

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 22-03-2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.3485 TO 3489 & 3869 OF 2015

G.R.Apparaj ...Petitioner in WP.3485/2015
A. Indira ...Petitioner in WP.3486/2015
A. Shanmugaraj
Represented by his power
Agent, G.R. Apparaj ...Petitioner in WP.3487/2015,
3488/2015

G.R. Apparaj ...Petitioner in WP.3489/2015

1. G.R. Apparaj
2. A. Indira
3. T. Anandhi ...Petitioners in WP.3869/2015

-vs-

1.The Government of Tamilnadu
Rep. by its Secretary to Government,
Animal and Husbandary, Dairying and Fisheries
Department,
Fort St.George,
Chennai-600 009.

2.The Government of Tamilnadu
Rep. by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai-600 009.

3.The Principal Secretary /
Commissioner for Land Administration,
Fort St.George,
Chennai-600 009.

4.The Additional Chief Secretary/
Commissioner for Land Administration
Ezhilagam, Chepauk,
Chennai-600 005.

5.The Land Acquisition Officer/
Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Nagapattinam. ...Respondents 1 to 5 in
WP.3485 to 3489 & 3869 of 2015

6. Manimekalai
7. Vasuki
8. Aavaiyar

..Respondents 6 to 8 in WP.3488/2015

Prayer W.P.3485 to 8487 of 2015, 3489/2015: Writ petitions filed under ARTicle 226 of the constitution of India Article 226 of the constitution of India to issue a writ of certiorari, direction, callfor the records from the respondents herein leading to passing of the impugned G.O.Ms. No.88 Revenue Department LA-1(1) dated 21.2.2014 and the consequential proceedings of the 5th respondent herein in Na.Ka. 8394/ 2011/A3 of the 5th respondent dated ...01.2015 leading to the so called interim award No.01-A/ 2014 dated 18.12.2014 passed by the 5th respondent herein and quash the same;

Prayer in WP.3488 of 2015: filed under Article 226 of the constitution of India to issue a writ of certiorarified Mandamus direction to call for the records from the respondents herein leading to passing of the impugned G.O.Ms. No.88 Revenue Department LA-1(1) dated 21.2.2014 and the consequential proceedings of the 5th respondent herein leading to the so called interim award No.01/ 2014 dated 21.08.2014 passed by the 5th respondent herein and quash the same;

For petitioner
in all WPs : Mr.T.V.Ramanujun,
Senior Counsel,
for Mr.C.Jagadish.

For respondents
1 to 5 in All WPs : Mr.R.M.Muthukumar,
Govt.Advocate,

COMMON ORDER

In all these Writ Petitions, the petitioners, who are land owners, have challenged the Government Order in G.O.Ms.No.88, Revenue Department LA-1(1), dated 21.02.2014, and the consequential proceedings of the fifth respondent/Land Acquisition Officer, dated ...January,2015, leading to interim awards.

2. In fact, the very same Government Order was put to challenge in a batch of cases in A.Sankara Subbu v. Secretary to Government, Housing and Urban Development Department, Fort St.George, Chennai, 2015 SCC OnLine Mad 6397. In the said Writ Petition, an identical issue was raised, in addition to the contention with regard to invoking of the urgency clause, which, of course, does not arise in the

instant cases. At this stage, it is beneficial to refer to some portions of the said order at paragraphs 30,31,32 and 33, which read as under :

"30. As already pointed out Section 40(3) of the new Act is in paramateria with Section 17(3-A) of the old Act and further taking into consideration the objects and reasons of the Right to Fair Compensation Act, 2013, this Court is of the view that the following order would meet the ends of justice to both the parties.

31.The Special Tahsildar (Land Acquisition), MRTS Phase-II Extension, Chennai-600 004, has passed the draft/interim award dated 15.09.2014 and while arriving at the quantum of interim compensation, the Special Tahsildar adopted the provisions of the old Act and for that purpose, has relied upon G.O. (Ms).No.88, Revenue [LA-I(1)] dated 21.02.2014, which he/she is under mandate to follow. Para 3(i) of the said Government Order would state among other things that the interim compensation should be determined based on the procedures already in vogue subject to additional compensation being paid as per the Right to Fair Compensation Act (new Act). In the considered opinion of the Court, in terms of Section 114(2) of the new Act, land acquisition proceedings already initiated under the old Act by invoking emergency provision is saved and admittedly, no award under Section 11 of the Act has been passed and the new Act came into force on 01.01.2014. Before taking possession, the Collector including Deputy Collector and any other officer specifically designated by the Government to perform the functions of the Collector defined under Section 3(g) of the new Act, is bound to follow Section 40(3) of the new Act and thereafter, he is under mandate to follow Section 40(5) and other provisions relating to rehabilitation and resettlement.

32. In the light of the said provisions, this Court is of the considered view that para 3(i) of the above said Government Order is not in

consonance with the Statute and it cannot be applied to the facts of these cases. It is not in serious dispute that only a minimal extent of land is to be taken possession and as pointed out by the learned Additional Advocate General that it is only about 4530 sq.mtrs or thereabout and once it is taken possession, the project would be complete and the travelling public will be immensely benefited and traffic congestion in the State of Chennai will also be eased. In some cases, interim award came to be passed on 15.09.2014 and notices dated 18.09.2014 were issued under Section 12(2) of the old Act and in the light of the legal position, as enunciated above, this Court is of the view that the interim/draft award as well as the notices issued under the old Act have to be set aside/quashed with a consequential direction directing the jurisdictional District Collector/competent authority to proceed afresh in terms of Section 40(3) of the new Act. The Railway Authorities also are not having any serious objection for resorting to such a course. Adoption of such a course, not only advances public interest, but will also avoid further time and cost overrun in the implementation of the project.

33. In the result, all the Writ Petitions are partly allowed and the interim award dated 15.09.2014 passed by the Special Tahsildar (Land Acquisition), MRTS Phase-II Extension, Chennai-4 and the notices dated 18.09.2014 are set aside/quashed and the respondents are directed to follow Section 40(3) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and tender interim compensation to the respective land/property owners and thereafter, follow other provisions of the new Act and complete the exercise as expeditiously as possible and not later than three months from the date of receipt of a copy of this order. The appropriate Government shall take every endeavour to frame rules and follow the relevant provisions regarding appointment of Administrator, Commissioner for

rehabilitation and resettlement, constitution of Rehabilitation and Resettlement Committee at project level, establishment of National and State Monitoring Committee for rehabilitation and resettlement, as expeditiously as possible to give complete effect to the benevolent provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. No costs. Consequently, connected miscellaneous petitions are closed."

3. Learned Government Advocate appearing for the respondents submitted that as against the above decision, no appeal has been preferred by the State and the same is valid and binding, as on date. Further, the learned Government Advocate produced a copy of the judgment of a Hon'ble Division Bench of this Court in W.A.No.1735 of 2014 and other connected matters, dated 27.08.2015, in the case of K.Balarama Naidu v. Govt of Tamil Nadu, rep. by its Secretary, Public Works Department, wherein, though there was a challenge to the invocation of urgency clause, the appellants/land owners had agreed to give up such argument, subject to the condition that they were paid compensation as per the provisions of Act 30 of 2013. On instructions, the learned Advocate General submitted to the Hon'ble Division Bench that the compensation in lieu of acquisition of the lands in question shall be re-determined as per the provisions of the 2013 Act and payment shall be made thereon accordingly. It was further submitted that the appellants therein would not be dispossessed from the lands in question till the entire compensation was paid to them, as prescribed under the Act, 2013. The operative portion of the said order reads as under :

"4. Mr. N.R. Chandran, learned Senior Counsel, with Mr.B.S.Jothiraman, learned advocate appearing for the appellants, on instructions, would submit that the appellants are not pressing the ground of invocation of urgency clause, which was the appellants' main plank in the writ petitions and also the appeals, on merit, provided they are paid compensation as per the provisions of the 2013 Act.

5. Concededly, Mr. A.L. Somayaji, learned Advocate General, submits that the compensation in lieu of acquisition of the lands in question shall be re-determined as per the provisions of the 2013 Act and payment shall be made

thereon accordingly. He further submits that the appellants shall not be dispossessed from the lands in question, till the entire compensation is paid to them, as prescribed under the 2013 Act.

6. In view of the foregoing, it is ordered accordingly. The appellants shall continue in peaceful possession of the lands in question till the entire compensation, after re-determination, is paid to them."

4. Learned Government Advocate, on instructions from the officials, who are present in the Court, submitted that the respondents will not enforce the impugned proceedings, but they will grant compensation to the petitioners/land owners, by computing the same in accordance with the provisions of Act 30 of 2013, and, until the entire compensation is paid as prescribed under the Act, the petitioners will not be dispossessed from the lands in question.

5. Following the decision of this Court in A.Sankara Subbu, cited supra, and in the light of the stand taken by the respondents, which has been noted above, these Writ Petitions are partly allowed and the interim awards are quashed, in so far as the petitioners are concerned. The respondents are directed to pay compensation to the petitioners, as agreed to by them, under Act 30 of 2013, and until the compensation is paid in its entirety, the petitioners shall not be dispossessed from the lands in question. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
सत्यमेव जयते
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

dixit

To

- 1.The Secretary to Government,
Government of Tamilnadu
Animal and Husbandary, Dairying and Fisheries
Department,
Fort St.George,
Chennai-600 009.
- 2.The Government of Tamilnadu
Rep. by its Secretary to Government,
Revenue Department,
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- 3.The Principal Secretary /
Commissioner for Land Administration,
Fort St.George,
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- 4.The Additional Chief Secretary/
Commissioner for Land Administration
Ezhilagam, Chempauk,
Chennai-600 005.
- 5.The Land Acquisition Officer/
Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Nagapattinam.

+ 1 cc to Mr.C. Jagadish, Advocate Sr.18302
+ 1 cc to the Government Pleader Sr.18417

W.P.Nos.3485/2015 & BATCH

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