

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

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THE HON'BLE Mr. JUSTICE N.KIRUBAKARAN

Writ Petition Nos.33423 & 33424 of 2015

1. S.Umangani ... Petitioner in W.P.No.33423 of 2015
2. S.R.Subangani ... Petitioner in W.P.No.33424 of 2015

Vs.

1. The Project Director,
National Highways Authority of India,
Sri Tower, 3rd Floor,
DP - 34 (SP) Industrial Estate,
Guindy, Chennai - 600 032.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Competent Authority,
The Special District Revenue Officer,
(Land Acquisition)
National Highways - 205,
Thiruvallur. Respondents in both W.Ps.

Prayer in both W.Ps.:-

Writ petitions are filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the second respondent to adjudicate the Arbitration Case No.744 of 2015, on merits and in accordance with law insofar as Award No.22 of 2001, dated 24.06.2002 and 11.03.2004 are concerned.

For Petitioner : Mr.R.Jayaprakash

For Respondent -1 : Mr.Jerry for P.Wilson Associates

For Respondents 2 and 3 : Mr.Lakshmi Narayan

COMMON O R D E R

As the issue involved in both Writ Petitions is identical in nature, the Writ Petitions are taken up together and disposed of vide this common order.

2. The petitioners herein, viz., S.Umangani and S.R.Subangani are sisters. They are the absolute owners of the property, described infra/:-

S.No	Survey No.	Extent of land	Situate at
1	S.No.106A,	26 cents	Karanodai Village, Ponneri Taluk, Thiruvallur District.
2	S.No.106B,	5 acres and 52 cents	"
3	S.No.112/1	30 cents	"
4	S.No.113	3 acres and 97 cents,	"

3. Out of the aforesaid property, the respondents acquired 2 acres and 55 cents of land in the year 2002, and an award was passed on 24.06.2002 in Award No.22 of 2001. Not satisfied with the compensation awarded thereunder, the petitioners made a representation, dated 07.10.2002, to the third respondent to refer the matter for arbitration before the second respondent/District Collector. Though the said representation was received by the third respondent, the matter was not referred for arbitration to the second respondent. Again, in the year 2004, another extent of land, measuring 150 sq.mts, was acquired by the respondents and a supplementary award was passed on 11.03.2004, in Award No.22 of 2001, since the compensation fixed thereunder was also low, the petitioners sought for enhancement, and filed an application before the second respondent, but so far, no orders have been passed regarding the same. When things stood thus, in the year 2009, another portion of land, measuring 6684 sq.fts, comprised in S.Nos.106/B1, 112/1, 113/1, 112/1A2 and 113/1B were acquired and award was passed on 18.03.2011 in Award No.288 of 2010. Likewise, in the year 2013, 664 sq.mts of land, comprised in S.Nos.106B and 112/A were acquired and award was passed on 26.02.2014 in Award No.476 of 2013. Since the representation/application made by the petitioners for initiation of arbitration proceedings in respect of the awards passed in Award No.22 of 2001, dated 24.06.2002 and 11.03.2004, have not evoked any response, the petitioners initiated consolidated arbitration proceedings before the second respondent, viz., Arbitrator Cum District Collector, in respect of all the awards, viz., four awards in Arbitration Petition No.744 of 2015. In the said Petition, a consolidated counter

statement was filed by the first respondent herein on 05.10.2015. However, the Arbitrator/second respondent directed the petitioners to confine their claims with regard to Award No.288 of 2010 and Award No.476 of 2013, and not to press upon the awards dated 24.06.2002 and 11.03.2004 passed in Award No.22 of 2001,. Aggrieved by such direction, the petitioners have come up before this Court with present Writ Petitions seeking for issuance of Writ of Mandamus, directing the second respondent/District Collector to adjudicate the Arbitration Petition No.744 of 2015, by including the Award No.22 of 2001, dated 24.06.2002 and 11.03.2004.

4. Heard Mr.R.Jayaprakash, learned counsel appearing for petitioners, Mr.Jerry, the learned counsel, who accepts notice for first respondent and Mr.Lakshmi Narayan, learned counsel, who takes notice on behalf of respondents 2 and 3.

5. Acquisition and the passing of awards with regard to said acquisition are not in dispute. In respect of the acquisition that took place in the year 2002, award, dated 24.06.2002, was passed in Award No.22 of 2001, regarding which, seeking enhancement of compensation, the petitioners gave representation to the third respondent on 07.10.2002 to refer the matter to the second respondent for arbitration, and in the said representation no orders have been passed yet. Subsequently, in respect of acquisition that took place in the year 2004, supplementary award, dated 11.03.2004, was passed in Award No.22 of 2001 and aggrieved by the compensation fixed therein also, the petitioners filed an application for initiation of arbitration proceedings before the second respondent, wherein also, no orders have been passed. Insofar as acquisition made in the years 2009 and 2013 are concerned, Award No.288 of 2010, dated 18.03.2011 and Award No.476 of 2013, dated 26.02.2014 respectively were passed, and the petitioners, questioning the compensation fixed in first two awards, i.e., the awards passed in Award No.22 of 2001, dated 24.06.2002 and 11.03.2004, and in the subsequent awards, dated 18.03.2011 and 26.02.2014, filed a comprehensive Arbitration case, being Arbitration Petition No.744 of 2015 on 25.08.2015, before the second respondent and the matter is being adjudicated.

6. The learned counsel appearing for petitioners submitted that when the petitioners are aggrieved over the compensation fixed in all four awards, as mentioned above, and sought for enhancement of compensation, the second respondent is expected to consider their claim on merits, rather than restricting them not to press upon the first two awards, dated 24.06.2002 and 11.03.2004. It is an admitted fact that the petitioners have made representation/application seeking

enhancement of compensation in connection with the Awards dated 24.06.2002 and 11.03.2004. It is because of the fault or default on the part of the third respondent for not referring the matter to the second respondent, award proceedings have not yet commenced. As far as the petitioners are concerned, they have acted as per the provisions contemplated under the Land Acquisition Act and discharged their obligation by seeking reference. The learned counsel, therefore, submitted that the second respondent may be directed to adjudicate the arbitration case by including the awards dated 24.06.2002 and 11.03.2004.

7. As rightly pointed out by the learned counsel appearing for the petitioners, the default on the part of the respondents cannot be employed against the petitioners and cannot exclude Awards dated 24.06.2002 and 11.03.2004 from the purview of the arbitration proceedings. Moreover, it is the bounden duty of the second respondent to adjudicate the rate of compensation with regard to the property, which covers Award No.22 of 2001, more so when, comprehensive arbitration proceedings have been initiated by the petitioners in Arbitration Petition No.744 of 2015 and comprehensive counter statement has been filed by the first respondent. If really, the claims of the petitioners with regard to the first two awards dated 24.06.2002 and 11.03.2004 in Award No.22 of 2001 is not sustainable, then, the claims should have been rejected at the initial stage itself. Without doing so, it is not open to the second respondent to exclude the Award No.22 of 2001 from the adjudication process, and therefore, the second respondent is directed to adjudicate all the awards, including the awards, dated 24.06.2002 and 11.03.2004 passed in Award No.22 of 2002, as per law, and dispose of Arbitration Petition No.744 of 2015 on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

8. Accordingly, Writ Petitions are disposed of. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Project Director,
National Highways Authority of India,
Sri Tower, 3rd Floor,
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Guindy, Chennai - 600 032.
2. The District Collector,
Thiruvallur District,
Thiruvallur.
3. The Competent Authority,
The Special District Revenue Officer,
(Land Acquisition)
National Highways - 205,
Thiruvallur.

+1cc to M/s. P. Wilson Associates, S.R.No.57383

+1cc to M/s. R. Jayaprakash, Advocate, S.R.No.57590

SVI (CO)
EU (30/10/2015)

Writ Petition Nos.33423 & 33424 of 2015

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