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Devika Rani Vs. the Collector.

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Court : Chennai

Decided On : Mar-20-2012

Judge : P.Jyothimani; M.Duraiswamy, Jj.

Acts : Land Acquisition Act - Section 48B

Appeal No. : W.A.No.462 of 2010

Appellant : Devika Rani.

Respondent : The Collector.

Advocate for Pet/Ap. : Mr.M.S.Krishnan, Adv.

Judgement :

JUDGMENT

(Delivered by P.JYOTHIMANI,J.)

1. The appeal is directed against the order of the learned Single Judge dated 22.1.2010 in W.P.No.10482 of 2009, by which the learned Judge has dismissed the writ petition filed by the appellant challenging the proceedings of the District Collector dated 16.4.2009, by which the District Collector has informed the appellant that in spite of offering payment of ` 3.25 Lakhs as per the earlier order passed by the learned Single Judge dated 25.8.1998 in W.P.No.2524 of 2002, the appellant has not taken steps to receive the cheque and, therefore, directed the

appellant to receive the said amount, failing which it was stated that further action would be taken.

2. The short facts leading to the filing of the writ petition by the appellant are that, in the year 1920, a land measuring about 9 Cents in Survey No.293/2, Manamadurai Village, Sivaganga Taluk was notified for acquisition under the Land Acquisition Act (for brevity the Act) and ultimately, the award has been passed in respect of the said 9 Cents of land. However, it is the case of the appellant that the Government has erroneously expropriated a total extent of 67 Cents of land instead of 9 Cents and handed over the same to the Railways. Admittedly, in respect of the 9 Cents of land, the appellant has been paid the compensation as per the Act.

3. It is stated that the excess 58 Cents of land, which has been expropriated without following the principles of the Act and handed over to the Railways, was returned by the Railways to the Government and it appears that the said return was in the year 1944 and the State Government has sold the said 58 Cents of land to Okkur Vellayan Chettiar Higher Secondary School, Manamadurai, Sivaganga District by way of a public auction conducted in the year 1944 itself. It is seen that even after the sale effected to the said school, the revenue records continue to stand in the name of the Railways and the records show that the excess land has been classified as railway poromboke.

4. The appellant, claiming herself to be the owner in respect of the said 58 Cents of excess land, has earlier approached this Court by filing W.P.No.2524 of 1992, in which this Court has given a direction to the Government to allot an approximate extent of 58 Cents of land in the same area or any area comparable to Survey No.292/3/2 of Manamadurai or in the alternative to pay a compensation of ` 3.25 Lakhs to the appellant for wrongful dispossession. The operative portion of the order passed by this Court at the earliest point of time in the writ petition filed at the instance of the appellant is as follows: 20. With the result, there will be a mandamus directing respondents-1 and 2 either to allot a land of an approximate extent of 58 cents of land in the same area or any area comparable to Survey No.292/3/2 of Manamadurai in favour of the petitioner herein or in the alternative

to pay a compensation of Rs.3.25 lakhs to the petitioner for the wrongful dispossession of the land from the family of the petitioner. If respondents 1 and 2 are of the opinion that the cost of the land has to be recovered either from the third respondent or from the fourth respondent, or both, for any reason, it would be a separate issue and cause of action as between themselves. The rights of the petitioner to obtain compensation from the acquiring authority, namely respondents 1 and 2, are independent and hence enforceable as against respondents 1 and 2.

5. When a question arose as to who has to pay the said amount of compensation, the school which has purchased the 58 Cents of land in the public auction from the Government has filed an appeal in W.A.No.1311 of 1998. A Division Bench of this Court, in the judgment dated 31.7.2000, has modified the order in respect of the payment of compensation of ` 3.25 Lakhs stating that it is not the school which is liable to pay the amount and in other respects, the order of the learned Single Judge stood confirmed.

6. Thereafter, it appears that the Government has filed a review before the learned Single Judge in Review Application No.5 of 1999 in W.P.No.2524 of 1992. That review came to be dismissed on 31.8.2005. A perusal of the order of dismissal passed by the Singe Judge in the review application shows that it has been the case of the Government that the excess land of 58 or 59 Cents does not belong to the appellant. However, the learned Judge has not given any opinion about the said contention raised on behalf of the Government, except stating that The mere fact that in the records relating to the year 1920, Paimash Nos.1-2 and 1-3 were shown as belonging to Taluk Board, Devakottai, and Sivaganga Estate cannot be a proof of the fact as to whether Muthusamy Pillai was or was not in possession of the entire land or whether he was exercising Kudivaram right only to the extent of 9 cents and not to the entire extent of 59 cents. Except for the affidavit, no other materials are produced before this Court.. In any event, it has been the case of the Government, originally, even before the learned Single Judge that the excess land continued to remain as poromboke land. However, there was a direction to the Government to pay the amount of compensation.

7. It is also relevant to point out at this stage that the order of the learned Single Judge which was passed originally on 25.8.1998, as extracted above, makes it abundantly clear that the appellant shall be given alternative land of 58 Cents or compensation of ` 3.25 Lakhs and that order holds water as on date and has become final. The order of the learned Judge is not to give 58 Cents of land to the appellant and in the absence of availability of such land, to pay compensation of ` 3.25 Lakhs to the appellant. Therefore, the subsequent representations made by the appellant and the recommendations on two occasions one by the Tahsildar and another by the Revenue Divisional Officer that the land continues to be poromboke land and the opinion of the Tahsildar that 0.12.0 Ares may be given to the appellant and the opinion of the Revenue Divisional Officer that 0.27.0 Ares may be given to the appellant, have no meaning and such recommendations do not confer any right on the appellant to claim 58 Cents of land as a matter of right based on the order of the learned Judge. Therefore, the contention of Mr.M.S.Krishnan, learned Senior Counsel appearing for the appellant that the spirit of the order of the learned Judge originally passed is that the appellant is entitled to 58 Cents of land and it is only if the lands are not available, the question of payment of ` 3.25 Lakhs as compensation would arise is unacceptable.

8. The contents of the order of the learned Single Judge, as extracted above, are clear and do not require any further interpretation. While so, the subsequent order passed by the District Collector which is challenged in the present proceedings directing the appellant to receive the amount of ` 3.25 Lakhs cannot be said to be either erroneous or illegal. When the said order of the District Collector came to be challenged by the appellant, it is true that the learned Judge has referred to Section 48-B of the Act to say that restoration of the property is not a matter of right. It is always for the Government to use any extent of the property acquired for any other public purpose and such observation may not be appropriate in the context and circumstances of the case, nevertheless, we are of the view that the appellant by virtue of the earlier order passed by this Court cannot claim as a matter of right the possession of 58 Cents of land, merely because such extent of land is available. As long as the said original order of the learned Single Judge stands, there is nothing iniquitous in the Government choosing the second option of payment of ` 3.25 Lakhs as compensation to the appellant. We are, therefore, of

the view that the impugned order of the learned Judge does not warrant any interference by this Court.

9. At this juncture, Mr.M.S.Krishnan, learned Senior Counsel appearing for the appellant represented that for no fault on the part of the appellant the payment of compensation has been delayed from 1998 to 2007 and, therefore, he submitted that the Government may be directed to pay interest for the delayed payment.

10. Taking note of the facts that even though the original order was passed by the learned Judge as early as 25.8.1998 the Government has chosen to come forward to pay the amount of compensation of `3.25 Lakhs only on 3.8.2007; that it is not the appellant who has challenged the original order of the learned Judge and that there has been some proceeding filed by the school as to who has to pay the amount of compensation, for which the appellant cannot be found fault with; and that the Government itself has filed a review before the learned Single Judge and even in respect of that no fault can be imputed to the appellant; and that it was only after 3.8.2007 when the amount of compensation was offered the appellant has refused to receive the amount, since she has been insisting that she only requires land, we are of the view that for the period between 25.8.1998 and 3.8.2007, in respect of the amount of compensation of ` 3.25 Lakhs, the appellant shall be entitled to interest at the rate of 9% per annum and accordingly, the Government is directed to pay interest at the rate of 9% per annum for the period between 25.8.1998 and 3.8.2007. The amount of compensation with interest shall be paid within a period of eight weeks from the date of receipt of a copy of this order. For the foregoing reasons, the appeal fails and the same is dismissed and the order of the learned Single Judge is confirmed. No costs.

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