

(2003) 03 MAD CK 0118

In the Madras High Court

Case No : Civil Revision Petition (NPD) No. 157 of 2003 and C.M.P. No. 1649 of 2003

Special Tahsildar (LA), Adi Dravidar Welfare

APPELLANT

Vs

C. Jeyachandran

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2003) 2 LW 32

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : M.C. Swamy, Special Government Pleader, for the Appellant; A.L. Somayaji for K. Srinivasan, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Aggrieved by the judgment and decree dated 31-10-2001, made in L.A.O.P. No. 9 of 2000 on the file of the Subordinate Judge, Tuticorin, Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Tiruchendur, has filed the above Revision under Article 227 of the Constitution of India.

2. According to the petitioner, an extent of 3.69.0 hectares (9.11 acres) of land was acquired in S. No. 6B/2 in Kayalpattinam South village, Tiruchendur Taluk, Tuticorin District by the Government for the purpose of providing houses for Adi-Dravidars residing in and around of the said village. The land has been acquired after following all formalities under the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978 (Act No. XXXI of 1978). The said land belonged to the respondent herein. Award was passed by the then Special Tahsildar, Tiruchendur-vide Award No. 2/99-2000 dated 10-2-2000. The said authority after holding an enquiry, determined the market value of the land acquired at Rs.1,89,167.42 per hectare (Rs.76,500/- per acre). The land owner was not satisfied with the market value fixed by the prescribed Authority, instead of filing an appeal u/s 9 of Act XXXI of 1978 sent a request to the then Special Tahsildar,

requesting him to make a reference. The then Tahsildar forwarded the award along with the other records to the Subordinate Judge on 8-7-2000 seeking for a reference under the Central Act. The Subordinate Judge, without returning the papers to the prescribed Authority has entertained the same as if it is a reference u/s 18 of the Land Acquisition Act, 1894 (Central Act 1/1894) in L.A.O.P. No. 9/2000 and passed an award enhancing the market value from Rs.765/- to Rs.4680/- by an award dated 31-10-2001. The very seeking for reference by the then Tahsildar/Prescribed Authority as well as entertaining the same by the Sub Court is totally illegal and against the provisions of Tamil Nadu Act XXXI of 1978; hence the present Revision before this Court.

3. The respondent filed a counter affidavit wherein it is stated that at the instance of the petitioner namely Special Tahsildar, the learned Subordinate Judge conducted the enquiry in which the respondent produced various documents. The objection was not at all raised by the petitioner nor his counsel namely the Government Pleader. After considering all the materials, the learned Subordinate Judge passed an award enhancing the compensation at Rs.4,600/- per cent and also the solatium at 30 per cent besides interest at 12 per cent per annum from the date of taking possession. The learned Subordinate Judge, by judgment dated 31-10-2001, enhanced the compensation and in view of the fact that the petitioner failed to comply with the award, the respondent filed Execution Petition in E.P. No. 1/2002 for realization of the amount. In the said Execution Petition, the Special Tahsildar filed a counter contending that they are liable to pay only 15 per cent as solatium and pursuant to their request, the respondent has also executed necessary consent documents, agreeing to receive solatium at the rate of 15 per cent. Inasmuch as it is only at the instance of the petitioner/Special Tahsildar, the matter was referred to the Sub Court for fixation of compensation and now it is not open to the very same authority to blame the Subordinate Judge, who exercised the powers, and who is also the Appellate Authority constituted under Act XXXI of 1978. Further, inasmuch as the lands were acquired in 1998 and possession taken thereafter, the respondent is yet to get the just compensation, the present Revision under Article 227 of the Constitution of India is not maintainable.

4. Heard Mr. M.C. Swamy, learned Special Government Pleader for petitioner and Mr. A.L. Somayaji, learned senior counsel for respondent.

5. It is seen from the materials placed, a Notification u/s 4 (1) of the Act XXXI of 1978 was issued on 31-12-1998 for acquiring an extent of 3.69.0 hectares of land in S. No. 6B/2 in Kayalpattinam South village, Tiruchendur Taluk, Tuticorin District. There is no dispute that respondent herein is the owner of the land in question. The Special Tahsildar, Tiruchendur, passed an Award, viz., Award No. 2/99-2000 on 10-2-2000 and possession was taken on 22-3-2000. The respondent herein made a representation on 22-3-2000 seeking enhancement of compensation. Based on the said representation, the petitioner-Special Tahsildar made a reference to the Sub Court, Tuticorin u/s 9 of Act XXXI of 1978 in the

month of July, 2000. Thereafter, the respondent herein made a claim statement in the month of October, 2001. The Special Tahsildar filed a counter statement on 8-10-2001. Before the Sub Court, four witnesses were examined and documents-Exs.P-1 to P-7 marked on the side of the claimant. Special Revenue Inspector, Adi-dravidar Welfare, was examined as R.W.1 and Exs. R-1 and R-2 were marked on the side of the Referring Officer. The learned Subordinate Judge, after considering all the materials and after framing necessary issues, passed an Award, fixing compensation at the rate of 4,600/- per Cent. The learned Subordinate Judge has also granted solatium at the rate of 30 per cent and interest for both the amounts at the rate of 12 per cent from 31-12-1998. It is further seen that in spite of the judgment and decree of the Sub Court, since the Special Tahsildar, Tiruchendur failed to deposit the amount, the respondent herein filed E.P. No. 1/2002 on 31-12-2001.

6. Learned Special Government Pleader, by drawing my attention to various provisions of Tamil Nadu Act XXXI of 1978 (hereinafter referred to as "the Act"), particularly Section 9, would contend that if the land owner/respondent did not agree to the amount determined by the Authority, the proper remedy for him is to file an appeal to the Sub Court having jurisdiction u/s 9 of the Act. He also points out that even against the decision of the Sub Court, second appeal lies to this Court u/s 13 of the Act. According to him, in the light of these provisions, the reference made by the then Tahsildar and the adjudication done by the Sub Court are all improper and contrary to the provisions of the Act; accordingly prayed for interference by this Court under Article 227 of the Constitution of India. On the other hand, Mr. A.L. Somayaji, learned senior counsel for the respondent, would contend that it was the petitioner-Special Tahsildar who made a reference to the Sub Court and that though a counter statement was filed before the Sub Court, by the very same officer, no such objection was raised therein. He also contended that having participated in the reference proceedings and suffered with an award, the petitioner cannot be permitted to raise objection regarding maintainability. He further contended that even in the counter statement filed in E.P. No. 1/2002 before the Sub Court, Tuticorin, no such objection as to maintainability of the reference was raised. Accordingly, the petitioner cannot be permitted to raise the objection before this Court. Even otherwise, according to the learned senior counsel for the respondent, inasmuch as the Sub Court, Tuticorin being an appellate Court having jurisdiction u/s 9 of Act XXXI of 1978, the decision of the said Court is to be treated as the judgment and decree rendered by the Appellate Court in terms of Section 9 of the Act. If the petitioner is aggrieved of the decision, the proper remedy for him is to pursue the same by filing a second appeal before this Court u/s 13 of the Act.

7. I have carefully considered the rival submissions.

8. There is no dispute that in this case the acquisition proceedings were initiated under Tamil Nadu Act XXXI of 1978. If that is so, the provisions of the said Act and the Rules made thereunder alone are applicable. After the amount of

compensation was determined, if the land owner was not satisfied with the same, as per Section 9 of the Act, he may prefer an appeal to the Sub Court, and still if he was not satisfied with the verdict of the appellate Court, he may prefer a second appeal before this Court u/s 13 of the Act. There is no dispute with regard to the above proposition of law. However, when the respondent-land owner made a claim for higher compensation by invoking the provisions of Section 9 of Act XXXI of 1978, the Special Tahsildar without any hesitation, referred the matter to the Sub Court, Tuticorin by his proceedings dated 8-7-2000 for consideration. The order of the reference made by the Special Tahsildar finds a place at pages 5 to 8 of the typed-set of papers. Pursuant to the said reference, the Sub Court numbered the reference as L.A.O.P. No. 9/2000 and the land owner-claimant made a claim statement in the month of October, 2001. On receipt of the copy of the claim statement, the very same petitioner-Special Tahsildar filed a counter statement on 8-10-2001 wherein, as rightly pointed out, he has not raised any objection regarding maintainability. It is clear that before the Sub Court, neither the Special Tahsildar, who made the reference, nor the land owner-claimant, referred to the relevant provision, namely, Section 9 of Act XXXI of 1978 which enables the aggrieved person to file an appeal to the Court against the amount determined by the prescribed Authority. I have already referred to the fact that before the Sub Court, both parties let in evidence, both oral and documentary and after due consideration, the learned Subordinate Judge enhanced the compensation, including solatium at the rate of 30 per cent and interest at 12 per cent. Apart from this, the other interesting factor to be mentioned here is that two Law Officers have offered their opinion stating that the judgment and decree of the Sub Court dated 31-10-2001, made in L.A.O.P. No. 9/2000 was quite reasonable and acceptable. It is further seen that when the matter was brought to the notice of the Government, it was ascertained that as per the provisions of Tamil Nadu Act XXXI of 1978, the parties are entitled solatium only at the rate of 15 per cent and not 30 per cent as awarded by the Sub Court. Thereafter, at the request of the Special Tahsildar, the respondent herein filed an affidavit to the effect that he is willing to receive solatium at the rate of 15 per cent for the amount awarded and assured that he will not prefer any appeal to this Court. It is also brought to my notice that the petitioner-Special Tahsildar has also given similar undertaking.

9. Considering all these materials, I am of the view that any person who does not agree to the amount determined by the prescribed authority under sub-section (2) of Section 7 of Act XXXI of 1978, is permitted to prefer an appeal to the Court (Sub Court) within the prescribed period. Further, where the amount determined by the prescribed Authority under sub-section (3) of Section 7 of the Act exceeds Rs.50,000/-, a second appeal lies to this Court from any decision of the Court under the said Act. This is a clear departure from the provisions of the Land Acquisition Act, 1894 (Central Act I of 1894). There is no provision of reference in the Tamil Nadu Act XXXI of 1978, similar to Section 18 of Central Act I of 1894. As stated earlier, the only remedy for the aggrieved person is to prefer

an appeal to the Court u/s 9 of the Tamil Nadu Act XXXI of 1978. Accordingly, I am of the view that on receipt of the request or representation from the respondent-claimant for reference u/s 9 of the Act XXXI of 1978, in fairness, the Special Tahsildar ought not to have referred the matter to the Sub Court, but returned the representation to the claimant himself with a direction to file an appeal u/s 9 of the Act. This is an initial error committed by the Special Tahsildar-petitioner herein. Even after making the reference to the Sub Court, after filing of the claim statement by the claimant, the Special Tahsildar filed a counter statement wherein he failed to apprise of the Court by referring the provisions of Section 9 and failed to raise objection regarding the adjudication initiated by way of a reference. As a matter of fact, as stated earlier, the special Tahsildar-Referring Officer very well participated in the proceedings. I have already referred to the fact that even in the Execution Petition though the Special Tahsildar has filed a counter statement, he did not raise any such objection. I have also referred to about the affidavit of undertaking filed by the respondent-land owner wherein he agreed for solatium at the rate of 15 per cent and also expressed his willingness to settle the amount as awarded by the Sub Court. Taking note of all the above aspects, I am of the view that though there is an error on the part of the Sub Court in entertaining the reference made by the Special Tahsildar u/s 9 of the Act, inasmuch as it is a mistake on the part of the Referring Officer, namely Special Tahsildar and considering the fact that even the Sub Court is the appropriate court in terms of Section 9 of the Act to decide the grievance of the claimant, I am not inclined to interfere with this proceedings at this stage. I have already given enough reasons as to the correctness of the reference made by the petitioner-Special Tahsildar and that if at all anybody is to be blamed, it is the petitioner-Special Tahsildar. Apart from this, it is also stated by the petitioner that as an abundant caution, he has preferred a Second Appeal before this Court against the Judgment and Decree of the Sub Court, Tuticorin in L.A.O.P. No. 9/2000. If that is so, and if the petitioner is aggrieved by the quantum of enhanced compensation awarded by the Appellate Court namely Sub Court, it is open to the petitioner to pursue the matter in Second Appeal before this Court, if the same is permissible under law. With the above observation, the Civil Revision Petition is dismissed. No costs. Consequently, C.M.P. No. 1649/2003 is closed.