
(2013) 08 MAD CK 0018
In the Madras High Court
Case No : W.P. No. 29623 of 2008

Selvam and Others

APPELLANT

Vs

Revenue Divisional Officer, Erode

RESPONDENT

Date of Decision : 16-08-2013

Acts Referred:

Citation : (2014) 2 MLJ 30

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Judgement

T. Raja, J.—This writ petition has been filed by three persons, namely, Mrs. Selvam, Mrs. Geetha and Mrs. Ranganayagi seeking to quash

the impugned proceeding passed by the respondent-Revenue Divisional Officer in Na. Ka. LA/2/89 dated 8.9.2008, with a consequential

direction to the respondent to refer the request of the petitioners for enhancement of compensation u/s 18 of the Land Acquisition Act in so far as

the land situated in Survey No. 764/3 having an extent of 1.03.0 hectares situated in Kasipalayam Village, Erode Taluk is concerned. It has been

pleaded by the learned senior counsel for the petitioners that when the respondent had acquired the petitioners land covered in S. No. 764/3

having an extent of 1.03.0 hectares situated in Kasipalayam Village, Erode Taluk, they also passed Award No. 1/95 dated 22.5.1995, but the

respondent failed to refer the case of the petitioners for enhancement of compensation u/s 18 of the Land Acquisition Act to the Sub Court, Erode.

Therefore, the petitioners came to this Court by filing W.P. No. 40170 of 2002. This Court, by order dated 9.9.2003, directed to consider the

case of the petitioners, on the basis of the legal notice dated 20.6.2002 sent to

the respondent, in accordance with law by taking note of the earlier orders passed by this Court dated 18.10.2001 and 13.3.2002, wherein this Court, while considering a similar prayer to issue a direction to make a reference against the Awards dated 3.3.2000 and 22.5.95 to the respondent u/s 18 of the Land Acquisition Act in respect of S. Nos. 723 & 763/1 of Erode Taluk respectively, issued a direction to refer the matter to the civil Court u/s 18 of the Land Acquisition Act immediately. But, in spite of the orders passed in the above writ petitions, it was stated that although the land of the petitioners is also similarly and identically placed, the respondent has refused to refer the matter u/s 18 of the Land Acquisition Act.

2. It was also pleaded before this Court that the respondent, having enormous power u/s 18 to refer the matter, has even failed to consider the equity rest with the petitioners, as they are the land owners and whose land had been acquired by the notification dated 8.4.1992 by paying only a pittance of 0.86 paise per sq. ft., when the lands of similarly placed persons covered by the very same notification dated 8.4.1992 were able to get Rs. 30/- per square feet, in the light of the judgment of the Hon'ble Apex Court in Civil Appeal Nos. 6127 and 6128 of 2011 dated 1.8.2011. If the petitioners request for referring the matter, by giving suitable direction to the respondent, to the Sub Court u/s 18 is not accepted, they would be put to great prejudice and irreparable loss. Adding further, it was also submitted that when similar issues have been repeatedly considered by this Court as well as the Hon'ble Apex Court, the prayer made by the petitioners also may be accepted. Referring to an order passed by this Court in W.P. Nos. 7866 and 7867 of 2005 dated 18.7.2012, it has been stated that, in the present case, it is not the case of the respondent that they had served the copy of the award while serving the notice u/s 12(2). But so far as the case of the petitioners is concerned, neither the notice u/s 12(2) was served nor a copy of the award was made available or served to the petitioners. Therefore, even if it is presumed that the respondent had served the notice u/s 12(2), not serving a copy of the award, is not going to support their case not to refer the matter u/s 18 of the Land Acquisition Act to the Sub Court for enhancement of compensation.

3. While considering a similar and identical issue, this Court, in the above mentioned W.P. Nos. 7866 and 7867 of 2005 dated 18.7.2012, by

relying upon the judgment of the Hon''ble Apex Court in Premji Nathu Vs. State of Gujarat and Another, holding that where the copy of the award

had not been supplied at the time of issuance of notice u/s 12(2), the reference application, even if it is filed after the period prescribed u/s 18(2)

(b), would be maintainable, directed the respondents therein to refer the matter to the Sub Court for determination of compensation to be paid to

the petitioners therein for acquisition of their lands. Therefore, it was again submitted that serving of notice u/s 12(2) is not the only criteria, even

the service of copy of the award is also sine qua non. As, in the present case, admittedly, the copy of the award has not been served upon the

petitioners, it goes without saying that the petitioners are entitled to make an application before the respondent to refer the matter u/s 18 of the

Land Acquisition Act for enhancement of compensation, since only 0.86 paise alone has been fixed per square feet, when their land having an

extent of 1.03.0 hectares had already been acquired. Finally, relying upon the ratio laid down by the Hon''ble Apex Court in the case of Premji

Nathu v. State of Gujarat and Another (supra), the learned senior counsel concluded his argument saying that if a copy of the award is not supplied

along with Section 12(2) notice, the reference application, even if filed after the period prescribed u/s 18(2)(b), is held maintainable. On this basis,

he prayed for setting aside the impugned order with a consequential direction to the respondent to refer the case of the petitioners for enhancement

of compensation u/s 18 of the Land Acquisition Act to the Sub Court, Erode.

4. Per contra, the learned Additional Government Pleader for the respondent, by relying upon the objections raised in the counter affidavit, stated

that the case of the petitioners cannot be considered in the light of the ratio decided by the Hon''ble Apex Court in Premji Nathu v. State of

Gujarat and Another (supra) case, as the notice u/s 12(2) was served upon the petitioners as early as on 31.5.1995. It was also stated that when

the notices under Sections 9(1), 9(3) and 10 of the Land Acquisition Act were issued on 2.1.1995, award enquiry was conducted after giving

proper notice on 3.2.1995. Subsequently, many of the land owners, on receipt of the award notice, appeared before the enquiry officer and the

statements of the land owners, who were present for the enquiry, were also recorded. Subsequently, the award proceedings No. 1/95 was

pronounced on 22.5.1995 and the enquiry notice was also served upon the land owners, namely, Mrs. Selvam and two others. But Mrs. Selvam, the first petitioner herein attended the enquiry and requested her land to be excluded from the acquisition. All these objections were considered by the Land Acquisition Officer, rejecting all the objections, the award was passed by the Land Acquisition Officer. As the petitioners did not come forward to accept the amount, the compensation amount due to the petitioners were ordered to be deposited u/s 30 of the Land Acquisition Act before the civil Court. Therefore, the question as to whether the notice u/s 12(2) was served or not has been properly explained and proved by her appearance before the enquiry officer. Unfortunately, the land owners have not even given any written application within the stipulated period of six weeks. In view of that, when the petitioners came to this Court by filing W.P. No. 40170 of 2002 for re-determination of compensation, this Court, by order dated 9.9.2003, directed the respondent-Special Tahsildar to consider and pass orders. In the light of the above order passed by this Court, the Land Acquisition Officer has passed necessary orders in accordance with law complying with the direction given by this Court. Therefore, he prayed before this Court to accept the case of the respondent that the notice u/s 12(2) was properly served in accordance with law, in view of that, the case of the petitioners cannot be considered. On this basis, he prayed for no interference with the impugned order.

5. Heard the learned counsel on either side. This Court is unable to agree with the submission made by the learned Additional Government Pleader for the respondent. The reason being that the records produced by the learned Additional Government Pleader also very clearly make the issue in favour of the petitioners that when the notice u/s 12(2) of the Land Acquisition Act was served upon the petitioners, no doubt, the notice had been received by the petitioners. But there is no proof whatsoever produced before this Court to establish the case of the respondent that the copy of the award was served upon the petitioners along with the notice u/s 12(2). Therefore, the ratio laid down by the Hon"ble Apex Court in Premji Nathu v. State of Gujarat and Another (supra), holding that service of notice u/s 12(2) alone is not sufficient, but supply of copy of the award is also sine qua non, needs to be accepted and more so binds this Court. Since in the present case, as mentioned above, although notice u/s 12(2)

had been served upon the petitioners, the copy of the award has not been supplied to them. In this context, it is more appropriate to rely upon

paragraphs 14, 15, 18 and 21 of the judgment of the Hon'ble Apex Court in Premji Nathu v. State of Gujarat and Another (supra), which are

extracted below:

14. The reason for providing six months from the date of the award for making an application seeking reference, where the applicant did not

receive a notice u/s 12(2) of the Act, while providing only six weeks from the date of receipt of notice u/s 12(2) of the Act for making an

application for reference where the applicant has received a notice u/s 12(2) of the Act is obvious. When a notice u/s 12(2) of the Act is received,

the landowner or person interested is made aware of all relevant particulars of the award which enables him to decide whether he should seek

reference or not. On the other hand, if he only comes to know that an award has been made, he would require further time to make enquiries or

secure copies so that he can ascertain the relevant particulars of the award.

15. What needs to be emphasised is that along with the notice issued u/s 12(2) of the Act, the landowner who is not present or is not represented

before the Collector at the time of making of award should be supplied with a copy thereof so that he may effectively exercise his right u/s 18(1) to

seek reference to the court.

18. In Bhagwan Das and Others Vs. State of UP and Others, this Court interpreted Section 18 and laid down the following propositions: (SCC

pp. 553-54, para 28)

(i) If the award is made in the presence of the person interested (or his authorised representative), he has to make the application within six weeks

from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorised representative), he has to make the application seeking

reference within six weeks of the receipt of the notice from the Collector u/s 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice u/s 12(2) from

the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents

of the award.

(iv) If a person interested receives a notice u/s 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot

claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice u/s 12(2) of the Act was

the date of knowledge of the contents of the award.

21. A careful reading of the averments contained in Para 2 of the application filed by the appellant u/s 18(1) shows that the notice issued by the

Collector u/s 12(2) was served upon him on 22.2.1985. Thereafter, his advocate obtained certified copy of the award and filed application dated

8.4.1985 for making a reference to the Court. This implies that the copy of the award had not been sent to the appellant along with the notice and

without that he could not have effectively made an application for seeking reference.

6. The above ratio laid down makes it clear that service of notice u/s 12(2) alone is not sufficient to hold against the land owner that his application

is barred by time, if he fails to make the same within six weeks from the date of receipt of notice issued u/s 12(2), since he should be issued with

the copy of the award. Admittedly, in the present case, the counter affidavit filed by the respondent does not mention anywhere that the petitioners

were served with the copy of the award. Moreover, the record also shows clearly that they were not served with the copy of the award.

Therefore, it can be safely concluded that when the award passed by the respondent has not been served upon the petitioners till date along with

the notice u/s 12(2), without which they could not have effectively made an application for reference, therefore, the case of the petitioners needs to

be accepted.

7. Moreover, while considering a similar and identical issue in respect of adjacent Survey Nos. 752/1 & 752/2 in Kasipalayam village of Erode

Taluk and Circle, this Court in W.P. Nos. 7866 and 7867 of 2005 dated 18.7.2012, finding that the issuance of notice u/s 12(2) of the Land

Acquisition Act is not sufficient, but the copy of the award should have been forwarded along with the said notice, came to the conclusion that a

direction should be issued to the respondents therein to make a reference u/s 18 of the Land Acquisition Act to the Sub Court for determination of

compensation to be paid to the petitioners therein for acquisition of their lands. In the present case also, the land covered in Survey No. 764/3

having an extent of 1.03.0 hectares was acquired by the notification dated 8.4.1992 by fixing only 0.86 paise per square feet. Unfortunately, no

copy of the award was served upon the petitioners. Therefore, they are not able to know on what basis the amount was fixed. However, when

they made an application for referring the matter before the Sub Court u/s 18(2) (b) of the Land Acquisition Act, of course with delay, the

respondent refused to accept the request of the petitioners for reference seeking enhancement of compensation for the land acquired from them.

Moreover, when the lands covered in the same notification issued u/s 4(1) dated 8.4.1992 was taken up to the Supreme Court for enhancement,

the Hon'ble Apex Court in Civil Appeal Nos. 6127-6128 of 2011, by order dated 1.8.2011, held that for the acquisition made vide notification

dated 8.4.1992, the base document will be sale deed dated 8.2.1991 by which land was sold at the rate of Rs. 30/- per square feet. By adding

10% per annum in lieu of escalation in the land prices and deducting 1/3rd towards development cost, market value of the acquired land was fixed

at Rs. 29.20 per square feet, finally, the same was also rounded off to Rs. 30/- per square feet. Sadly, the petitioners' land which is also covered

under the same notification dated 8.4.92 has been arbitrarily fixed for a throw away price of 0.86 paise per sq. ft., hence, the case of the

petitioners needs acceptance.

8. Yet again, while considering a similar relief in Civil Appeal Nos. 5335-5336 of 2013, by order dated 5.7.2013, it has been held thus:-

...We further direct the respondents and the State of Tamil Nadu to pay the same amount of compensation to other landowners whose land was

acquired by notification dated 22.5.91, but who may have on account of ignorance, poverty and other similar handicaps, not been able to

approach the Reference Court or may not have been able to contest the matter before the High Court and this Court. The needful be done in

respect of other landowners within a period of six months. This direction has been given in exercise of the power vested in this Court under Article

142 of the Constitution.

In the light of the above directions, this Court, being bound by the same, is

inclined to issue a direction to the respondent to refer the case of the petitioners u/s 18 of the Land Acquisition Act to the Sub Court, Erode, on receipt of a copy of this order, forthwith. The writ petition stands allowed and the impugned order is set aside. No costs.