

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2015

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

W.P. No. 28110 of 2015

&

M.P. Nos. 1 & 2 of 2015

1. T. Dharmalingam
 2. Kamalaammal
 3. T. Aaron
 4. T. Elumalai
 5. T. Sankar
- ..Petitioners

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary,
Highways Department,
Secretariat,
Chennai -9.
 2. The District Collector,
Land Acquisition Officer (Highways),
Collectorate of Chennai,
Chennai -1.
 3. The Divisional Manager,
Office of Division Engineer (H),
Chennai City Roads,
No. 394/4, Anna Salai,
Chennai 600 015.
 4. The Assistant Divisional Engineer,
Office of the Assistant Divisional
Engineer (H),
Contraction and Maintenance,
Tambaram Sub-Division,
Chennai - 600 100.
 5. The Revenue Divisional Officer,
Chenglepet.
- (R5 suo motu impleaded as per order of Court
dated 16.09.2015 by NKKJ)
- ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the file of the 4th respondent herein in Notice No. 27/2014-03/Kanathur/EHA/dated 05.02.2014 issued under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 and quash the same in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner :: Mr.T. Dharani

For Respondents:: Mr.V. Jayaprakash Narayanan,
Special Govt. Pleader
for R1 to R5

O R D E R

The petitioners seek issuance of a Writ of Certiorari challenging the notice issued by the 4th respondent dated 05.02.2014 under Section 28(2)(ii) of the Tamil Nadu Highways Act, 2001 and quash the same in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2. The petitioners submit that the land and building in question, to an extent of 0.005 acres comprised in S.No. 56/4B2B at MGR Street, Kanathur, Kovalam Post, Kanchipuram District was under their possession and enjoyment as a joint family property after the demise of their father, by name, Thulakanam, on 10.02.1997. According to the petitioners, the said property is an ancestral property and they are in continued possession and enjoyment of the same, which has also been recognised by the Tahsildar, Revenue Divisional Officer and the District Collector by issuance of patta No.133 for the said property. Apart from the petitioners' residential house, they have constructed small shops and they are the absolute owners of the property in question. According to the petitioners, though they are in possession and having patta and other revenue records in their name, the impugned notice has been issued stating that the petitioners encroached upon the property and put up construction and further, the petitioners have been called upon to remove the encroachments and hand over possession.

3. When the matter is taken up, learned Special Government Pleader submitted that the Revenue Divisional Officer, Chengleput Division, is a necessary party to the writ petition, but, the said authority is not found in the array of parties. Therefore, this Court, suo motu, impleads the Revenue Divisional Officer, Chenglepet Division, as the 5th respondent in this writ petition.

4. Eventhough the land was acquired and the award was passed, no amount towards compensation was deposited and the possession was not taken from the petitioners. Therefore, the petitioners' possession should not be disturbed until the compensation, as per the present Act, is paid to them, learned counsel for the petitioners, Mr.Dharani, would submit.

5. On the other hand, Mr.V. Jayaprakash Narayanan, learned Special Government Pleader appearing for respondents 1 to 5 would submit that the land was acquired as early as in 1993 and the award was passed on 30.03.1995. Though the petitioners' father appeared for the enquiry, he did not get the award amount. Hence, the same was deposited. Moreover, possession of the land comprised in S.No. 56/4B2B measuring an extent of 0.005 acres , which was acquired under the Land Acquisition Proceedings, was already handed over to the Highways Department for the purpose of widening of road. Therefore, the question of application of the present Act will not arise.

6. After hearing both the parties, it is evident that the petitioners have produced only the patta in respect of S.No. 56/4B2B whereas the fact that the land comprised in S.No. 56/4B2B has been acquired is proved by the respondents by production of the award proceedings passed by the Special Tahsildar (LA) Unit-I, East Coast Road Project, Chengalpattu, dated 30.03.1995. Further, the land was also allotted to the Highways Department for the purpose of widening of road. Though the petitioners claim that they are in possession of the property in question, they have not produced any document to show that the they are in possession of the property comprised in S.No. 56/4B2B. In such circumstances, as stated by the learned Special Government Pleader, since the amount of compensation had already been deposited, it is for the petitioners to approach the appropriate authority with relevant documents to prove that they are the legal heirs of Thulakanam to get the compensation amount. Therefore, the contention of the petitioners is negatived and the writ petition is dismissed. No costs.

7. However, while dismissing the writ petition, it is made clear that the dismissal of this writ petition will not be a bar for the petitioners to approach the respondents for payment of the award amount by producing relevant documents including legal heirship certificate of their father, namely, Thulakanam in support of their claim. Since the appropriate authority, whom the petitioners have to approach, is the Revenue Divisional Officer, Chenglepet, who has been, suomotu, impleaded by this Court, as the 5th respondent in this writ petition, the petitioners shall approach the 5th respondent for payment of award amount, as stated above, along with required documents including legal heirship certificate. On such receipt of representation/application from the petitioners, the 5th respondent

shall pass appropriate orders within four weeks thereafter. Connected MPs are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

nv

To

1. The Secretary,
Highways Department,
Secretariat,
Chennai 9.
2. The District Collector,
Land Acquisition Officer (Highways),
Collectorate of Chennai,
Chennai -1.
3. The Divisional Manager,
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No. 394/4, Anna Salai,
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Contraction and Maintenance,
Tambaram Sub-Division,
Chennai - 600 100.
5. The Revenue Divisional Officer,
Chenglepet.

+1 cc to Govt.Pleader, sr.51026
+1 cc to M/s.T.Dharani, sr.51336

W.P. No. 28110 of 2015

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