

(1999) 07 MAD CK 0068
In the Madras High Court
Case No : Writ Petition No. 821 of 1992

M.P. Palani and twenty three others	Vs	APPELLANT
The State of Tamil Nadu and two others		RESPONDENT

Date of Decision : 23-07-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 12(2), 18(2)

Citation : (1999) 3 CTC 133 : (1999) 3 MLJ 265 : (1999) WritLR 760

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. C.R. Dasarathan, for the Appellant; Mr. V. Selvanayagam, for the Respondent

Judgement

P. Sathasivam, J.—The petitioners numbering 24 have approached this Court to issue a writ of mandamus for a direction to the third

respondent to refer the dispute over the price in respect of the Award No. 4 of 1987, dated 26.4.1989 in Na.Ka. No. 9/90 A/37 to the

competent Civil Court in respect of the lands of the petitioner as mentioned in the Annexure. It is stated in the affidavit filed in support of the above

writ petition that in the Award enquiry, they jointly and also individually submitted that the land value has been increased considerably and the

adjoining lands were sold at the rate of Rs. 3,000 per cent. Since the lands have got all facilities, they wanted to fix the price for their land at the

rate of Rs. 3,000 per cent. It is further stated that their objection for fixation of the lesser price has been recorded and they have also stated the

same in writing which was received by the third respondent on the date of the enquiry for fixing the price. They were orally told that their matter

will be referred to the civil court with regard to the dispute for the price. Since

they did not receive any reply, they sent a lawyer's notice dated 27.11.1990 calling for the third respondent for delay in referring the matter to the Court. The third respondent in and by his reply in R.C. 9/90A dated 13.12.1990 has stated that they have not preferred any claim u/s 18 of the Land Acquisition Act within the stipulated time. In such circumstances, having no other remedy, they approached this court by way of the present writ petition.

2. None of the respondents has chosen to send any information to this Court or to the Government Pleader, nor filed counter-affidavit informing the correct position.

3. Heard the learned counsel for the petitioners as well as learned Government Advocate for respondents.

4. It is seen from the affidavit that even at the Award enquiry, they raised an objection regarding the lesser price recorded and wanted to fix the price for their, land at the rate of Rs. 3,000 per cent. It is also seen that there is no proof regarding service of copy of the award passed by the third respondent. Section 18 of the Land Acquisition Act, 1894 deals with reference to the Court. It runs as, follows:

18. Reference to Court - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court. Whether his objection be to the measurement of the land, the amount of the compensation the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken;

provided that every such application shall be made,-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Even though it is asserted by the petitioner that they raised their objection regarding the lesser price recorded in the award proceedings, the third

respondent has not referred the matter to the Civil Court. Like-wise, in the light of section 12(2), a duty is cast on the Collector to give copies of

the Award to all the landowners and interested persons when the Award is made. Section 12(2) of the Land Acquisition Act, is as follows:

12(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representative when the award is made.

I have already stated that there is no proof that copy of the award had been served on all the persons. In absence of any such proof and in view of

the fact that they raised an objection in respect of the value arrived at the time of award enquiry, irrespective of the period prescribed u/s 18(2)

proviso, duty casts on the third respondent to refer the matter to the Civil Court for adjudication. In this regard, it is worthwhile to refer a Division

Bench decision of this Court reported in Ramalakshmi Ammal, T.A.K.M. v. The Revenue Divisional Officer, 1985 W.L.R. 504. The Division

Bench after considering section 12(2) and 18(2) of the Land Acquisition Act, 1894 has observed thus:

5. u/s 18(2) of the Act, the claimant should intimate the Land Acquisition Officer about his request for reference to Court within six weeks of the

receipt of the notice from the Collector u/s 12(2), because he was not admittedly present. In our view, it is but fundamental that when a claimant's

property is being acquired, he should be served with a copy of the award. It is not for the respondent to decide as to how the claimant would

utilise the award. We would emphasise that it is the fundamental right of the claimant to have a copy of the award served on him. How he may use

it is none of the concern of the respondent. For instance, taken an illustration. In the award a reference is made to a decision of the Supreme Court

and on that basis the quantum of compensation is fixed, in such a case it might be that the claimant would not plunge into a costly litigation, but

would be content with the quantum awarded by the Officer. Take a case, where compensation is not only in respect of the land, but also in respect

of the standing trees. In that case, if the consolidated figure alone is shown as compensation in the award, how could the claimant be put on notice

of the break up of the figures so as to entitle him to decide his next course of action. Can it be said then, there is sufficient compliance of Section

12(2) of the Act. As long as neither in the Act nor in the Rules, is there any provisions which enables the claimant to obtain the certified copy of the award and as long as Section 18(2) of the Act mandates that the claimant's reference should be notified to the Land Acquisition Officer within six weeks of the receipt of the notice from the Collector u/s 12(2) of the Act it is but reasonable to construe Section 12(2) of the Act, as requiring the Collector when he sends the notice of his award, to enclose therewith a copy of the award.

The Division Bench decision makes it clear that whenever the Collector sends notice of his Award u/s 12(2) of the Land Acquisition Act, 1894 has to enclose copy of the award. Further, J. Kanakaraj, J., had an occasion to consider similar request in K.A. Sulaiman v. The Government of Tamil Nadu and another. Writ Petition No. 12670 of 1987 dated 28.3.1994 wherein the following conclusion has been arrived at:

4. It is then contended that atleast a reference u/s 18 of the Act may be directed to be made because the petitioner had come to this Court on 14.12.1987 and the award is said to have been passed on 16.12.1987. Instead the petitioner, seeking a reference and going through the sigmarate, on the averments in the affidavits filed in the writ petition, the petitioner says that a direction may be given in that regard. I perused the affidavit and the counter-affidavit to see whether there is any claim for enhanced compensation at the relevant point of time. I find from the counter-affidavit that the petitioner had filed a written statement on 16.11.1987 seeking enhanced compensation under different heads totalling a sum of Rs. 49,55,000. This Court has taken the view that a Statement asking for higher compensation at the award enquiry may be treated as an application for reference. Therefore, instead of driving the petitioner to another litigation, I am of the opinion that this Court can mould the relief taking note of the subsequent events. In this view of the matter, there will be a direction in the writ petition to the respondents to make a reference u/s 18 of the Act, in as far as the petitioner is concerned in respect of the subject award passed on 16.12.1987 within six weeks from the date of receipt of this order...

5. In view of Sections 12(2) and 13(2) of the Land Acquisition Act, 1894 and in the light of the specific assertion in the affidavit objecting the

fixation of lesser price for their lands and in the absence of any information by any of the respondents, I hold that unless the notice of award is accompanied by a copy of the award, it would not be effective notice within the meaning of Section 12(2) of the Act. Like-wise, if any statement is made during the award enquiry asking for higher compensation, the same may be treated as an application for reference. I also hold that if compensation is received under protest in such case also it is to be treated as an application for reference. In all these cases, undoubtedly, duty is cast on the Collector to refer the matter to the Civil Court u/s 18 of the Land Acquisition Act, 1894 for adjudication. In this view of the matter, there will be a direction to the respondents to make a reference u/s 18 of the Land Acquisition Act, 1894 in so far as the petitioners are concerned in respect of subject Award No. 4 of 1987 dated 26.4.1989 within a period of three months from the date of receipt of a copy of this Order. Writ Petition is allowed in the above terms. No costs.