) 11 MAD CK 0104

In the Madras High Court

Case No : W.P. Nos. 34309 to 34344 of 2014 and M.P. Nos. 1 to 2 of 2014

Kousalya

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 18(1), 28(A)(3), 28A, 28-A

Citation : (2015) 11 MAD CK 0104

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : M. Rajaraman, for the Appellant; R. Rajeswaran, Spl. G.P., for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—With the consent of the learned counsel for the parties, these writ petitions are taken up for final disposal.

2. Heard Mr. M. Rajaraman learned counsel appearing for the petitioners, Mr. R. Rajeswaran, learned Special Government Pleader for the respondents 1, 3 and 4 and Mr. V. Anandamurthy for the second respondent.

3. In all these writ petitions, the prayer sought for is identical, wherein, the petitioners have prayed for the issuance of writs of certiorarified mandamus, to quash the proceedings of the second respondent dated 18/8/2014 and direct the first respondent to disburse the redetermined compensation amount, in respect of the lands, which is stated to have been acquired for the project of the Tamil Nadu Housing Board.

4. At the outset, it is to be pointed out that the impugned proceedings dated 18/8/2014, is not an order nor a proceeding in the strict sense, but it is a letter addressed to the District Collector, Thiruvallur District, by invoking the provisions of Section 28-A(3) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

5. The facts which are necessary for the disposal of the case are as follows:--

An extent of 75.20 acres of land in Tirur Village was acquired for the formation of the Housing Scheme and Notification under Section 4(1) of the Act, in G.O. Ms. No. 1118 Housing and Urban Development Department, was issued on 18/12/1982, which was followed by a declaration under Section 6 of the said Act was issued in G.O. Ms. No. 1124 Housing & Urban Development Department, on 28/10/1995. There appears to have been no challenge to the Land Acquisition proceedings at the instance of the petitioners and other land owners, acquisition proceedings attained the finality.

6. The dispute in the present batch of cases relates to the amount of compensation payable to the petitioners.

7. The facts which are not in dispute are as follows:--

(i). The Land Acquisition Officer, conducted an enquiry and award came to be passed, fixing the market value of the land, at the rate of Rs. 100/- per cent and compensation was determined. In respect of the entire extent of land acquired, six awards were passed, bearing Award Nos. 1 to 6 dated 31/8/1987, 30/10/1987 and 9/12/1987.

(ii). It is also not in dispute that only certain land owners sought for reference under Section 18 of the Act and wherever references were sought for, cases were heard by the Reference Court and a decision was arrived at by the Reference Court in a bunch of cases, fixing the market value at Rs. 700/- per cent by judgment in L.A.O.P. No. 12 of 1989 dated 28/4/1993.

8. Aggrieved by such awards passed in sixteen Reference cases by the Sub-Court, Tiruvallur, appeals were preferred before this Court and this Court, in A.S. No. 214 of 1996, etc., batch, by judgments dated 2/11/2007 and 28/1/2010, fixed the market value at Rs. 600/- per cent. The enhanced compensation at the rate of Rs. 600/- per cent is said to have been remitted by the Board before the Sub-Court, Tiruvallur, on 2/8/2011 in respect of their cases.

9. In respect of the persons, who have not sought for reference under Section 18 of the said Act, they submitted applications under Section 28-A of the Act, for determination of the compensation, based on the decision of the Reference Court, by judgment dated 28/4/1993. The respondent Board, took a stand that none of the pattadhars produced certified copy of the judgment and they had produced the photostat copy of the judgment in L.A.O.P. No. 13 of 1989 dated 28/4/1993, instead of LAOP decree in L.A.O.P. No. 12/1989.

10. Since the applications were pending, writ petitions were filed before this Court in W.P. Nos. 1517 to 1536 and 2209 of 1995 etc., praying for a direction to pass orders on the respective applications filed by the petitioners under Section 28A of the Act.

11. The aforestated writ petitions were disposed of in three batches and the gist

of the direction was that "the petitioners were directed to furnish the copies of the judgment and decree made in L.A.O.P. Nos. 12 and 13 of 1989 to the respondents, within two weeks, from the date of receipt of the copies of judgment, the respondent was directed to consider and pass orders on the applications filed under Section 28-A of the said Act. If appeals said to have been preferred against L.A.O.P. Nos. 12 and 13 of 1989 are numbered in the meanwhile, it is open to the respondents to point out the same as a reason for postponing the consideration of the application under Section 28-A of the Land Acquisition Act."

12. In another batch of cases, this Court, while disposing of the writ petitions, observed that

"It has to be remembered that an application under Section 28-A of the Act has to be filed within three months from the date of the judgment of the Civil Court and in view of the clamour for filing applications under Section 28A of the Act, there are bound to be certain culprits, who try to insert application with bogus seals, as that they can get higher compensation. Therefore, liberty was granted to the respondents to decide whether the applications had been received in time for this purpose, they can hold an enquiry, if necessary, by giving notice to the respective applicants."

13. In the third set of cases, the Court took note of the stand taken by the respondents that no applications were received under Section 28-A of the Act and therefore, the petitioners were directed to be given an opportunity to furnish proof of their applications having been filed in time and file their statements enclosing the proof and thereafter, let it open to the respondent to conduct enquiry, after giving notice.

14. In another set of cases, in W.P. No. 10997 of 1995, etc., an order was passed on 6/9/2002, stating that no relief can be granted to the petitioners when the appeals are still pending against the judgment of the reference. However, the Special Tahsildar was directed to recompute the amounts on the basis of the judgment and decree to be made in the appeals filed against the judgment on which the petitioners rely.

15. Ultimately, this Court, by judgment dated 27/11/2007, in A.S. No. 559 of 2002, etc., reduced the market value from Rs. 700/- to Rs. 600/- per cent. The petitioners made a representation on 18/2/2008 based on the decision of this Court for redetermining the compensation. The petitioners filed W.P. Nos. 26310 to 26341 of 2008 for a direction to redetermine the compensation amount payable in respect of Tirur Village, Thiruvallur Taluk and District. The said batch of cases were disposed of by an order dated 25/3/2009 and the operative portion of the order reads as under:--

"to consider the representation of the petitioners dated 18/2/2008 for redetermination of compensation in respect of the lands of the petitioners acquired under the Land Acquisition Act as per 4(1) Notification dated

18/12/1982 and also in the light of the directions given by this Court in W.P. No. 10997 of 1995 etc., batch on 6/9/2002 taking note of the amount of compensation fixed by this Court in A.S. No. 559 of 2002 in the judgment and decree dated 27/11/2007 and pass appropriate orders in redetermination of compensation. Such orders shall be passed by the respondent expeditiously, in any event, within a period of eight weeks from the date of receipt of a copy of this order. Connected Miscellaneous Petitions are closed."

16. Pursuant to which, the Special Tahsildar (Land Acquisition), submitted a report to the District Revenue Officer, on 24/8/2010 and all the claims filed under Section 28A of the Act were rejected by the third respondent/District Revenue Officer, by an order dated 31/8/2010.

17. In the meantime, the petitioners filed a batch of contempt petitions against the fourth respondent/Special Tahsildar (Land Acquisition). However, it appears that the District Revenue Officer, Tiruvallur District was not impleaded as a respondent. The said Contempt Petitions were said to have been closed, with certain directions, based on an undertaking, given by the District Revenue Officer and subsequently, by his proceedings in Na.Ka. No. 45700/08/F3 dated 16/5/2011, allowed all the claim petitions.

18. The contention of the respondent Board is that they are not a party to the Contempt Petition and all these facts are not brought to their notice. Therefore, being aggrieved by the said order, they preferred appeals in L.P.S.R. No. 29858 of 2012 etc., batch and the said batch of cases were disposed of, by an order dated 10/2/2014 and the operative portion reads as follows:--

"It is seen from the records that subsequent to the order passed in the Contempt Petition Nos. 911, 1220 to 1250 of 2009, which was disposed of by the learned Single Judge by consent of the learned Additional Government Pleader, who appeared then for the District Revenue Officer, Tiruvallur, a final order dated 16/5/2011 has been passed by the District Revenue Officer, Tiruvallur. Since the said order dated 16/5/2011 having been passed, the order challenging the observation made in the Contempt Petition Nos. 911, 1220 to 1250 of 2009 dated 1/11/2009 cannot be entertained as an appeal and if the petitioner is aggrieved about the order of the District Revenue Officer, Tiruvallur dated 16/5/2011, the remedy open to the petitioner is to challenge the same in a manner known to law and the observation made in the Contempt Petition Nos. 911, 1220 to 1250 of 2009 dated 1/11/2010 cannot be treated as a ground to file LPA. If any such challenge is made to the order of the District Revenue Officer, Tiruvallur dated 16/5/2011, the observation made in the order under challenge shall not be put against the petitioner and the concerned Court will consider the matter on merits and in accordance with law."

19. Pursuant thereto, the respondent Board had sent a letter to the District Collector dated 18/8/2014, requesting to refer the order/award dated 16/5/2011, to the Court. This communication sent by the second respondent is impugned in

this writ petition.

20. The learned counsel appearing for the petitioner challenges the impugned proceedings mainly on three grounds:--

(i). Firstly, by contending that the impugned Notification, which is in the nature of application, filed under Section 28(A)(3), is not maintainable.

(ii). The second ground is that the said application under Section 28-A(3) of the Act could be only with reference to the aspects mentioned in Section 18(1) viz., pertaining to the measurement of the land, the amount of compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested and in the instant case, none of these factors are fulfilled and the applications are not maintainable.

(iii). The third ground is that the impugned order dated 18/8/2014, is beyond the period of limitation, as the redetermination was done on 16/5/2011. Adding further to the said submission, the learned counsel submitted that even as early as on 24/11/2008, the fourth respondent has recommended to the District Collector for redetermination and going by the said date, the impugned application is hopelessly time barred.

21. The learned counsel appearing for the fourth respondent Board submitted that the impugned Notification is not an order, but it is only an objection raised by the Housing Board and pursuant to the liberty granted by the Honourable Division Bench, the Board was entitled to raise such a contention before the District Collector.

22. Further, it is submitted that the mode of application made under Section 28-A of the Act, is not in accordance with law and the petitioners/claimants were to prove the genuineness of their claim, by adducing oral evidence, before the competent Civil Court. It is further submitted that challenge to the impugned proceedings would be indirectly challenging the order passed by the Honourable Division Bench in LPASR No. 29858 of 2012 etc., batch.

23. Heard the learned counsel for the parties elaborately and perused the materials placed on record.

24. The factual matrix of the matter has been elaborately set out in the preceding paragraphs and therefore, there may not be a necessity to repeat the same. The impugned communication has been sent by the Board to the District Collector is in fact a sequel to the directions/observations made by the Honourable Division Bench in LPASR No. 29858 of 2012 etc., batch dated 10/2/2014. In the preceding paragraphs, the operative portion of the judgment has been extracted.

25. On a perusal of the judgment, it is seen that liberty was granted to the Housing Board to challenge the order of the District Revenue Officer, redetermining the compensation, by an order dated 16/5/2011, in the manner

known to law. Further, the Honourable Division Bench, observed that if any such challenge is made to the order of the third respondent dated 16/5/2011, observation made in the said order shall not be put against the Housing Board and the concerned Court will consider the same on merits and in accordance with law. Thus, the Board was given liberty to question the order dated 16/5/2011 and therefore, the petitioners cannot now harp upon to say that the said order remains intact.

26. It is noteworthy to point out that the present writ petitioners were party respondents to the appeals before the Honourable Division Bench and the order was passed, after hearing them and the order binds them. Therefore, the Board was justified in filing the present application before the District Collector, which is in fact an objection raised by the Board to the request made by the petitioners for redetermination of enhanced compensation under Section 28-A of the Act.

27. In view of the foregoing, the writ petitions are liable to be rejected, on the ground that

(i). Firstly, they are not maintainable, as the Board was granted liberty to move the concerned authority/Court for challenging the order dated 16/5/2011. Therefore, the contention raised by the learned counsel, by referring to Sub-Section 3 of Section 28-A of the Act does not in any manner render support to the case of the petitioners, as the objections have been raised by the Board, as per the liberty granted by the Honourable Division Bench and it is an admitted fact that the Board was not heard when the redetermination was made by the third respondent on 16/5/2011.

(ii). Secondly, the other grounds stating that the application is beyond the period of limitation also should necessarily fail.

(iii). That apart, the contention raising based on Section 18(A)(1) of the Act is also not tenable as the Board has raised their objection, not only with regard to the maintainability of Section 28-A but also the genuinity of the person to whom it is payable.

28. In the result, the writ petitions are dismissed. The District Collector, Thiruvallur, is directed to consider the objections/letter dated 18/8/2014 filed by the Housing Board and after hearing the petitioners as well as the Housing Board and other officials and considering all the materials, pass a speaking order, on merits and in accordance with law, within a period of four months, from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.