

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.1411 of 2017

AND

C.M.P.No.19233 of 2017

T.N.Magnesite Ltd
Rep by its Managing Director
5/53, Omalur Main Road
Jakir Aammappalayam PO
Salem 636 302

... Appellant / Respondent

Versus

- 1.Rajamani
(L.R. Of C6 Subramani in LAOP No.22/1992)
- 2.Arayer, w/o Chinnappan
(C21 in LAOP No.23/1992)
- 3.S.Ramasamy, s/o Sadaiyan (C5)
- 4.R.Radhakrishnan, s/o C.Ramasamy
(L.R. Of deceased Ramasamy C6 in LAOP 25/1992)
- 5.R.Govindan, s/o C.Ramasamy
(LR of deceased Ramasamy C6 in LAOP 25/1992)
- 6.D.Periyammal, w/o Duraisamy (C7)
- 7.S.Elumalai, s/o Sadaiyan (C11)
- 8.K.Duraisamy, s/o Krishnan
(No.6 to 8 are petitioners in LAOP 25/1992)
- 9.Palanisamy, s/o Andiyappa Goundar
(C13 in LAOP No. 26/1992)
- 10.Chettiar, s/o Malaiya Goundan (C2)
- 11.Kandasamy, s/o Malaiya Goundan (C3)
- 12.Raja Goundar, s/o Elumalai Goundar (C5)
- 13.Chinnappan, s/o Elumalai Goundar (C7)
- 14.Sundarammal, w/o Madhesh (C15)
- 15.Angammal, w/o Annamalai (C16)
- 16.Chinnappan, s/o Elumalai (C35)
- 17.Kaveriammal (C36)

- 18.Subramani (C37)
Nos.9 to 18 petitioners in LAOP No.41/1992
- 19.Mariappan, s/o Ramasamy, (C2)
20.Palanivelu
21.Perumayee
- 22.Indrani
(Nos. 19 to 22 L.R.s of C3 Sithayee)
- 23.Venkatachalam (C6, as well as L.R. of C3 Sithayee)
- 24.Madhammal, w/o Mariappan
(C4 as well as L.R. Of C5 Perumal)
- 25.Govindan, s/o Mariappan (C7)
26.Dhanakodi (C8)
27.Veerappan, s/o Palani Nadar (C10)
28.Lakshmi, w/o Veerappan (C11)
29.Vadivelu, s/o veerappan (C12)
30.Sidhan, s/o Veerappan (C12)
31.Subramani, s/o Vaiyapuri (C14)
32.Shanmugam, s/o Pacha Goundar (C15)
33.Mariappan, s/o Vaiyapuri (C16)
34.Pachaiappan, s/o Marappan (C17)
35.Subbaiah, s/o Marappan (C18)
36.Perumayee, w/o Chinnan (C19)
37.Palanisamy, s/o Chinnannan (C22)
38.Subramani, s/o Chinnathambi (C25)
39.Alamelu, w/o Subramaniam (C26)
40.Palaniappan, s/o Subramani (C27)
41.Perumal, s/o Chinnappan (C37)
42.Subramani, s/o Chinnappan (C38, as well as C45)
43.Ponnusamy, s/o Chinnappan (C39)
44.Kandasamy, s/o Chinnappan (C40)
45.Govindammal, w/o Perumal (C41)
46.Raman, s/o Sadayan (C42)
- 47.Lakshmanan, s/o Sadaiyan (C43)
(Nos.19 to 47 are petitioners in LAOP 8/93)
- 48.Shakunthala
49.Nataraj
50.Sathiya
- 51.Kousalya
(Nos.48 to 51 L.Rs of C4 Sambu in LAOP No.9/93)
- 52.Amichiammal, w/o Vaiyapuri (C13)
53.Arumugam, s/o Chinnathambi (C14)

54.Madhammal, w/o Perumal (C29)
55.P.Subramani,s/o Perumal (C30)
56.P.Angammal, d/o Perumal (C31)
57.P.Gopal, s/o Perumal (C32)
58.P.Sambu, s/o Perumal (C33)
59.P.Thangaraju, s/o Perumal (C34)
60.Ammasi
61.Alagumani
62.Kandasamy
63.Sankara
(Nos.60 to 63 are LR's of C10bThudhan in LAOP 9/93
as well as LOAP NO.41/92)
(Nos.52 to 63 are petitioners in LAOP No.9/93)
64.Kullamma
(Lr of C19 Chinnapillai in LAOP No.41/92)
65.R.Ganesan
66.T.Ranjitham
(No.65 & 66 are L.Rs of C9 Raman in LAOP 26/92)
67.Perumayee
68.Malarkodi
69.A.Kandasamy
70.Chinnamma
(Nos.67 to 70 are LR's of C18 Arumugam in LAOP 41/92)
71.Ammasi (LR of C36 Rajathi in LAOP 8/93)
72.Chinnapilla
73.Alamelu
(Nos.72 & 73 areLR's of C11 Sengoda Mooppan in LAOP 22/92)
74.S.Arumugam
75.A.Shanmugam
76.Perumayee (C6 in LAOP 9/93)
77.Dhanalakshmi (LR of C5 Perumal in LAOP 8/93)
78.A.Subramani
79.Kaveri
(Nos. 78 & 79 are LR's of C20 Ammasi in LAOP 8/93)
80.S.Subramani (C7 in LAOP 9/93)
81.Moorthi
82.Saraswathi
(Nos.81 & 82 are LRTs of C20 Chinnathayee in LAOP 41/92)
83.A.Palanisamy (LR of Arumugam C7 in LAOP 26/92)
84.Kandasamy (C8 in LAOP 26/92)
85.S.Kanaga (LR of C21 Arumugam in LAOP 8/93)

86.Ramasamy, s/o Nallamuthu (C17 in LAOP 25/92)
87.L.Ramakrishnan
88.R.Ragupathi

89.R.Silambarasan
(Nos.87 to 89 are L.Rs of Valarmathi C30 in
LAOP 41/92 & C36 in LAOP 9/93)
...Respondents

90.The Special Tahsildar
Land Acquisition
TANMAC, Salem
Rep by Sub-Collector, Mettur
...Respondent / Respondent

Prayer: The Writ Appeal has been filed under Clause 15 of the Letters Patent to set aside the order dated 09.08.2017 passed in W.P.No.7533 of 2012.

W.P.7533 of 2012:

Writ Petition filed under Article 226 of the constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records in the proceedings bearing No.L-47/2010 dated 09.01.2012 passed by the Tamilnadu Magnesite Ltd. represented by its Managing Director the second respondent herein quast the same and consequently directing the respondents herein to deposit the amout for compensation as per the order dated 24.02.2012 passed by the Honourable Supreme Court in C.A.Nos.6240/2001 to 6248/2001 and C.A.Nos.495/2002 to 504/2002 within a time frame that may be fixed by this court.

For Appellant : Mr.K.Venkataramani
AAG for Mr.S.N.Parthasarathy

For Respondents : Mr.A.V.Arun
for R29, 31,48,49,50,51,39,40,42,
53, 6, 23,62,78,86,7,21,22,33,35,
12,13,24,25,71,84,73,55,38,37,
47,30,5,10,8,75,66,65,79,46,72,
26,44,54,57,4,64,11,5,28,27,85,
54,41,88,43,56,61,60,63 & 59

Mr.AR.L.Sundaresan
Sr.C. For Mrs.A.L.Ganthimathi
for R34,18,3,8,14,15,17,19,32,34,
52,67,68,69,77,80 & 82

J U D G M E N T
(Judgment of the Court was made by P.VELMURUGAN,J.)

The writ appeal has been filed by the appellant, challenging the order of this Court dated 09.08.2017 made in W.P.No.7533/2012.

2.The case of the appellant is as follows:

The lands having an extent of 196.44 acres in Thathaiyangarpatty Village, Omalur Taluk, Salem District were acquired by the Government for expansion of Tamil Nadu Magnestite Limited/ the appellant herein, under Section 4(1) of the Land Acquisition Act, 1894. The Special Tahsildar (Land Acquisition), Mettur, had fixed the compensation for the lands at Rs.18,000/- per acre for irrigated lands and Rs.15,000/- per acre for unirrigated lands.

3.Aggrrieved by the compensation determined by the Authority, the respondents took the matter to the Reference Court. The Reference Court, by its judgment dated 26.04.1996, enhanced the compensation to Rs.1,75,000/- per acre. Against the common order passed by the Reference Court dated 26.4.1996, the Land Acquisition Officer preferred an appeal in A.S.No.134 to 143/1997, before this Court. The Division Bench, by its judgment dated 23.01.2001 and 15.02.2001, reduced the compensation fixed by the Reference Court from Rs.1,75,000/- to Rs.75,000/-.

4.Aggrrieved by the judgment made by this Court in Appeal Nos.134 to 143/1997, some of the claimants preferred appeals before the Hon'ble Supreme Court in Civil Appeals Nos.6240 to 6243/2001, 6248/2001 and 495 to 504/2002. The Hon'ble Supreme Court, while disposing of the Civil Appeals by its judgment dated 24.02.2010, set aside the Judgment of a Division Bench of this Court and confirmed the common order passed by the Reference Court, fixing the compensation at Rs.1,75,000/- per acre. The Appellant has also disbursed the amount at that rate. The remaining claimants, those who have not approached the Hon'ble Apex Court had sent a representation dated 30.01.2011 to the appellant to consider their claim of Rs.1,75,000/- per acre as compensation, based on the judgment of the Hon'ble Supreme Court dated 24.02.2010. The said representation was not considered by the appellant.

5. Aggrrieved by the same, the respondents had approached this Court in W.P.No.21397 of 2011 dated 26.09.2011. This Court directed the appellant to consider the representation of the respondents dated 30.01.2011 and pass appropriate orders, within a period of eight weeks. The said representation was duly considered by the appellant and by its communication dated 09.01.2012, the claim was rejected.

6. Aggrieved by the rejection order of the appellant, the contesting respondents herein have approached this Court in W.P.No.7533 of 2012. The said writ petition was allowed by the learned single Judge stating that the contesting respondents herein are entitled to the enhanced compensation, which was fixed by the Hon'ble Apex Court. Aggrieved by the order of the learned single judge, the second respondent in the writ petition has preferred the present writ appeal (LAOP).

7. The learned Additional Advocate General, appearing for the appellant would submit that the learned single judge allowed the writ petition on the ground that even though the contesting respondents herein have not preferred any Special Leave Petitions (SLP) before the Apex Court, being similarly placed persons, the contesting respondents herein are also entitled to the benefit of the order passed by the Supreme Court. The Apex Court gave a specific direction to disburse the amount only to the claimants i.e. parties to the Special Leave Petition and to the concerned parties. The claimants being the landowners who have approached the Apex Court, the concerned parties, being the subsequent purchasers or the Legal Representatives of the land owners, who have approached the Apex Court, and not others. Therefore, the benefits to the others, who have not approached the Apex Court is legally not permissible.

9. The learned senior counsel for the contesting respondents would submit that the respondents' lands were also acquired by the appellant under the very same acquisition proceedings, the same notification and the same award. They are all similarly placed persons. Even though, they have not approached the Apex Court, they cannot be denied the benefits extended to those who have approached the Supreme Court. There cannot be any discrimination among the similarly placed persons. The learned Senior counsel would further submit that the Apex Court, while disposing of the appeal has also given a direction that compensation should be disbursed to the claimants and also to the other concerned parties. These contesting respondents are also the concerned parties to the very same Land Acquisition and therefore no interference is called for in the order passed by the learned single judge.

10. It is an undisputed fact that an extent of 196.44 acres of patta land in Thathiengarpatti and Thekkampatti Villages of Omalur Taluk, Salem District was acquired during 1983 to 1986 for the expansion activities of M/s.Tamil Nadu Magnesite Limited (TANMAG) as per the provisions of Land Acquisition Act, 1894. The Land Acquisition Officer passed the order, fixing the compensation for the lands at Rs.18,000/- per acre for irrigated lands and Rs.15,000/- per acre for unirrigated lands. The land

owners made claims before the Reference Court. While considering the matter, the Reference Court fixed the market rate at Rs.1,75,000/- per acre and aggrieved against the said Judgment an appeal was preferred before this Court. This Court reduced the compensation from Rs.1,75,000/- to Rs.75,000/-. Aggrieved by the Judgment of this Court, the respondents in the Appeals before the Hon'ble Supreme Court in Civil Appeal Nos.6240 to 6243/2001 and 6248/2001 and 495 to 504/2002 to set aside the Judgment of this Court in A.S.No.134 to 143 of 1997. The Hon'ble Supreme Court allowed the civil appeals.

11. Those who have not approached the Apex Court, subsequently made a representation to the appellant, to give them the benefits of the order fixing compensation. The representation was not considered and kept pending, and as such, the contesting respondents herein moved a writ before this Court and got the order. This Court in W.P.No.21397 of 2011 dated 26.09.2011, directed the appellant to consider the representation, which was later rejected. Against the rejection order dated 09.01.2012, the contesting respondents herein have filed the writ petition. While dealing with the matter, the learned single judge accepted the claims of the writ petitioners and directed the appellant to extend the benefits to them.

12.The main contention raised by the learned counsel for the appellant is that those who have not approached the Apex Court cannot be given the benefit and only the claimants before the Apex Court alone would get the benefit. Whereas, the counsel for the respondents would submit that the Apex Court has not prevented the appellant to extend the benefit to the other persons. It is settled that the similarly placed persons are to be equated and there cannot be any kind of discrimination. Even otherwise Section 28 of the Land Acquisition Act, has given the benefit to the contesting respondents.

13.The contention of the learned Additional Advocate General cannot be accepted for the reason that the lands owned by the contesting respondents herein and those who have approached the Apex Court in SLP are covered under the same Land Acquisition and the very same award. The fact that some of them have gone up to the Hon'ble Supreme Court and got the remedy does not mean that those who were not in a position to challenge the judgment before the Supreme court are not entitled to the benefit of the order restoring the award passed by the Reference court.

14.In this regard, it is useful to refer to the latest decision of the Apex Court in Narendra & Ors. V. State of Uttar Pradesh & Ors. reported in JT 2017(9) SC 98, wherein the Apex Court has held that fair compensation should be given to all the land owners. The relevant portion of the Judgment of the Hon'ble Apex Court is extracted hereunder:

"landowners are not willing parties and rates are not determined by them but by the LAO. Determination of compensation is subject to judicial scrutiny. Thus fair compensation determined by Court should be given to all land owners. This is the objective of Section 28A, which states that benefit of rate of fair compensation, is to be given even to those landowners who could not approach the court. Therefore, strict rules of pleadings are not to be made applicable and mere fact that rate claimed was lesser than fair compensation should not be a ground to deny fair compensation. This is not only an aspect of good governance but avoids discrimination. Appellants granted compensation at Rs.297 per sq. yd. Difference in court fee to be made good by them.

Fair compensation - Adversarial form of adjudication - Appellant - Villagers filed batch of appeals restricting their claim of compensation to Rs.115 per sq. yd., as they were not in a position to pay higher court fee - Whether they are not entitled to judicially determined higher rate of fair compensation i.e. Rs.297 per sq. yd. Held,

"Poverty compelled them to restrict their claim. Traditionally our justice delivery system is adversarial in nature. The adversarial process operates as a disadvantage to weaker section of the society. Court has to be sensitive to the inequalities and ensure access to justice to the poor. Appellants are therefore entitled to compensation at Rs.297 per sq. yd." (Paras 8-13)

15. In the light of the above discussion and the law laid down by the Apex Court, the respondents are also entitled to the benefit of the order restoring the amount determined by the Reference Court.

16. In the result, the writ appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

kas/tsh

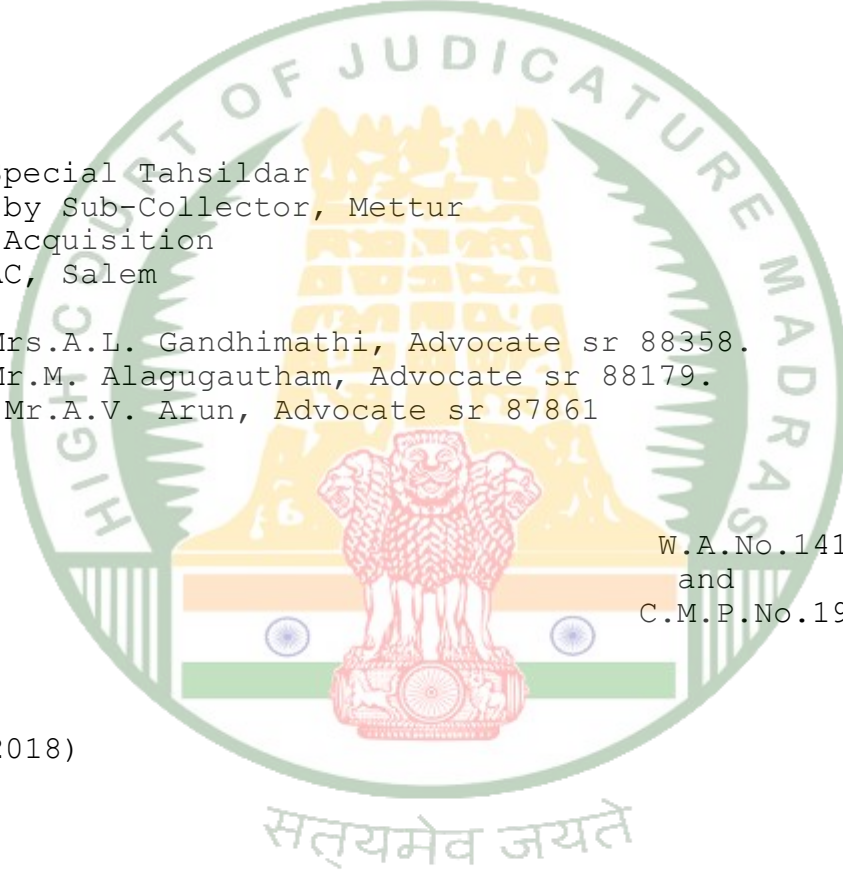
To

The Special Tahsildar
Rep. by Sub-Collector, Mettur
Land Acquisition
TANMAC, Salem

+1 CC to Mrs.A.L. Gandhimathi, Advocate sr 88358.
+1 CC to Mr.M. Alagugautham, Advocate sr 88179.
+2 Ccs to Mr.A.V. Arun, Advocate sr 87861

W.A.No.1411 of 2017
and
C.M.P.No.19233 of 2017

SS(CO)
SP(17/02/2018)



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