

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 30.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM  
and  
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.2011 of 2002

1. The State of Tamil Nadu,  
rep. by its Secretary to Government,  
Housing and Urban Development Dept.,  
Fort St. George, Madras-9.
  2. The Chief Engineer (Highways),  
TNUDP, Chepauk, Chennai-6.
  3. The Collector,  
Tiruvallur District.
  4. The District Revenue Officer,  
Tiruvallur.
  5. The Revenue Divisional Officer,  
Ponneri.
- ... Appellants

Vs.

1. P.Narayanan
2. Amaravathi
3. Lakshmi Ammal
4. Muniammal
5. Ranganatha Pillai
6. Elumalai Pillai
7. Ponnusamy Pillai
8. Amaravathi
9. Pushpa
10. Govindammal
11. Dhasaratha Naidu
12. V. Balaraman
13. Kothanda Chettiar
14. Velayutha Naicker
15. Vijayalakshmi
16. Thangammal
17. Yagathammal
18. Chakkarai Naicker

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19.Chandrammal  
20.Vengai Ammal Palani  
(R2 to R20 are under care & control  
and rep. by P.Narayanan) ... Respondents

Appeal against the order of the learned single Judge, dated 05.04.2002, made in WP NO.6814 of 2001 in the nature of Writ of Mandamus directing the first respondent to provide funds for the payment of balance 50% of compensation payable to the petitioners with due interest, the date of deposit to enable the collector to dispose of our claims under Rule 284 of Land Acquisition Act.

For Appellants : Mr.C.Thirumaran  
Government Advocate.

For Respondents : Mr.V.Raghavachari, for  
Mr.G.R.Swaminathan

(Judgment of the Court, delivered by P.SATHASIVAM, J.)

Aggrieved by the Order of the learned single Judge, dated 05.04.2002, made in WP No.6814 of 2001, Housing and Urban Development Department, Government of Tamil Nadu, and others have filed this Writ Appeal.

2. The respondents herein/writ petitioners filed the Writ Petition, praying for the issuance of a writ of mandamus, directing the first respondent therein, Secretary to Government, Housing and Urban Development Department, to provide funds for the payment of balance 50% of compensation payable to them with interest, enabling the District Collector to dispose of their claims under Section-28A of the Land Acquisition Act.

3. According to the writ petitioners/respondents herein, their lands were acquired for the formation of Inner Ring Road under World Bank Project and award was passed in Award No.1/85 on 16.04.1985, fixing the land value at Rs.60/- per cent and the compensation was also paid to them. After passing of the Award, other land owners by name M.G.Vidyasankar and T.Ranjithammal, who are also covered by Award No.1/85, filed a petition under Section 18 of the Land Acquisition Act, whereupon, the matter was referred to Sub Court, Tiruvallur, resulting in LAOP Nos.214 and 215 of 1986, wherein, by judgment dated 20.01.1993, enhanced compensation was ordered at Rs.1,500/- per cent with due interest at the rate of 15% per annum. The writ petitioners, being one amongst the awardees, filed a petition before the Special Tahsildar (Land Acquisition) for considering their claim under Section 28-A of the Land Acquisition Act and claimed compensation on par with those who got higher compensation by the judgment of the Sub Court. According to them, their petition under Section 28-A of the Act was preferred in time in accordance with Rules. It is further

stated that the Land Acquisition officer, after due examination, paid 50% of the enhanced compensation under Section 28-A of the Act and payments were made on 27.07.1994 and 19.08.1994. In order to get the balance 50%, they made several representations, however, the Government have not acted positively by providing funds, hence, they filed the Writ Petition for appropriate direction.

4. Learned Judge, who heard the matter on 05.04.2002, after observing that inasmuch as the petitioners were given 50% of the difference in the enhanced amount and the balance was not paid in spite of representations, allowed the Writ Petition and directed the respondents therein to pay the remaining 50% within a period of three months from the date of receipt of copy of the order. Questioning the said order, the Government and its Officers have come up with this Appeal.

5. Heard Mr.P.Subramanian, learned Government Advocate for the appellants and Mr.V.Ragavachari, learned counsel for the respondents.

6. The only point for consideration in this Appeal is as to whether the learned Judge is justified in issuing a mandamus for payment of remaining 50% of the difference in the enhanced amount to the petitioners.

7. It is not in dispute that the Land Acquisition Officer passed Award No.1 of 1985 on 16.04.1985, fixing Rs.60/- per cent as compensation to the land owners. Admittedly, the Writ Petitioners did not seek for reference under Section-18 of the Act for enhancement. At the instance of one Vidyasankar and Ranjithammal, the matter was referred to Sub-Court and, in LAOP Nos.214 and 215 of 1986, the learned Subordinate Judge, Tiruvallur, by his Order dated 20.01.1993, enhanced the compensation from Rs.60/- to Rs.1,500/- per cent. Even though the writ petitioners were not parties to the order of reference, by virtue of Section 28-A of the Act, they are entitled to enhanced compensation as ordered by the Sub Court if they satisfy the conditions prescribed in sub-Section(1) of Section 28-A of the Act.

8. Learned counsel appearing for the respondents/writ petitioners contended that inasmuch as 50% of the enhanced compensation had already been settled, taking note of their applications under Section 28-A of the Act, they are entitled to the remaining 50%. It is true that, at the instance of the Land Acquisition Officer, based on the decree of the Sub-Court, 50% of the enhanced compensation was settled. It is equally true that as against the judgment of the sub Court in LAOP Nos.214 and 215 of 1986, the appeals filed by the Government were dismissed on the ground of delay, however, the learned Government Advocate informed that they preferred appeal to the Supreme Court.

9. It is not in dispute that though the writ petitioners are entitled to seek for enhanced compensation on par with other land owners

at whose instance the Sub Court granted the compensation, undoubtedly, they have to fulfil the conditions prescribed under Section 28-A of the Act in strict terms. We here-under extract the said provision,

" 28-A. Re-determination of the amount of compensation on the basis of the award of the Court.-

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector, may, notwithstanding that they had not made an application to the Collector under Section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded."

Thus, it is very clear from the above provision that irrespective of an application to the Collector for reference under Section-18, if the Court enhances the compensation amount in excess than the amount fixed by the Land Acquisition Officer, other land owners forming part of the same notification, by written application to the Collector, can seek for excess compensation as ordered by the Court, however, such application has to be made within three months from the date of the award of the court. To put it clear, if anyone wants excess compensation on par with other land owners (covered by same notification) at whose instance higher compensation was ordered by the court, he/she has to,

(a) make an application to the collector in that regard; and

(b) the same is to be made within three months from the date of the award of the court.

No doubt, the proviso appended thereto makes it clear that while computing the period of three months within which an application to the Collector shall be made under the sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

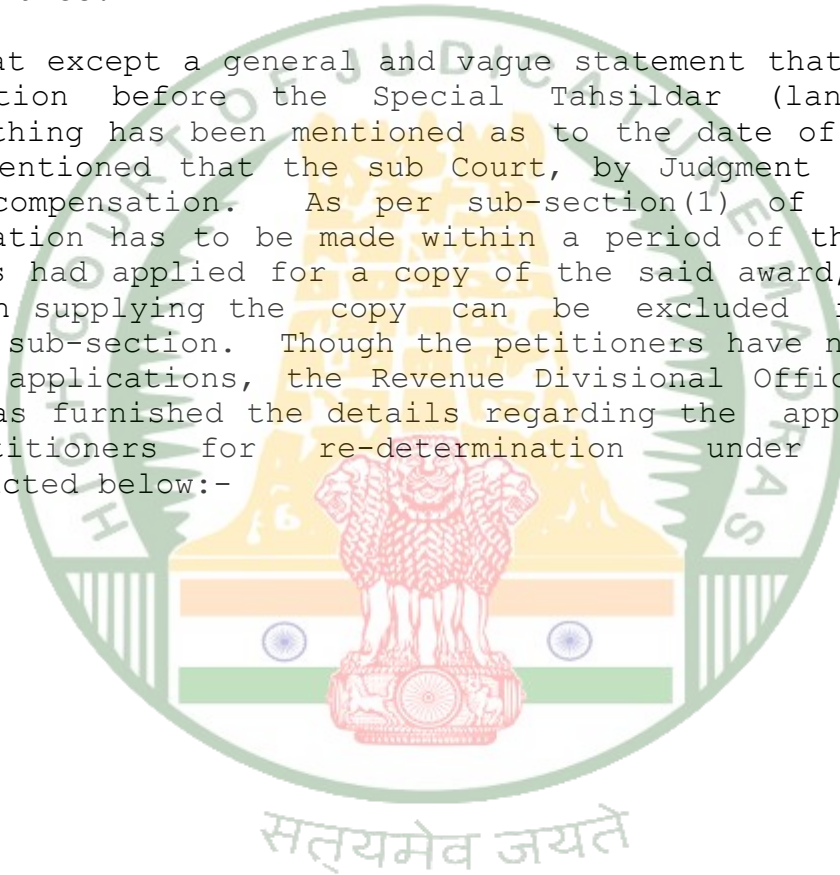
10. Here, it is not the case of the writ petitioners that they applied for a copy of the Award, hence, the time taken by the Court for supplying a copy be excluded. In the affidavit filed in support of the Writ Petition, nowhere the petitioners have furnished the date on which they



made applications to the Collector. It is useful to refer the only paragraph, which is relevant, viz., para No.4 of the affidavit, which reads as follows:-

" 4. The petitioners state that being the one among the awardees we have filed a petition before the Special Tahsildar (Land Acquisition) and Land Acquisition Officer for considering our claim u/s.28A Land Acquisition Act and claimed compensation on par with Sub Court Judgment. The petition u/s.28A of Land Acquisition Act was preferred in time in accordance with rules."

It is clear that except a general and vague statement that the petitioners filed a petition before the Special Tahsildar (land Acquisition), admittedly, nothing has been mentioned as to the date of Application. We have already mentioned that the sub Court, by Judgment dated 20.01.1993 enhanced the compensation. As per sub-section(1) of Section 28-A, a written application has to be made within a period of three months. If the petitioners had applied for a copy of the said award, the time taken by the Court in supplying the copy can be excluded in terms of the proviso to the sub-section. Though the petitioners have not furnished the date of their applications, the Revenue Divisional Officer, Ponneri, in his counter, has furnished the details regarding the applications filed by the writ petitioners for re-determination under Section 28-A, which are extracted below:-



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SL. No.	NAMES	DATE OF APPLICATION
1.	P.Narayanan	27.09.1993
2.	Amaravathi	15.10.1993
3.	Lakshmi Ammal	15.10.1993
4.	Muniammal	15.10.1993
5.	Ranganatha Pillai	27.09.1993
6.	Elumalai Pillai	15.10.1993
7.	Ponnusamy Pillai	15.10.1993
8.	Amaravathi	15.10.1993
9.	Pushpa	15.10.1993
10.	Govindammal	27.09.1993
11.	Dhasaratha Naidu	27.09.1993
12.	V.Balaraman	17.01.1994
13.	Kothanda Chettiar	15.10.1993
14.	Velayutha Naicker	15.10.1993
15.	Vijayalakshmi	27.09.1993
16.	Thangammal	27.09.1993
17.	Yagathammal	27.09.1993
18.	Chakkarai Naicker	27.09.1993
19.	Chandrammal	27.09.1993
20.	Vengai Ammal Palani	27.09.1993

The above statistics makes it clear that all the applications were made beyond three months from 20.01.1993, when the sub court enhanced the compensation, in such circumstances, we are of the view that they are not entitled to the benefit under Section 28-A. The above conclusion of us is supported by the decisions of the Hon'ble Supreme Court in 1997 (6) SCC 59 (Union of India v. Mangatu Ram) and 2003 (4) CTC 700 (State of Andhra Pradesh v. Marri Venkaiah). Merely because an officer, who is not empowered enough, without proper orders disbursed 50% of the amount, there cannot be any direction from judicial side when the claim of the writ petitioners is not within the statutory provisions. It is brought to our notice that knowing the mistake committed by the Officer concerned, the Government, by G.O.Ms. No.330, Housing and Urban Development Department, dated 24.07.2001, ordered action against him for recovery of 50% of the

amount disbursed to the petitioners and also for taking Departmental action for the lapses. As rightly pointed out by the learned Government Advocate, the learned Judge has not adverted to and discussed the relevant aspect, viz., whether the petitioners are entitled to enhanced compensation in terms of sub-section(1) of Section 28-A and whether they filed the written applications within the prescribed period etc. The petitioners cannot take advantage of the mistake committed by an officer and we are of the view that, based on the same, further directions by the learned Judge for payment of the balance 50% cannot be sustained. While considering between the individual interest and public interest, it is the paramount duty of the Court to safeguard public interest and, in the absence of specific finding regarding the petitioners' entitlement to their claim under sub-section(1) of Section 28-A, we are of the view that the direction by the learned Judge for payment of 50% of the difference in the enhanced amount cannot be sustained.

11. In the above circumstances, the order of the learned single Judge is set aside. Writ Appeal is allowed. No costs.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Secretary to Government,  
Housing and Urban Development Dept.,  
Fort St. George, Madras-9.

2. The Chief Engineer (Highways),  
TNUDP, Chempauk, Chennai-6.

3. The Collector,  
Tiruvallur District.

4. The District Revenue Officer,  
Tiruvallur.

5. The Revenue Divisional Officer,  
Ponneri.

+ 1 CC To Mr. G.R.Swaminathan, Advocate SR NO.59020

+ 1 CC to the Government Pleader SR NO 58835

W.A. No.2011 of 2002

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