



W.P.(MD) No.6630 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.6630 of 2020

Dr.G.Ganga

... Petitioner

/vs./

1.The District Collector Madurai,
Office of the District Collectorate,
N.K.No.27/2009 Land Acquisition,
Airport Acquisition Extension Wing-1,
Madurai.

2.Special Tahsildar (Land Acquisition),
N.K.No.27/2009/L.A,
Airport Acquisition Extension Wing-1,
Madurai 625 020.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the Na.Ka.No.3715/2009/B6 dated 10.03.2020 regarding Land Acquisition Madurai District - Airport Extension Iyanpappakudi Village, Land Acquisition property, vide N.K.No.27/2009 House Site plot of Survey No.455 situated in Airport Road, Wing 3 of Avaniyarpuram Town Panchayat, Madurai and quash the



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award in 9/2020 which was posted on 19.03.2020 and was received on 21.03.2020 and the consequent notice dated 19.03.2020 in Na.Ka.No. 31/2018/Ni.Ea, dated 19.03.2020 which was received on 24.03.2020 since posted on 20.03.2020. The same was not acted upon due to the corona virus lock down implemented by the state of Tamil Nadu and the Union of India and quash the same as illegal, contrary to law and invalid under law against the judgment of the Supreme Court of India in S.L.P.9036 to 9038 of 2016 dated 06.03.2020 consequently direct the 1st respondent to reissue a fresh notification since the earlier notification is lapsed in view of the Apex Court's order pertaining to land and building in S.No.455/2A1A, Door No.6, 0.78.50 ares part situated in the Airport Road, Wing-3, Avaniyapuram Town Panchayat, Madurai.

For Petitioner : Mr.M.V.Santharaman

For Respondents : Mr.D.Ghandiraj
Special Government Pleader

ORDER

The above writ petition is filed for the following relief:-

“Writ of Certiorarified Mandamus, calling for the records pertaining to the Na.Ka.No.3715/2009/B6 dated 10.03.2020 regarding Land Acquisition Madurai District - Airport Extension Iyanpappakudi Village, Land Acquisition property, vide N.K.No.27/2009 House Site plot of Survey No.455 situated in Airport Road, Wing 3 of Avaniyarpuram Town Panchayat, Madurai and quash the award in



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9/2020 which was posted on 19.03.2020 and was received on 21.03.2020 and the consequent notice dated 19.03.2020 in Na.Ka.No. 31/2018/Ni.Ea, dated 19.03.2020 which was received on 24.03.2020 since posted on 20.03.2020. The same was not acted upon due to the corona virus lock down implemented by the state of Tamil Nadu and the Union of India and quash the same as illegal, contrary to law and invalid under law against the judgment of the Supreme Court of India in S.L.P.9036 to 9038 of 2016 dated 06.03.2020 consequently direct the 1st respondent to reissue a fresh notification since the earlier notification is lapsed in view of the Apex Court's order pertaining to land and building in S.No.455/2A1A, Door No.6, 0.78.50 ares part situated in the Airport Road, Wing-3, Avaniyapuram Town Panchayat, Madurai.”

2.This writ petition highlights the loss that is caused to the exchequer on account of the officials not comprehending/overlooking the instructions, Government Orders as well as the Court orders. The above observation has been made taking into account the facts, which has given raise to the above writ petition.



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3.It is the case of the petitioner that she has purchased a house site under a registered sale deed dated 05.06.2002 registered as Doc.No.2424/2002. On the very same day, a gift for the road was also registered as Doc.No.2423/2002. The petitioner would submit that she has sought building permission for constructing a building and the same was approved on 02.08.2002. As per the approval, the construction was to be completed on or before 19.08.2004. The petitioner would submit that she has also put up a construction by obtaining loan from the Housing Development Finance Corporation Bank Ltd., under two tranches. The construction was completed before 2009 and an additional construction was also put up. The building that has been put up was given D.No.6 and was also assessed to tax with the Avaniyapuram Town Panchayat. The petitioner would submit that the building was a modern construction and was also serviced with electricity.

4.While so, the petitioner was shocked to receive the letter dated 22.11.2017 from the second respondent, wherein it has been stated that they proposed to acquire her lands, as the same was described as punja lands when it is a house site in an approved layout. This classification has been made with a view of giving lesser compensation to the petitioner.



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5.The petitioner has therefore filed W.P.(MD) No.5269 of 2018 on the file of this Court to direct the respondents to change the classification of the land in S.Nos.455/2A 1A, measuring an extent of 0.78.50 ares. This Court by order dated 16.08.2018 was pleased to direct the respondents therein to consider the representation of the petitioner dated 05.02.2018 and pass orders on merits after hearing the petitioner.

6.The petitioner would submit that contrary to the directions of this Court, the second respondent did not afford a personal hearing to the petitioner to put-forth her case. The second respondent had issued a notice calling upon the petitioner to appear before him on 03.10.2018. However, the notice was received on the date of the hearing and the petitioner had contacted the second respondent over phone requesting him to grant time for a personal hearing to consider the representation and fix the market value. She was informed that the matter would be taken on 16.10.2018. However, the same was not taken up on the said day. Thereafter, the petitioner had moved W.P.(MD) No.24762 of 2018 calling upon the first respondent to fix the market value of the acquired land as a house site.



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When the matter had come up, the learned Government Advocate had fairly conceded that the award has not been passed. Therefore, this Court had passed an order directing the respondents to determine and disburse the compensation payable to the petitioner within a period of 8 weeks from the date of receipt of a copy of that order. It appears that the first respondent had passed an award dated 07.03.2019 deciding the compensation payable at Rs.4,41,986/-. This order has been passed without hearing the petitioner. The said award was communicated to the petitioner by the petitioner's counsel vide letter of the second respondent dated 25.04.2019.

7.Immediately, the petitioner had challenged the same by filing W.P.(MD) No.15609 of 2019 along with the relief for directing the first respondent to pass an award fixing the compensation for paying the petitioner. This Court by order dated 19.08.2019 was pleased to pass the following order:-

“20.For all these reasons and discussions made above, this Court is inclined to dispose of this writ petition with the following directions:-

“that the impugned communication dated 25.04.2019 issued by the second respondent cannot be given effect to and therefore, it is



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quashed. The matter is remitted back to the respondents with a direction that, the respondents shall conduct an enquiry with the petitioner by giving separate notice to that effect, within a period of one week from the date of receipt of a copy of this order directing the petitioner to appear either before the first respondent or before the second respondent mentioning the date and time as well as the venue, with relevant documents to be enumerated in the said notice and on receipt of such notice, the petitioner shall appear before the respondent as indicated in the notice and on appearing, the petitioner would be given an effectual hearing, enabling the petitioner to put forth her case seeking for adequate compensation for the land acquired from her including the building and after completing the enquiry, it is open to the respondents to pass award within a period of two weeks, thereafter. Once the award is passed, it is for the petitioner to accept or to agitate the same, if she felt aggrieved in the manner known to law. The aforesaid exercise shall be strictly followed and to be completed within the time, as indicated above, by giving opportunity to the petitioner, as has been directed by this Court.””

8. Thereafter, the second respondent had called upon the petitioner to appear before him on 26.08.2019 pursuant to the orders passed in W.P.(MD) No.15609 of 2019. The petitioner would submit that she had submitted a detailed



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representation to the respondent under cover of a letter dated 30.08.2019. Despite bringing it to the notice of the petitioner that the compensation has to be calculated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30/2013), the impugned order dated 10.03.2020 came to be passed, which is the subject matter of challenge in the instant case.

9.Mr.M.V.Santharaman, learned counsel appearing on behalf of the petitioner would submit that the land in question was originally acquired by invoking the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (No.30/2013) came into force on 01.01.2014. This Act repealed the Land Acquisition Act, 1894. On 01.01.2015, the Tamil Nadu Amendment Act 1/2015 (The Right to Fair Compensation and Transparencies in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Act came into effect. After the enactment of Act 30/2013, the three special State Acts, namely The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition of Land



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for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001, by virtue of Section 105 of Act 30/2013, acquisition continued to be applicable.

10. Thereafter, by G.O.Ms.No.251, Industries (SIPCOT-LA) Department, dated 31.12.2014, it was decided that the provisions of the Central Act 30/2013 relating to determination of compensation would apply to cases of land acquisition, where notice of acquisition under Section 3(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 has been published on or before 01.01.2014.

11. Meanwhile Act 1/2015 was challenged, in and by which a new Section 105(A) was sought to be introduced and it was held that the provisions of Act 30/2013 would not apply to the enactments relating to the land acquisition specified in the Vth schedule. The Vth schedule dealt with the three Acts, namely The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001. The Bench in the batch of cases had ultimately observed that by the insertion of Section 105(A), the three State Acts, which have



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been listed in the schedule V of Act 1/2015 could not be revived since it had become repugnant on 27.09.2013. This judgment was taken on challenge before the Hon'ble Supreme Court in S.L.P.No.22727-22736 of 2019. By order dated 27.09.2019, the Hon'ble Apex Court had granted leave and observed that the impugned orders would be stayed with reference to the order of the Division Bench of the Madras High Court that the acquisition made under the three impugned enactments post 27.09.2013 would be illegal and had continued the interim protection granted by the Division Bench of the High Court regarding the *status quo* as to the possession of the land and for proceedings to go on without final orders being passed. After the orders were passed by the Hon'ble Supreme Court, the Government of Tamil Nadu enacted Act 38/2019 for reviving the operation of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the Tamil Nadu Highways Act, 2001. As per Section 6 therein, all the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 stood revive except for the provisions relating to the determination of compensation with effect from 26.09.2013.



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12.Sub-section 3 therein provided that the provisions relating to the determination of compensation as specified in the Ist schedule, Rehabilitation and Resettlement as specified in the IInd schedule and infrastructure amenities as provided in the IIIrd schedule to Act 30/2013 would apply to the land acquisition proceedings under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. This amendment has been circulated to all the District Collectors of the State under cover of a letter of the Principal Secretary to Government bearing letter No.8210/1.2/2019 dated 08.01.2020. Despite the above and without considering the submissions and giving hearing to the petitioner, the impugned order came to be passed on 10.03.2020.

13.The respondents had filed a counter *interalia* contending that the remedy of the petitioner is only to move a suit before the competent civil Court under Section 8 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and the writ petition was not maintainable. In the additional counter affidavit, once again the averment stated in the earlier counter affidavit is reiterated and the respondents have stated as follows:-



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“6.It is humbly submitted that in accordance with the above orders passed by this Hon'ble Court, the Petitioner herein was directed to appear for personal enquiry on 18.02.2020 at 11 AM. She appeared for enquiry and gave a representation dated 18.02.2020. In-fact, additional notification under section 3(2) of the Industrial Purposes Act,1997 regarding houses, tress etc. was approved and published in Dinamalar and Deccan Chronicle dated 19.12.2018. Insofar the Petitioner's house property located in 1950 sq.ft of land in S.No. 455/2A1 is concerned, the Executive Engineer, Public Works Department, the Competent authority, inspected the property and submitted his valuation report by stating that the property is valued at Rs.4,70,300/-. Hence necessary proposal to the Special Commissioner for Land Administration has been submitted for approval as well as causing publication in the Government Gazette, the amount will be paid to he Petitioner herein as per the orders passed by this Hon'ble Court in Roc. No. 31/2018 dated 25.02.2020 and the Petitioner herein has received the same on 03.03.2020.”

They have further stated as follows:-

“Larger bench of the Hon'ble Supreme Court of India in SLP (C) Nos.906 -9038 of 2016 dated 06.03.2020 held that under the Provisions of section 24(1)(a) in case the award is not made as on 1.1.2014, the date of commencement of the Act, there is lapse of



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proceedings. Compensation has to be determined under the provisions of Act of 2013. In the present case also, the compensation has been arrived only as per the provision of the new Act, 2013 and hence no prejudice has been caused to the Petitioner.”

14. In the counter it has been categorically stated that the compensation has been passed only as per Act 30/2013. In the background of the above submissions, a perusal of the impugned order dated 10.03.2020 would clearly demonstrate that the compensation has not been awarded as per Act 30/2013, which is evident from a reading of the operative portion of the impugned order, which reads as follows:-

“நிலஎடுப்பிற்கான இழப்பீட்டுத் தொகை:-

3(2) அறிவிக்கை 19.03.2009ல் வெளியிடப்பட்டுள்ளதால் புதிய நிலஎடுப்பு சட்டம் 2013ஆம் வருடத்திய நிலம் கையகப்படுத்துதல் மற்றும் உரிய இழப்பீடு வழங்குதல் மறுவாழ்வு மற்றும் மறுகுடி அமர்வு சட்டத்திற்குண்டான (RFCTLARR Act 2013) பலன்கள் வழங்குவதற்கான கேள்வி எழவில்லை. நில உரிமையாளர்களுக்கு இதுவரை இடைக்கால இழப்பீட்டுத் தொகை எதுவும் வழங்கப்படவில்லை. நில உரிமையாளர்களிடமிருந்து நிலம் கையகப்படுத்தப்பட்டு இதுவரை கேட்புத் துறையினர் வசம் ஒப்படைக்கப்படவில்லை.”



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15.Heard the learned counsels appearing on either side.

16.The entire case rests on whether the respondents have followed the provisions of the Act and the instructions of their officials and from a reading of the impugned order, it is clearly evident that the same has not been done as per Act 30/2013, but only as per the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. The respondents would take umbrage under the provisions of G.O.Ms.No.251, Industries (SIPCOT-LA) Department, dated 31.12.2014, which is a Government Order that has been passed pending the assent to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Tamil Nadu Amendment) Bill, 2014. It is thereafter that Act 38/2019 had received the assent of the President and Section 6(1) and (3) makes it very clear that with reference to compensation it would only be the provisions of the Central Act 30/2013 that would apply. Therefore, by the enactment of the Act, the respondents cannot rely upon G.O.Ms.No.251, Industries (SIPCOT-LA) Department, dated 31.12.2014 which by itself was only an interim measure pending assent. Therefore, the Writ Petition



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is allowed as prayed for. The impugned order passed in Na.Ka.No.3715/2009/B6 dated 10.03.2020 is set aside and the matter is remitted back to the respondents for reworking the compensation in the lines of Act 30/2013 within a period of 8 weeks from the date of receipt of a copy of this order. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

08.06.2023

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To

- 1.The District Collector Madurai,
Office of the District Collectorate,
N.K.No.27/2009 Land Acquisition,
Airport Acquisition Extension Wing-1,
Madurai.
- 2.Special Tahsildar (Land Acquisition),
N.K.No.27/2009/L.A,
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