

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2015

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

WRIT PETITION NO.5543 OF 2014

Mrs.B.Mary Selvam

.. Petitioner

Vs.

1.State of Tamil Nadu, represented by
its Secretary to Government,
Highways Department, Secretariat,
Chennai-600 009.

2.The District Collector,
Thanjavur District,
Thanjavur-613 001.

3.The Revenue Divisional Officer,
Thanjavur-613 001.

.. Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records comprised in the proceedings of the third respondent in award No.1 of 2014 Na.Ka.4245/2000/A5 dated:30.07.2014 and to quash the same and consequently direct the respondents herein to adopt the land value as on the date of notification of the Central Act 30 of 2013 and follow the procedure contemplated under the Central Act 30 of 2013 in fixing the compensation for the lands comprised in Survey Nos.167/1A and 167/1B measuring a total extent of 72000 sq.ft in Nanjikottai village Thanjavur Taluk Thanjavur District which were forcibly taken possession from the petitioner. (Prayer amended as per order dated 13.08.2015 by MMSJ in MP.1/2014 in W.P.No.5543/2014)

For Petitioner :Mr.AR.L.Sundaresan Senior Counsel
for
Mr.V.Ramajegadeesan

For Respondents :Mr.S.Pattabiraman,
Government Advocate

ORDER

A decision was made by the respondents to form a bypass road in and around Thanjavur Town. Unfortunately, without following the procedure, the petitioner's property situated in Survey Nos.167/1A and 167/1B, Nanjikottai Village, Thanjavur Taluk, Thanjavur District, was taken possession by the respondents.

2. The petitioner, thereafter, filed a writ petition in W.P.No.2358 of 2001, in which, this Court by an order dated 18.02.2002 has passed the following order.

"6. For all the above reasons, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the third respondent, for determining the quantum of compensation in respect of the land in question. The third respondent for the said purpose shall take the date on which the award enquiry was conducted instead of taking the date of entry into the land on 27.4.94 and pass award fixing the quantum of compensation within a period of two months from the date of receipt of copy of this order. The petitioner is also at liberty to file documents to claim the potential value for the land. After the compensation amount is arrived by the third respondent, it shall be directed to be paid to the petitioner without prejudice to the claim of the fourth respondent under the third proviso to Section 31 of the Land Acquisition Act. There will be no order as to costs. Consequently connected W.M.P., is closed."

3. The writ appeal in W.A.No.2314 of 2002 filed against the above said order was also dismissed by this Court on 25.10.2010. Thereafter, the impugned notice was issued on 24.12.2013 solely for the purpose of fixing the compensation under the Land Acquisition Act 1 of 1894. Thereafter, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) (hereinafter referred to as the New Act) has come into force with effect from 01.01.2014.

4. The learned Senior Counsel appearing for the petitioner submits that in view of the express provision contained in Provision 24(1)(a) of the New Act, in a case where no award under Section 11 of the Land Acquisition Act I of 1894 has been made determining the compensation, the provisions of the New

Act namely Act 30 of 2013 are applicable. Thus, inasmuch as no award has been passed on the date of the coming into force of the New Act 30 of 2013, the compensation has to be fixed under the said Act. During the pendency of the writ petition, an application was filed for amendment of the prayer in the writ petition which was duly allowed. Now the award is challenged on the ground that the 3rd respondent has passed award No.1 of 2014 in Na.Ka.4245/2000/A5 dated 30.7.2014 under the provisions of the Land Acquisition Act, 1894 though the same is repealed by the new Act and as such the said proceedings cannot be sustained in the eye of law. The learned counsel has made reliance upon the order passed in W.P.No.2358 of 2001. Insofar as the claim made by the third parties are concerned, incidentally she has filed a separate suit.

5. The learned Government Advocate, based upon the counter affidavit filed, has submitted that the provisions of Section 24(1)(a) of New Act does not have any application to the case of petitioner, since possession has already been taken way back in the year 1994. Therefore, no interference is required.

6. The order passed in W.P.No.2358 of 2001 dated 18.02.2002 has become final between the parties. A perusal of the said order makes it clear that the third respondent therein will have to take into consideration of the date on which the award enquiry was conducted instead of the date of entry into the land on 27.4.1994 for the purpose of fixing the compensation. Admittedly, as on the date on which Act 30 of 2013 has come into force, no award was passed. It was passed subsequently on 30.07.2014. Therefore, the rigour of Section 24 (1)A would apply in all fours to the case of the petitioner. Resultantly, the compensation will have to be fixed by the third respondent as per the said enactment alone and not under the erstwhile Land Acquisition Act 1 of 1894.

7. Accordingly, the order impugned is hereby set aside and consequently, the third respondent is directed to conclude the award by applying the provisions of New Act 30 of 2013 and fix the compensation, in the light of the orders passed by this Court in W.P.No.2358 of 2001 and W.A.No.2314 of 2002, within a period of eight weeks from the date of receipt of a copy of this order. Therefore, for the purpose of fixing compensation, the date for hearing on the award enquiry i.e. 20.01.2014 alone will be taken into consideration by applying Act 30 of 2013.

The writ petition is allowed. No costs.

Sd/-
Assistant Registrar (CS-III)

True Copy

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Highways Department, Secretariat,
Chennai-600 009.

2.The District Collector,
Thanjavur District,
Thanjavur-613 001.

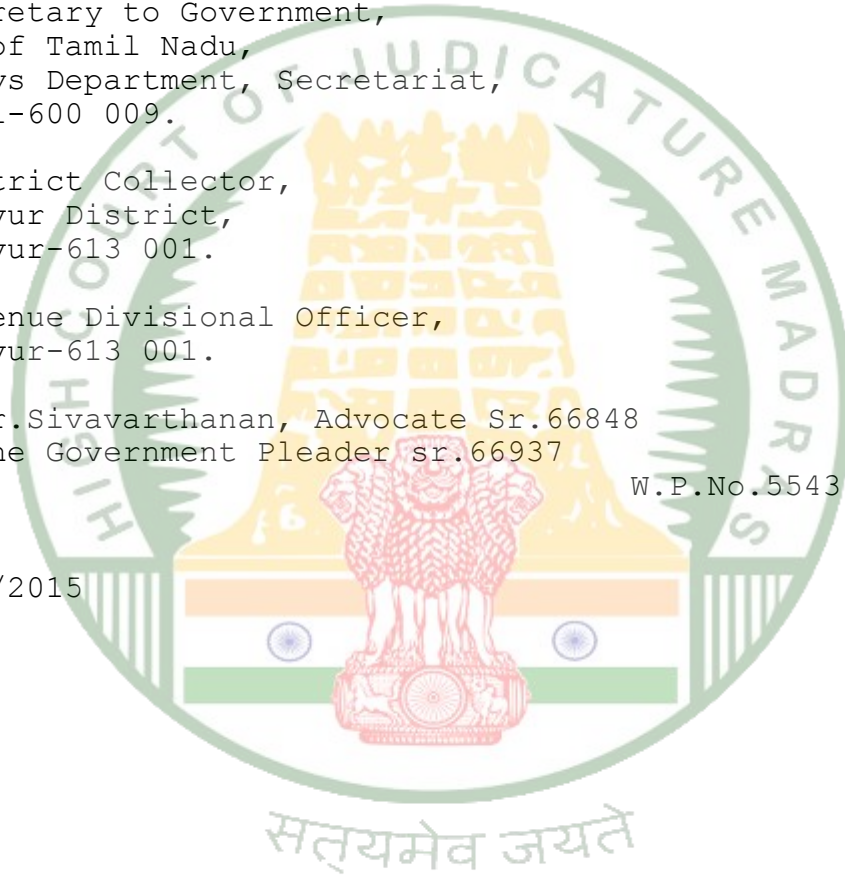
3.The Revenue Divisional Officer,
Thanjavur-613 001.

+1cc to Mr.Sivavarthan, Advocate Sr.66848

+1cc to The Government Pleader sr.66937

W.P.No.5543 of 2014

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srg 16/12/2015



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