

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

Writ Petition No.33262 of 2015 and
M.P.No.1 of 2015

Harendrakumar J Gandhi

.. Petitioner

vs.

1.The State of Tamil Nadu,
Rep. By its Secretary,
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.

2.The General Manager,
Southern Railways,
General Manager Office,
General Branch,
1st Floor, NGO Main Building,
Southern Railway, Park Town,
Chennai - 600 003.

3.The Divisional Engineer (Highways),
NABARD and Rural Roads,
Mulapalayam, Erode - 2.

4.The District Collector,
Collector Office, Tiruppur.

5.The District Revenue Officer,
Tiruppur District,
Tiruppur.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the respondents 3 to 5 to pay a compensation of Rs.16,80,944/- to the petitioner towards value of the acquired building situated in TS No.J/24/25/1 at Railway Feeder Road, Thottipalayam Village, Tiruppur within the time to be stipulated by this Court.

For Petitioner : Mr.R.Bharath Kumar

For RR 1,3,4 & 5 : Mr.Rm.Muthukumar,
Government Advocate

For P.2 : Mr.P.T.Ramkumar

ORDER

The petitioner is the owner of the land and building located in T.S.No.J/24/25/1 and T.S.No.J/24/26/1, Thottipalayam Village, Tiruppur Town. Originally the petitioner along with his brothers purchased the said property by virtue of sale deed dated 21.11.1988. The Highways Department for free flow of traffic movement, acquired lands in the Trippur Town including the the land of the petitioner for the purpose of construction of railway over bridge and under bridge.

2.The fifth respondent issued notice under Section 15(2) of the Tamil Nadu Highways Act, 2001, stating that the petitioner's lands are required for public purpose, namely, for building a railway under bridge between Tiruppur and Uthukuli railway station. The petitioner's land covered an extent of 135 sq.meters together with building is sought to be acquired. By order dated 22.05.2013, the fifth respondent directed the petitioner to vacate the premises and hand over vacant land to the respondents within 30 days and further informing that the lands are sought to be acquired under Section 15(1) of the Tamil Nadu Highways Act, which was also published in the Tamil Nadu Gazette No.22 dated 06.06.2012.

3.The acquisition proceedings were challenged by the petitioner and four others in W.P.No.18254 of 2013 and this Court by order dated 09.09.2014 dismissed the writ petition with a direction to the petitioner to approach the fifth respondent for receiving compensation and also to seek enhanced compensation in accordance with law.

4.Though, the award was passed in respect of 135 sq.meters @ Rs.6,515/- per square meter along with 30% solatium and 12% interest of additional land value, the petitioner's building in T.S.No.J/24/25/1, J/24/26/1 was omitted to be valued and the building value mentioned in the award was zero. Therefore, by representation dated 27.08.2014, the petitioner requested the fourth respondent/District Collector to re-consider the issue and award compensation for the building and also to re-fix the value for the land. The fifth respondent by his proceedings dated 09.10.2014, called for remarks from the third respondent, Divisional Engineer and Sub Collector in respect of the building of the petitioner. By proceedings dated 10.12.2014, the fifth respondent conducted an enquiry on 12.12.2014 and determined the value of the building at Rs.16,80,944/- which was omitted to be mentioned in the award by over sight. Thereafter, the petitioner gave another representation dated 27.03.2015 to the respondents thereby requesting three months time to demolish the building and for receiving compensation. Though the petitioner received part of the amount, the entire amount of compensation was not paid and therefore, the petitioner made a representation to the Divisional Engineer on 04.08.2015 to rectify the error kept in making the value of the building which was mentioned as zero in the award.

5.Subsequently, on 04.08.2015, the petitioner sent another communication to the District Revenue Officer for valuation of building. On 28.08.2015, the Divisional Engineer has sent a communication to the District Revenue Officer thereby recommending to pass an award of Rs.16,80,944/- as compensation to the petitioner's land. Since, so far, the said amount has not been disbursed by the fifth respondent/District Revenue Officer, the petitioner is before this Court with this writ petition.

6.Heard Mr.R.Bharath Kumar, learned counsel for the petitioner; Mr.Rm.Muthukumar, learned Government Advocate appearing for the respondents 1,3,4 & 5 and Mr.P.T.Ram Kumar, learned counsel for the second respondent.

7.The facts are not disputed by the learned Government Advocate appearing for the respondents 1,3,4 & 5 and the learned counsel for the second respondent. Originally, the petitioner's lands were acquired and award was passed. However, the amount of compensation for the said building was not determined and reflected in the original award. Therefore, the petitioner approached the respondents by separate representations and thereafter only, after conducting enquiry, the value of the building was fixed at Rs.16,80,944/-.

8.In this regard, a recommendation has been made by the Divisional Engineer by communication dated 28.08.2015 to the fifth respondent, the District Revenue Officer to pass an award of compensation for the building of the petitioner at Rs.16,80,944/-.. However, so far, the fifth respondent has not passed any award as recommended by the third respondent Divisional Engineer.

9.In view of all the above, the fifth respondent is directed to pass appropriate orders rectifying the mistake committed in the original award thereby including Rs.16,80,944/- which is the value determined for the building by the third respondent Divisional Engineer as approved by his communication dated 28.08.2015, within a period of six weeks from the date of receipt of a copy of this order. After the award is amended, the respondents are directed to pay amount to the petitioner, within a period of four weeks thereafter. It is made clear that till the compensation amount is paid by the respondents to the petitioner, the possession of the petitioner's building should not be disturbed. It is only because of non payment of compensation, the petitioner has not delivered possession and the construction of service road could not be laid. Now, it is accepted that the respondents would take appropriate steps to pay the compensation amount to the petitioner within the time stipulated by this Court and to take possession in the interest of the public.

10.With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Call the matter for compliance during first week of February 2016.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Highways and Minor Ports Department,
Secretariat, Chennai - 600 009.
- 2.The General Manager,
Southern Railways,
General Manager Office,
General Branch,
1st Floor, NGO Main Building,
Southern Railway, Park Town,
Chennai - 600 003.
- 3.The Divisional Engineer (Highways),
NABARD and Rural Roads,
Mulapalayam, Erode - 2.
- 4.The District Collector,
Collector Office, Tiruppur.
- 5.The District Revenue Officer,
Tiruppur District,
Tiruppur.

+1 cc to Mr.R.Bharathkumar,Advocate(sr.57412)
+1 cc to Mr.P.T.Ramkumar,Advocate(sr.56947)

copy to : The Section Officer,
Writ section
High court madras. 104

W.P.No.33262 of 2015

TM(co)
cp 30/10/2015