

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2015

CORAM

THE HON'BLE MR. JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR. JUSTICE T.MATHIVANAN

A.S.Nos.233 to 239, 306 and 572 to 577 of 2013, 872 to 879, 880 to 900 and 901 to 913, 914 to 945 and 952 to 985 of 2014 and 332 of 2015 (123 cases)

and

M.P.Nos.1 of 2013 (14 Nos.), 1 of 2014, 2 of 2014 (71 Nos.), 1 of 2014, 2 of 2014 (26 Nos.), 1 of 2014 (2 Nos.), 2 of 2014 (32 Nos.) and 1 of 2015

The Chairman,
Neyveli Lignite Corporation Limited,
Neyveli - 1.

... Appellant in all the
Appeals/3rd Respondent

Vs

P.Thangarasu
D.Pachamuthu
C.Kuppusamy

...R1 in A.S.233/13(Claimant)
...R1 in A.S.234/13(Claimant)
...R1 in A.S.235/13(Claimant)

V.Jayaraman
V.Kamaraj
V.Rengaraj
V.Mahamani

...R1 to R4 in A.S.236/13(Claimants)

Munusamy
M.Muniyasamy
R.Rajendiren
P.Marimuthu
Thambusamy
Senthilkumar
Mariyayee
Arumugam
Murugesan
Samidurai
Thangarasu
Ramanujam
Thirunavukarasau

...R1 in A.S.237/13(Claimant)
...R1 in A.S.238/13(Claimant)
...R1 in A.S.239/13(Claimant)
...R1 in A.S.306/13(Claimant)
...R1 in A.S.572/13(Claimant)
...R1 in A.S.573/13(Claimant)
...R1 in A.S.574/13(Claimant)
...R1 in A.S.575/13(Claimant)
...R1 in A.S.576/13(Claimant)
...R1 in A.S.577/13(Claimant)
...R1 in A.S.872/14(Claimant)
...R1 in A.S.873/14(Claimant)
...R1 in A.S.874, 875 & 878/14
(Claimants)

Chandrasahana

...R1 in A.S.876 & 898/14(Claimants)

Natarajan	...R1 in A.S.877 & 879/14 (Claimants)
Palanisamy	...R1 in A.S.880/14 (Claimant)
Thangarasu	...R1 in A.S.881/14 (Claimant)
Jayaraman	...R1 in A.S.882/14 (Claimant)
Chandrasekaran	...R1 in A.S.883/14 (Claimant)
Rasaiya	...R1 in A.S.884/14 (Claimant)
Ambujammal	...R1 in A.S.885/14 (Claimant)
Jayaraman	...R1 in A.S.886/14 (Claimant)
Rasaya	...R1 in A.S.887/14 (Claimant)
Jayalakshmi	...R1 in A.S.888/14 (Claimant)
Jayaraman	...R1 in A.S.889/14 (Claimant)
Palaniammal	...R1 in A.S.890/14 (Claimant)
Savithri	...R1 in A.S.891/14 (Claimant)
Virakannu	...R1 in A.S.892/14 (Claimant)
Kannan	...R1 in A.S.893/14 (Claimant)
Balakrishnan	...R1 in A.S.894/14 (Claimant)
Thirunavukarasu	...R1 in A.S.895/14 (Claimant)
Natarajan	...R1 in A.S.896/14 (Claimant)
Kuthappan	...R1 in A.S.897/14 (Claimant)
Kaliyamoorthy	...R1 in A.S.899/14 (Claimant)
Chinnappan	...R1 in A.S.900/14 (Claimant)
Chandrasasan	...R1 in A.S.901/14 (Claimant)
Karthikeyan	...R1 in A.S.902/14 (Claimant)
Masilamani	...R1 in A.S.903/14 (Claimant)
Ambujammal	...R1 in A.S.904 & 909/14 (Claimants)
Jayalakshmi	...R1 in A.S.905/14 (Claimant)
Kaliyaperumal	...R1 in A.S.906/14 (Claimant)
Muthaiyan	...R1 in A.S.907/14 (Claimant)
Vasantha	...R1 in A.S.908/14 (Claimant)
Natarajan	...R1 in A.S.910/14 (Claimant)
Thirunavukarasu	...R1 in A.S.911/14 (Claimant)
Jayalakshmi	...R1 in A.S.912/14 (Claimant)
Ambujammal	...R1 in A.S.913/14 (Claimant)
Thillaikannu	...R1 in A.S.914/14 (Claimant)
Nagamuthu	...R1 in A.S.915/14 (Claimant)
Rathinasamy	...R1 in A.S.916/14 (Claimant)
Thangavel	...R1 in A.S.917/14 (Claimant)
Ayyamperumal	...R1 in A.S.918/14 (Claimant)
Rathinam	...R1 in A.S.919/14 (Claimant)
Dhanapal	...R1 in A.S.920/14 (Claimant)
Chittu	...R1 in A.S.921/14 (Claimant)
Kuppammal	...R1 in A.S.922/14 (Claimant)
Thangasamy	...R1 in A.S.923/14 (Claimant)
Dhanapal	...R1 in A.S.924/14 (Claimant)
Appavoo	...R1 in A.S.925/14 (Claimant)
Ayyamperumal	...R1 in A.S.926/14 (Claimant)
Pattusamy	...R1 in A.S.927/14 (Claimant)
Sivalingam	...R1 in A.S.928/14 (Claimant)
Krishnan	...R1 in A.S.929/14 (Claimant)

Panchavarnam	...R1 in A.S.930/14 (Claimant)
Kaliyaperumal	...R1 in A.S.931/14 (Claimant)
Saravanan	...R1 in A.S.932/14 (Claimant)
Dhanavel	...R1 in A.S.933/14 (Claimant)
Pavunammal	...R1 in A.S.934/14 (Claimant)
Supparayan	...R1 in A.S.935/14 (Claimant)
Savithri	...R1 in A.S.936/14 (Claimant)
Ramadoss	...R1 in A.S.937/14 (Claimant)
Jagadeesan	...R1 in A.S.938/14 (Claimant)
Muruganantham	...R1 in A.S.939/14 (Claimant)
Palanivel	...R1 in A.S.940/14 (Claimant)
Chinnadurai	...R1 in A.S.941/14 (Claimant)
Jayalakshmi	...R1 in A.S.942/14 (Claimant)
Dhanapakkiyam	...R1 in A.S.943/14 (Claimant)
Ramamoorthy	...R1 in A.S.944/14 (Claimant)
Boopathy	...R1 in A.S.945/14 (Claimant)
Kumarasamy	...R1 in A.S.952/14 (Claimant)
Kasthoori	...R1 in A.S.953/14 (Claimant)
Pugazhendhi	...R1 in A.S.954/14 (Claimant)
Balusamy	...R1 in A.S.955/14 (Claimant)
Singarau	...R1 in A.S.956/14 (Claimant)
Appadurai	...R1 in A.S.957/14 (Claimant)
Balusamy	...R1 in A.S.958/14 (Claimant)
Marimuthu	...R1 in A.S.959/14 (Claimant)
Gandhimathi	...R1 in A.S.960/14 (Claimant)
Selvanathan	...R1 in A.S.961 & 962/14 (Claimants)
Perumal	...R1 in A.S.963/14 (Claimant)
Chinnappan	...R1 in A.S.964/14 (Claimant)
Annadurai	...R1 in A.S.965/14 (Claimant)
Velmurugan	...R1 in A.S.966 & 968/14 (Claimants)
Muruganantham	...R1 in A.S.967/14 (Claimant)
Tamilarasi	...R1 in A.S.969/14 (Claimant)
Srinivasan	...R1 in A.S.970/14 (Claimant)
Manivannan	...R1 in A.S.971/14 (Claimant)
Mani	...R1 in A.S.972/14 (Claimant)
Panchanathan	...R1 in A.S.973/14 (Claimant)
Dharmaraj	...R1 in A.S.974/14 (Claimant)
Panchanathan	...R1 in A.S.975/14 (Claimant)
Rajeswari	...R1 in A.S.976/14 (Claimant)
Govindasamy	...R1 in A.S.977/14 (Claimant)
Jaganathan	...R1 in A.S.978/14 (Claimant)
Palanivel	...R1 in A.S.979/14 (Claimant)
Paramasivam	...R1 in A.S.980/14 (Claimant)
Palanivel	...R1 in A.S.981/14 (Claimant)
Palanivel	...R1 in A.S.982/14 (Claimant)
Veerasamy	...R1 in A.S.983/14 (Claimant)
Viram	...R1 in A.S.984/14 (Claimant)
Rajeswari	...R1 in A.S.985/14 (Claimant)
Rajammal	...R1 in A.S.332/14 (Claimant)

The Special Tahsildar
(Land Acquisition),
Jayamkondam Lignite Power
Project,
Jayamkondam.

The Executive Director,
Tamil Nadu Industrial Development
Corporation (TIDCO), Egmore,
Chennai - 8.

...R2 & R3 in all the Appeals
except A.S.236/13

...R5 & R6 in A.S.236/13

Appeals preferred against the Fair and Decretal Orders of
the Special Court No.I, Jayamkondam dated 28.09.2012,
18.12.2012, 17.12.2012, 30.11.2012, 28.02.2013 and 20.12.2012
and Special Judge - II, Jayamkondam, dated 25.09.2013
respectively and made in L.A.O.P.Nos.4097, 4100, 4104, 4106,
4107, 4110, 4116, 4114, 3354, 3358, 3977, 3979, 4109, 4111, 686,
696, 699, 702, 717, 718, 724, 725, 732, 733, 735, 737, 738, 741,
742, 743, 744, 747, 748, 749, 751, 752, 753, 754, 756, 762, 763,
767, 771, 777, 780, 784, 787, 790, 792, 794, 795, 797, 728, 736,
772, 775, 23, 31, 35, 37, 39, 40, 43, 46, 48, 53, 87, 88, 89,
92, 114, 116, 121, 122, 124, 127, 132, 135, 141, 142, 143, 146,
148, 49, 52, 105, 131, 133, 996, 997, 1126, 1127, 1128, 1129,
1131, 1133, 1135, 1138, 1142, 1145, 1150, 1151, 1152, 1153,
1154, 1157, 1158, 1173, 1174, 1176, 1177, 1208, 1215, 1225,
1245, 1247, 1252, 1253, 1156, 1172, 1221, 1241 and 180 of 2008
respectively.

For Appellant : Mr.N.Nithyanandam
in all the appeals

For Respondents : Mr.P.Gunasekaran,
Additional Government Pleader
for STATE
Mr.M.Vijayan
for M/s.King and Patridge
for TNIDC
Mr.Pugazhendhi for R1
in A.S.Nos.574 & 575 of 2013

COMMON JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

All these appeals are filed by the Neyveli Lignite Corporation Limited under Section 54 of the Land Acquisition Act, 1894, questioning the very imposition of liability as well as the quantum of compensation awarded by the Land Acquisition Tribunal in a batch of cases.

2. Heard Mr.N.Nithyanandam, learned counsel appearing for the appellant, Mr.P.Gunasekaran, learned Additional Government Pleader appearing for the Government and Mr.M.Vijayan, learned counsel representing M/s.King and Patridge, appearing for the Tamil Nadu Industrial Development Corporation Limited and Mr.Pugazhendhi, learned counsel appearing for the claimants in A.S.Nos.574 and 575 of 2013.

3. The famous quote that a blind man was searching in a dark room for a black cat, which was not there, has come true of the proposed acquisition of a vast extent of about 4000 hectares in about 12 villages in the District of Perambalur, which became a non-starter despite a lapse of about 22 years.

4. Way back on 03.08.1993, the Government approved a proposal of the Tamil Nadu Industrial Development Corporation Limited under Government letter (Ms). No.305 Industries Department to implement an Integrated Lignite Mining cum Power Generation Project at Jayamkondam Cholapuram in Perambalur District, in association with McNally Bharath Engineering Company Limited and four other German companies as equity partners. Actually, a new company by name Jayamkondam Lignite Power Corporation Limited was floated to implement the project. But, this Corporation also did not make any headway in the project.

5. Therefore, by G.O.Ms.No.117 Industries Department dated 05.05.1997, the Government directed Tamil Nadu Industrial Development Corporation Limited (hereinafter referred to as 'TIDCO') to implement the project by going in for international competitive bidding. The Government also accorded administrative approval for acquisition and alienation of 4017.17.0 hectares of land in 12 villages of Perambalur District for the establishment of Integrated Lignite Mining cum Power Generation Project in favour of TIDCO. The cruel joke was that the Government invoked the emergency clause in Section 17(1) of the Land Acquisition Act for the acquisition and selected a consortium led by Reliance Industries Limited in June, 1998 to implement the said project in three stages, with the estimated investment of Rs.4,000 crores during the first stage.

6.As a consequence, the Reliance Industries Limited and the Tamil Nadu Electricity Board entered into a Power Purchase Agreement in March, 1999. But the implementation of the project did not progress. Without realising this, the process of acquisition was allowed to continue.

7.At this stage, Reliance Industries Limited backed out and demanded the return of the bank guarantee of Rs.4 crores and the bid security amount of Rs.1 crore given at the time of submission of bids. This forced TIDCO to scout for some one else to take over the project and this is how Neyveli Lignite Corporation Limited (hereinafter referred to as 'NLC') got caught half way through the process of acquisition.

8.Despite the fact that the Notifications for acquisition had been issued long before and despite the fact that NLC was nowhere in the picture during the said time, the Corporation, in good faith, expressed willingness in a meeting convened by the Chief Secretary on 18.12.2003 to explore the possibility of taking over the project and implementing it in joint venture with the Tamil Nadu Electricity Board.

9.After a provisional offer was made by NLC on 18.12.2003, TIDCO requested the Government to issue orders transferring JLP (Jayamkondam Lignite Power Corporation Project) including the lands acquired for the purpose of implementing it through a joint venture of Tamil Nadu Electricity Board and NLC. Therefore, the Government issued G.O.Ms.No.40 Industries (MID-1) Department dated 28.03.2005, according administrative approval for implementation of Jayamkondam Lignite Power Corporation Project by a joint venture between Tamil Nadu Electricity Board and NLC.

10.In a series of meetings held, NLC expressed willingness to develop the project on their own and to offer 75% of the power generated to Tamil Nadu, subject to certain modifications. The Government accepted the same and issued G.O.Ms.No.62 Energy (B2) Department dated 06.07.2006, according administrative sanction for -

1.the development of the project by NLC independently;

2.allowing Tamil Nadu Electricity Board to play the role of facilitator;

3.sharing the power generated as per the current CEA Guidelines; and

4.allowing NLC to develop the project independently without any investment from the Government of Tamil Nadu or Tamil Nadu Electricity Board.

It was also indicated that the lands acquired by TIDCO and owned by Tamil Nadu Electricity Board would be handed over to NLC, after realising the expenditure incurred.

11.Paragraph 4 "(IV)" of G.O.Ms. No.62 dated 06.07.2006 requires to be extracted. Hence it is extracted as follows :

"4. (iv). M/s.Neyveli Lignite Corporation will develop the project independently without any investment from the Government of Tamil Nadu/Tamil Nadu Electricity Board. The land already acquired by TIDCO (now owned by TNEB) to be handed over to Neyveli Lignite Corporation after realizing the expenditure incurred."

12.But, there were lot of difficulties, which the parties could not sort out between themselves. Therefore, what became a non-starter at the hands of TIDCO and Reliance Industries Limited, continued to be so even after NLC was roped in. Therefore, eventually, NLC wrote a letter to the Government of Tamil Nadu on 06.03.2012, requesting the Government to annul G.O.Ms.No.62 Energy (B2) Department dated 06.07.2006. This letter has not evoked any response from the Government so far.

13.In the meantime, the Special Tahsildar (Land Acquisition) proceeded to pass several awards, fixing the compensation at a particular rate. Aggrieved by the quantum of compensation fixed by the Tahsildar, land owners sought references. Hundreds of references came to be made before the Sub Court, Jayamkondam, which actually became a Special Court for these cases.

14.Interestingly, in the references made to the Tribunal, NLC was not made a party in the first instance. But half way through the enquiry into the references under Section 18, NLC came to be impleaded as a party in all cases. As against their sudden impleadment, NLC came up with a revision petition before this Court. But the revision petition in one case in C.R.P. No.3149 of 2009 was dismissed by this Court by order dated 20.10.2009.

15.Thereafter, what happened was, the Tribunal passed orders in batches and batches of cases, enhancing the compensation payable. The orders passed by the Tribunal fall under three categories viz.,

1.those cases in which the entire liability was fastened only upon NLC;

2.those cases in which the liability was fastened jointly and severally upon NLC and TIDCO; and

3.those cases in which the liability was fastened only upon TIDCO.

16.Adding more complication to the already complicated project, in the references made in many cases in the subsequent years, the claimants gave up NLC as a party to the proceedings. This has resulted in either NLC alone challenging the awards passed by the Tribunal (1)where they have been made jointly and severally liable along with TIDCO or (2)where they have been made solely responsible for payment of claim. TIDCO is said to have filed appeals against those cases where they are made jointly and severally liable or where they are made solely liable.

17.In the batch of cases on hand, NLC, who is the appellant, is aggrieved by the fact that they have been made jointly and severally liable to pay the compensation along with TIDCO. Though the grounds of appeal filed by the appellant disclose that their challenge to the award of the Tribunal are two fold viz., both on the very liability as well as on the quantum of compensation, we are of the considered view that the latter is only a consequence of the former. The second question relating to the quantum of compensation would arise for consideration only if we hold the first question relating to liability against the appellant. Therefore, we shall first take up the question as to whether the appellant is liable at all, either jointly and severally or individually to pay the quantum of compensation as fixed either by Land Acquisition Officer or as fixed by the Tribunal.

18.As rightly contended by the learned counsel for the appellant, the lands were not acquired for the benefit of the appellant at the beginning. The Notifications under Section 4(1) of the Act, whatsoever, were not issued, showing the appellant as the requisitioning body. The original Notifications were issued only for the purpose of implementing the power project at the behest of TIDCO. As a matter of fact, TIDCO associated itself with a company by name McNally Bharath Engineering Company Limited and four other German companies as equity partners. This partnership gave birth to a new company called Jayamkondam Lignite Power Corporation Limited. If at all, any one could be called the requisitioning body, it could either be TIDCO or at least Jayamkondam Lignite Power Corporation Limited. NLC was nowhere in the picture from the year 1993 till the year

2004. NLC came into picture to rescue the State of Tamil Nadu, the Tamil Nadu Electricity Board as well as TIDCO, which got caught into a project that became a non-starter. But they have now become the victim.

19.The State of Tamil Nadu, by Tamil Nadu Amendment Act 16/97 inserted Section 25A into the Land Acquisition Act, 1894. This Section starts with a non-obstante clause. This Section makes the compensation awarded in excess of the amount awarded by the Collector, payable by the party for whom the acquisition is made. The acquisition in this case was not made for the benefit of NLC. NLC was roped in to save the State Corporation as well as the State of Tamil Nadu. Therefore, in no way, the liability can be fastened upon them.

20.However, bringing our attention to two more amendments made by the State of Tamil Nadu, one to Section 19 and another to Section 20, Mr.M.Vijayan, learned counsel for TIDCO contended that the appellant was dragged into the picture only because of the hopes that they gave and the agreements that they have entered into from the year 2005 up to the year 2012 when they finally withdrew from the picture. Therefore, he vehemently opposed the stand taken by the appellant that they are not liable to pay any compensation.

21.We have carefully considered the above submissions. Under Section 19(1) of the Act, the State of Tamil Nadu inserted clause (bb), which made it mandatory for the impleadment of the third parties, if the acquisition was not for the Government. Similarly, by the Amendment Act 14/90, clause (d) was inserted under Section 20 to enable the Court to serve notice upon all the parties for the benefit of whom, the acquisition was made. These amendments were necessitated in view of a controversy that was prevailing at that time as to whether the requisitioning body would have a right to be heard in the matter of determination of compensation at all.

22.But the fact that NLC was a necessary party, is different from the question as to whether they have any liability to pay the compensation or not. NLC was not the requisitioning body when the project was contemplated. It was roped in half way through when the joint venture floated by the Government failed and after Reliance Industries Limited backed out, after participating in the international competitive bidding. A person, who came to rescue the Government, cannot be made a victim. Therefore, the first contention of the learned counsel for the appellant deserves to be upheld.

23.In view of our finding that the appellant does not have any liability, the second question as to whether the quantum of compensation was correct or not is not answered by us.

24.It is painful to note that the acquisition was made by invoking the emergency clause 20 years ago. We do not think that after the failure of the joint venture project in the form of Jayamkondam Lignite Power Corporation Limited and the failure of the international competitive bidding where Reliance Industries Limited bagged the contract and after NLC backed out from the rescue operations, anything still survives in the project. If at all we have come across any case which genuinely deserves the invocation of Section 48-B, we think, it is this case. A huge extent of about 4017.17.0 hectares in 12 villages have been acquired for nothing. Therefore, while allowing the appeals of the appellant and holding that they are not liable to pay any amount to the claimants, we direct the Government to constitute a High Level Committee to reconsider if anything useful could be done with the lands and if any useful purpose could be served by retaining the lands. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

mmi
To

Sub Assistant Registrar

1.The Special Judge I,
Jayankondam.

2.The Special Judge II,
Jayankondam.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.N.A.K.Sarma, Advocate, S.R.No.46130

+6cc's to M/s.King and Patridge, Advocate,

S.R.Nos.46056 to 46061 & 46063

+1cc to the Additional Government Pleader(AS), S.R.No.46198

A.S.Nos.233 of 2013 etc., batch

KSJ(CO)

CA(24/03/2016)