
(2011) 11 MAD CK 0137

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 80

M. Mani

APPELLANT

Vs

The District Collector,
Dindigul District and
Others

RESPONDENT

Date of Decision: Nov. 8, 2011

Acts Referred:

- National Highways Act, 1956 - Section 3E

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: C. Thiruppathi in W.P. MD No. 80 of 2011 and Mr. G. Manikandaraja in W.P. MD Nos. 1300, 1807 and 1808 of 2011, for the Appellant; M. Govindan, Special Government Pleader for Respondents 1, 2, 4 and 5, Mr. Arulvadivel Sekar For 3rd Respondent, Mr. G. Manikandaraja for 6th Respondent in W.P. (MD) No. 80 of 2011, Mr. M. Govindan, Special Government Pleader for Respondents 1, 3 and 4, Mr. Arulvadivel @ Sekar for 2nd Respondent and Mr. C. Thiruppathi for 5th Respondent in W.P. (MD) Nos. 1300, 1807 and 1808 of 2011, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioners in these four writ petitions are close relatives viz., the petitioners in W.P.(MD).Nos.1807 & 1808 of 2011 are the sisters of the petitioner in W.P. No. 80 of 2011 and the petitioner in W.P.(MD) No. 1300 of 2011 is the nephew of the petitioners in the other writ petitions.

2. The writ petition in W.P.(MD). No. 80 of 2011 is filed by Mr. M. Mani, S/o. late Muthunarayanasamy. He was running a hotel by name Hotel Doss at Ayyaloor and the hotel was situated in Survey No. 935/6. The claim of the said petitioner is that he had

constructed the building in the year 1975 and has been in possession of the said building and also paying house tax, electricity consumption charges, etc. His name also finds in the village revenue records. The said building was acquired for the purpose of expanding the National Highway No. 45 in Trichy -Dindigul Section. After the completion of the acquisition, the compensation was arrived at Rs. 12,15,853/-as certified by the competent authority. The compensation is yet to be disbursed to the said petitioner. The petitioner was not satisfied with the rate of compensation and therefore, he sent a representation, dated 21.12.2010, to the District Collector, Dindigul, seeking for a higher compensation for the land acquired and therefore, he sought for a reference of his petition for higher compensation and that W.P. when it came up for admission on 05.01.2011, notice of motion was ordered in the said petition. On notice from this Court, the Special Tahsildar, Land Acquisition, Dindigul has given a reply dated 04.01.2011 stating that the petitioner had not submitted the death certificate showing the death of his father late Muthunaranayasamy and also the legal heir certificate for claiming the said property and it was also pointed out that he had not produced the original house tax receipts and E.P. consumption receipts for having enjoyed the facility in the building situated in Survey No. 935/6. Therefore, after the petitioner submits those applications, his application for reference for higher compensation will be considered.

3. In the meanwhile, the two sisters of the petitioner in W.P.(MD). No. 80 of 2011, viz., M/s. Annapooranam, who is unmarried and said to be residing in the same building, until it was taken over by the Highways filed W.P.(MD). No. 1808 of 2011 and Saraswathi, filed W.P.(MD). No. 1807 of 2011 claiming that the property in question belongs to the joint family and in respect of acquisition made, the matter should be referred to the Civil Court for determining the rights of the legal heirs in terms of Section 3-H(4) of the National Highways Act, 1956 (hereinafter referred to as "the Act"). Section 3-H(4) of the Act states that if any dispute arises as to the apportionment of the amount or any part thereto or to any person to whom the same or any part thereto is payable, the competent authority shall refer the dispute to the decision of the Principal District Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

4. When these two writ petitions came up for admission on 17.02.2011, this Court ordered notice of motion in both the writ petitions and the fourth respondent in those two writ petitions viz., the Special Tahsildar (Land Acquisition), Dindigul was directed not to disburse the award amount to the claimants, but it transpires, both the petitioners filed earlier writ petitions before this Court in W.P.(MD). No. 13365 of 2010 (M. Saraswathi) and W.P.(MD). No. 12189 of 2010 (M. Annapooranam). The prayer in the said writ petitions was to forbear the Special Tahsildar (Land Acquisition), Dindigul from passing an award and disbursing the compensation in favour of M. Mani, the petitioner in W.P.(MD). No. 80 of 2011 and one K. Palaniammal, who is the respondent therein. The said writ petitions were not gone into on merits and the petitioners were directed to give representation to the respondents staking their claim in the said property. The petitioners, pursuant to the direction issued by this Court in W.P.(MD). No. 13365 of 2010, dated

03.11.2010 and in W.P.(MD). No. 12189 of 2010, dated 27.09.2010, were directed to produce the records showing their interest or ownership in the said property and it was observed that the petitioners have only filed a written representation, but did not show any documents to prove that they are the owners of Survey No. 935/6. Therefore, the petitioners were informed that the house tax receipts as well as the patta No. 1051 was standing in the name of Mr. M. Mani, the petitioner in W.P.(MD). No. 80 of 2011 and therefore, the request of the petitioners that they should not only be given compensation but also the matter relating to the dispute towards apportionment of the compensation amount should be referred to the Civil Court, was rejected by the authorities, in the absence of any prima facie claim made by the two petitioners. However, the counsel for the petitioners strenuously contended that certain documents were standing in the name of their mother and they have vital interest and the respondents are bound to refer to the dispute in terms of Section 3-H(4) of the National Highways Act, 1956.

5. It must be noted that section 3-H(4) is only an enabling provision for determining the apportionment of the amount by the authorities, who have acquired the lands, failing which a reference can be made to the Civil Court having jurisdiction. It is not as if the petitioners did not have any remedy to claim their share in the compensation amount. They can very well establish before a competent civil Court that they are entitled to have a share in respect of Survey No. 935/6, Ayyaloor Village. In fact, they have not succeeded in convincing the authorities about their share in the property by producing prima facie documents in their favour. Their claim was only based upon the legal heir certificate issued by the Tahsildar, Vedachandur in which the legal heirs for the late Muthunarayanassamy has been shown as one son and five daughters, including M/s. Annapooranam and Saraswathi as well as the Palaniammal, who is the daughter-in-law of late Muthunarayanassamy and wife of late M. Kalidas. Mere legal heir certificate, without showing that the particular property in question is coming within the joint family property, the petitioner cannot seek for any direction in terms of Section 3-H(4) and prima facie the impugned orders dated 12.01.2011 challenged in W.P.(MD). No. 1807 of 2010 and dated 12.12.2011 challenged in W.P.(MD). No. 1808 of 2011 do not call for any interference. That does not preclude the petitioners from filing appropriate suit before the appropriate Civil Court claiming their right in the said property, including the determination of their share in the said property. However, the learned counsel for the petitioner Mr. G. Manikandaraja, expressing an apprehension that if amounts disbursed to their brother M. Mani, the petitioner in W.P.(MD). No. 80 of 2011, they would leave with nothing for a latter to claim and secondly, mere getting a declaratory relief in the Court finally will be no result, requested the Court that some compensation amount may be directed to be deposited.

6. While this Court is not inclined to entertain the writ petitions, seeking for a reference u/s 3-H(4), this Court is inclined to safeguard the interest of the other legal heirs, if they prima facie establish before the appropriate Civil Court about their right to get the amount and therefore, intent to pass appropriate orders in the other writ petitions to that effect. Hence,

W.P.(MD).Nos.1807 and 1808 of 2011 will stand dismissed with the direction and the dismissal will not disentitle the petitioners

7. The petitioner in W.P.(MD). No. 1300 of 2011 is son of late M. Chandran, who married Saroja and died on 22.12.1995 leaving him, as the sole legal heir. The prayer made in W.P. is to forbear the fourth respondent Special Tahsildar, Land Acquisition, from passing an award and disbursing the compensation in favour M/s. M. Mani and K. Palaniammal, W/o. Late Kalidass in respect of Survey No. 935/6, situated at Ayyaloor village. That W.P. when came up on 03.02.2011, notice of motion was ordered. Pending notice of motion the Special Tahsildar was directed to not to disburse the amount to the claimants. When only a final determination regarding the acquisition is made, the question of payment of compensation will arise and thereafter, u/s 3-E, the compensation of land can be taken for and the amount can be deposited in terms of Section 3-H(4) of the National Highways Act. Therefore, the first portion of the prayer that the Court should restrain the respondents from passing the award or disbursing the compensation amount, cannot be entertained by this Court. It transpires already the compensation amount has been determined by the authorities as per the original file relating to the acquisition produced before this Court. The only apprehension raised by the petitioner is similar to that of the petitioners in W.P.(MD).Nos.1807 & 1808 of 2011. Therefore, the direction given in those writ petitions will also apply to the petitioner and hence, with the same direction, W.P.(MD). No. 1300 of 2011 stands dismissed. It also transpires that the same petitioners viz., C. Gopinath, M. Saraswathi and M. Annapooram have filed a suit in O.S. No. 266 of 2010 and in the suit, I.A. No. 417 of 2010 restraining the petitioner M. Mani from constructing or altering properties, was rejected. In any event, it is unnecessary to go into the civil dispute.

8. In so far as the writ petition filed by the petitioner in W.P.(MD). No. 80 of 2011 is concerned, he was subsequently informed that he should satisfy the authorities with reference to his right to claim the amount by producing necessary documents and ultimately if he satisfies the authorities, he can be given the compensation as ordered by the authority. The only impediment was that the pendency of W.P.(MD). No. 13365 of 2010 before this Court. As already rightly stated by the petitioner, the said writ petition filed by M. Saraswathi was disposed of as early as on 03.11.2010. Therefore, the authority must have known about the said disposal, since the order copy made in W.P. has already been marked to the respondents and despatched by this Court on 10.11.2010. Unfortunately the respondents had driven the land owner for giving a petition before the District Collector at the grievance redressal day. Thereafter, they gave an explanation contrary to the records. Hence, a direction will issue to the respondents to consider the petitioner's representation dated 21.12.2010, a copy of which marked at Page 7 of the typed set filed in W.P.(MD). No. 80 of 2011. The authority should pass appropriate orders within four weeks from the date of receipt of a copy of this order. In case, the respondents are inclined to disburse the compensation amount in favour of Mr. M. Mani, the petitioner in W.P.(MD). No. 80 of 2011, the same shall be received by the

said writ petitioner. Out of the said amount received by him, he should keep Rs. 7,00,000/-(Rupees seven lakhs only) separately and put the same in a fixed deposit for a period of one year. In the event of his sisters or other legal heirs, are able to succeed before the Civil Court, the said amount would stand as a security in the civil suit if any filed by the said persons. If the suit is not filed and no interim orders are obtained from the civil Court within a period of one year from the date of receipt of a copy of this order, the petitioner Mr. M. Mani is entitled to encash the said amount in his favour. The writ petition is disposed of accordingly. On receipt of money, the said petitioner shall file an affidavit into this court before the Registrar (Judicial), Madurai Bench of Madras High Court, Madurai, undertaking to keep the above said amount in fixed deposit for a period of one year and the Registrar (Judicial) shall call for compliance report from the said petitioner.

9. In the result, the writ petition in W.P.(MD). No. 80 of 2011 is disposed of with directions. W.P.(MD).Nos.1300, 1807 & 1808 of 2011 will stand dismissed with the above direction. In view of the above, all the miscellaneous applications are closed. No costs.