IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.02.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Review Application No.51 of 2016
in W.P.No.28313 of 2015

The Managing Director,
Chennai Metro Rail Ltd.,
"Harini Towers",
No.7, Conron Smith Road,
Gopalapuram, Chennai 600086. ... Appellant

Vs.

1.S.Saranath
2.S.Manivannan
3.Jayanthi
(2 and 3 respondents are
Rep.by their Registered General
Power Agent, Mr.S.Saranath)

4.The State rep. by the,
Principal Secretary to Government
Housing and Urban Development
Department, Fort St. George, Secretariat,
Chennai 600 009.

5.The Member Secretary,
M/s.Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

6.The District Collector,
Chennai District,
Singaravelar Maligai,
No.62, Rajaji Salai,
Chennai 600 001.

7.The Special Deputy Collector,
Land Acquisition Cell,
Chennai Metropolitan Development,
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008. ... Respondents

Prayer: Review Application filed Order 47 Rule 1 of the C.P.C. read with under Section 114 of the C.P.C. to review the order dated 09.03.2016 made in W.P.No.28313 of 2015.

PRAYER WP.28313 OF 2015:

Petition Presented to this court is issue a writ of certiorarified mandamus to quash the order dated passed by the 3rd Respondent in Proceeding Rc No. J9/24385/2014 dated 25.04.2015 and directing the respondents to pay compensation to the petitioners as per the proviso to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) with respect to the land situated at Plot No.11- to an extent of 2775 Sq.ft comprised in R.S.No.163/2, T.S.No.3, Block No.61, Koyambedu Village, Nungampakk and Egmore Taluk, Chennai District

For Petitioner	:	Mr.Jayesh B.Dolia
For R1 to R3	:	Mr.M.Anadaraj
For R4 and R6	:	Mr.J.Pothiraj Special Government Pleader
For R5	:	Mr.K.Raja Srinivas

O R D E R

Heard Mr.Jayesh B.Dolia, learned counsel appearing for the petitioner, Mr.M.Anadaraj, learned Counsel appearing for respondents 1 to 3, Mr.K.Raja Srinivas, learned counsel appearing for the fifth respondent and Mr.J.Pothiraj, learned Special Government Pleader appearing for respondents 4 and 6.

2. This Review application has been filed by the Chennai Metro Rail Limited seeking to review the order and directions issued by this Court in W.P.No.28313 of 2015. The operative portion of the order reads as follows:-

> "6. Learned counsel appearing for the respondents who have got written instruction from the respondent reiterated the contentions set out in the impugned proceedings and submitted that the land has already been utilized for CMRL project. Learned counsel for 5th respondent specifically contended that the land has been fully utilized for the

workshop and administrative block etc., of the CMRL project and therefore the land acquisition proceedings would not be lapsed in terms of Section 24 of the (Act 30 of 2013). The Special Thasildar has given written instructions to the Deputy Planner (K), CMDA, with copies to the Law officers, wherein the same stand as taken in the impugned proceedings has been set out. The issue as to whether the land acquisition proceedings have lapsed in terms of Section 24 (2) (Act 30 of 2013) has been considered by the Hon'ble Supreme Court in a long line of decisions, the earliest being the case of Pune Municipal Corporation and another vs. Harakchand Misirimal Solanki and others, 2014 3 SCC 183. The Hon'ble Supreme Court held that when compensation is not paid to the person interested and where award has not been made more than five years, the subject land acquisition proceedings are deemed to have been lapsed. In a recent decision of the Hon'ble Division Bench of this Court, the Hon'ble Division Bench has analyzed the long end of decisions. The decisions are the point and held as follows:

> " ...
>
> 23. The ratio deducible from the afore stated judicial pronouncements is that when a provision is clear and unambiguous, leaving no room or scope for vagueness, the word or cannot be understood and interpreted as and. The intention of the Legislature must be given full effect to, unless it creates anomally. In the case on hand, the word or used in two places in the passage in Rule 24(2) of the 2013 Act, viz., where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid clearly indicates that after the award is passed 5 years or more, prior to the commencement of the 2013 Act, the proceedings initiated under the Old Act, 1894, shall be deemed to have lapsed. Thus, in any eventuality, either if the compensation is not paid or possession of the land is not taken over, the provisions of Section 24(2)

would be attracted. Thus, the word or employed in Section 24(2) of the 2013 Act in the aforesaid two places, has to be read disjunctively and not conjunctively, as pleaded by the learned Additional Advocate General.

24. The manifest intention of the Legislature can be derived from the Statement of Objects and Reasons, read with the plain language of Section 24(2) of the 2013 Act, Clause 18 of the Statement of Objects and Reasons clearly stipulates that the benefits under the new law would be available in all the cases of land acquisition under the Old Act, 1894, where, award has not been made or possession of land has not been taken. In line with the objective of the enactment, Section 24(2) of the 2013 Act plainly read that where an award under Section 11 has been made 5 years or more prior to the commencement of the 2013 Act, but, the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed. Thus, it is eloquent that the word or employed in two places in the passage where an award under the said Section 11 has been made five years or more prior to the commencement of this Act by the physical possession of the land has not been taken or the compensation has not been paid is disjunctive and not conjunctive. On happening of one event, the land owner would be entitled to the benefit under the provisions of Section 24(2) of the 2013 Act.

From the impugned proceedings, as well as the written instructions it is clear that the compensation amount has not been deposited before the Civil Court and all that is stated is, it was ordered to be kept in Civil Court deposit and there is no proof to show that it has been deposited before the Civil Court.

7. In the light of the above, by applying the decision of the Hon'ble Supreme Court and the Hon'ble Division Bench referred supra, it has to be held that the impugned land acquisition proceedings are deemed to have been lapsed in terms of Section 24(2) of the (Act 30 of 2013). However, in the light of the stand taken by the 5th respondent that the land has already been utilized and the project developed by the 5th respondent is a very important project and the project in public interest, this Court is of the view that even though the land acquisition proceedings are held to be lapsed the land shall not be reverted back to the land owners and continue to be utilized by the 5th respondent and for such purpose the respondents are directed to issue fresh notification for acquisition and such notification shall be only for the purpose of fixing fair and reasonable compensation for the lands in terms of (Act 30 of 2013) and such fresh notification shall be issued by the respondents within a period of one month from the date of receipt of a copy of this order and endeavor to complete the entire proceedings and pay the compensation in terms of (Act 30 of 2013) within a period of three months from the date on which acquisition proceedings are initiated in terms of the above direction. It is made clear that the possession of the land shall not revert to the land owners viz., the petitioners and the 5th respondent is entitled to fully utilize the land for the project.

8. Writ petition is allowed in the above terms. No costs."

3. This Review, at the instance of the Chennai Metropolitan Rail Limited (hereinafter after referred to as "CMRL"), was on the ground that the land acquisition has not lapsed and the amount was lying in Court deposit. Therefore, the Court extensively heard the matter and passed orders from time to time. First of such order is dated 02.11.2016. The operative portion of the order reads as follows:-

" 5. From the above averments it is clear that the amount of compensation payable to Thiru.Santhappan for the extent of 2775 sq.ft. has not been paid to the land owner, but, is lying in Revenue deposit. By applying the decision of the Hon'ble Supreme Court, the acquisition has to be held to have lapsed and in fact that was the reason assigned while allowing the Writ Petition by this Court. Therefore, the petitioner herein has not made any case for review of the order and direction issued in the Writ Petition and the factual averments as set out in the counter affidavit filed by the Collector of Chennai is sufficient to dismiss the Review Petition.

6. However, this Court taking into consideration of the fact that the project implemented by the Chennai Metro Rail is in public interest and fact that writ petitioners do not seek for restoration of possession of land, but, are interested in receiving adequate compensation, this is a fit case where Chennai Metro Rail should have a pragmatic stand and sort out the issue, by holding discussions with the petitioners.

7. Obviously the Writ Petitioners cannot be directed to accept the compensation which was fixed in 2004, since this Court directed that the provisions of Act 30 of 2013, should be applied and fresh notification should be issued for the purpose of fixing compensation under the provisions of Act 30 of 2013. This shall be borne in mind by the Chennai Metro Rail while holding discussions with the Writ Petitioners. Equally, the Writ Petitioners shall also attend the discussions with Chennai Metro Rail with open mind, so that they can receive fair and reasonable compensation for the extent acquired.

8.The learned counsel for the petitioner would contend that the discussions which have taken place across the Court are only with regard to the amount of compensation for the lands acquired, but the land owners/writ petitioners are entitled for interest and solatium.

9.Since, this Court has directed the Chennai Metro Mail to have discussions with the writ petitioners to arrive at the total compensation payable, all other issues are left open for present, so that it shall not be of any hindrance while holding discussions. The parties shall report about the outcome of the discussions on the next hearing date.

List on 18.11.2016.”

4. Subsequently, by order dated 05.01.2017, the Court recorded the discussions, which took place between the parties, with regard to the compensation amount payable to the

petitioner. The operative portion of the order reads as follows:-

> "2. From the papers placed before this Court, and particularly, the letter, dated 03.01.2017, issued by Chennai Metropolitan Rail Limited (CMRL) to the District Collector, Chennai District, it is seen that negotiated compensation amount would be deposited by (CMRL). Therefore, a request has been made to this Court to facilitate the negotiation process. The learned Government Advocate shall get appropriate instructions on the communication sent by CMRL to the District Collector, dated 03.01.2017. In the meantime, this Court pointed that the land owners have to be compensated, and what is required to be discussed is quantum of compensation. In any event, the quantum of compensation cannot be lesser than the guideline value, and therefore, pending discussion between the parties, this Court deems it appropriate that, a direction be issued to the CMRL to deposit Rupees One Crore Fifty Lakhs to the credit of Review Application till proceedings are concluded by the District Negotiation Committee. This direction is obviously without prejudice to the rights of the parties, more particularly, the rights of the landowners, who are entitled to just compensation together with solatium and interest. The aforesaid compensation amount has been mentioned by this Court by taking into consideration the submission of the learned counsel for landowners that the guideline value as on date is Rs.5700/- per sq.ft., and the total extent of land is 2775 sq.ft.,
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> 3. Mr.Jayesh Dolia, the learned counsel for the review applicant seeks time to get instructions in the matter.
>
> List on 12.01.2017."

5. The matter did not attain finality and once again, the Court heard the matter on 12.01.2017. The operative portion of such order reads as follows:-

> "4. In the order dated 05.01.2017, this Court observed that it deems it appropriate that, a direction be issued to the CMRL to deposit the compensation amount to the credit of Review Application till the proceedings are concluded by the District Negotiation Committee and this direction being without prejudice to the rights of th parties. The Court indicated that a sum of Rs1,50,00,000/- (Rupees One Crore Fifty Lakhs Only) can be deposited by taking note of the submission of the counsel for the land owners that the actual value is Rs.5,700/- per sq.ft.
>
> 5. The CMRL has given written instructions to the learned counsel for the applicant vide E-Mail dated 12.01.2017, wherein they requested for direction to conclude the private negotiation. However, to ensure that the interest of the land owner is also protected and at the same time, there is seriousness to the private negotiation, which has been agreed upon by all the parties, this Court deems it appropriate to direct CMRL to deposit a sum of Rs.50,00,000/- (Rupees Fifty Lakhs Only) to the credit of Review Application No.51 of 2016 in the Indian Bank, High Court Branch on or before 01.02.2017. This amount shall be kept by the Indian Bank, in an interest bearing account for the minimum period of one month. It is made clear that this amount is fixed as an adhoc basis and not going by the value as stated by the land owners.
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> List the matter on 17.02.2017."

6. Subsequently, the Court took note of the developments and passed an order on 03.03.2017. The operative portion of the order reads as follows:-

> "6. In the light of the above facts and circumstances, this Court can very well dismiss the review application today and also initiate contempt action against the respondent for not obeying the orders and directions issued in the writ petition dated 09.03.2016. However, with a view to avoid unpleasant events, this Court considers it fit to direct the District Collector to hold discussion with the land owners as observed in the earlier order. It appears that the

entire files have not been produced before the District Collector for acquaintance with the earlier order and directions. The land owners, even today, are willing to attend one more meeting before the Committee. So far as the four documents are concerned, which were produced by the land owners, they have been discarded on the ground that it is a residential plt. However, the present condition of the land is of no consequence. The District Collector and the Negotiation Committee should bear in mind that the land was taken over without payment of compensation to the land owners and as on date, in terms of the order passed in the writ petition, the acquisition proceedings stand lapsed. Therefore, as per the direction issued by this Court, the respondents have to issue a fresh notice under Act 30 of 2013 for acquiring the land and if that is so, the market value of the land as on date of such acquisition will have to be adopted. The District Collector and the Negotiation Committee shall take not of the above as well as the observations made by this Court and carry out effective discussions with the land owners and submit a further report on the next hearing date.

List the matter on 07.04.2017."

7. Subsequently, the amount of compensation payable was fixed at Rs.4,250/- per sq.ft. which was agreed to by the petitioner and the order was passed on 03.08.2017. The operative portion of the order reads as follows:-

"5.Thus, considering the fact that the litigation had prolonged all these years and this Court had to make an elaborate exercise to come to a conclusion that the acquisition itself had lapsed and considering the importance of the project molded the relief that the petitioners/ land owners would be able to obtain. Thus, it is a fit case where this Court can exercise its discretionary power and fix the amount of compensation so that the matter comes to an end and the curtain is drawn.

6.Therefore, there will be a direction to the concerned officials as well as the Committee and the District Collector to fix the compensation payable to the petitioner at the rate of Rs.4,250/- per sq.ft., and disburse the amount at the earliest and file the compliance report before the next date of hearing. It is made clear that this amount has been fixed considering the peculiar facts and circumstances of the case and therefore, the same shall not be taken as a precedent nor can be adopted by the land owners whose lands have already been acquired and paid compensation or lands which are in the process of acquisition.

List on 04.09.2017."

8. The Court permitted the petitioner to withdraw of Rs.50,00,000/-(Rupees Fifty Lakhs Only) by order dated 06.09.2017. The operative portion of the order reads as follows:-

"2.Considering the fact that this Court has finally fixed the rate of compensation payable to the petitioner at Rs.4,250/- per square feet and today, when the matter is heard, the learned counsel for CMRL requests three weeks time to settle the balance amount, i.e., the remaining amount payable after giving credit to the amount of Rs.50,00,000/- (Rupees fifty lakhs only) lying in deposit. It is stated that the additional amount which has to be paid is around Rs.67,00,000/- (Rupees Sixty Seven lakhs only). The learned counsel for the petitioner submits that the calculation is incorrect since as per the new Act, solatium is double the amount. However, for the present, this Court does not propose to go into the said controversy and will take decision later on the said issue.

3. In the light of the above, there will be a direction, permitting the petitioner to withdraw the amount of Rs.50,00,000/- (Rupees Fifty lakhs only) lying in deposit to the credit of Review

Application No.51 of 2016 which was paid by the CMRL by cheque dated 15.02.2017 drawn in favour of the Registrar General, High Court, Madras. The Registrar General is directed to issue necessary instructions to the Indian Bank, High Court Branch to permit the petitioner to withdraw the amount of Rs.50,00,000/-(Rupees Fifty lakhs only) together with the interest accrued till date of withdrawal.

4. List the matter on 27.10.2017."

9. Subsequently, the matter has been coming up before this Court and the only issue to be considered is that, whether the compensation amount of Rs.4,250/- per sq.ft. includes solatium and interest. The State as well as CMRL contended that Rs.4,250/-per sq.ft. is a total compensation payable, which includes solatium and interest. In the earlier orders, some of which have been extracted above, this Court had made it clear that at no point of time, the writ petitioner had given-up its rights to claim interest and solatium, which is a statutory right. Infact the direction in the Writ Petition is to initiate acquisition proceedings under the Act 30 of 2013.

10. The learned Special Government Pleader appearing for respondents 4 and 6 was directed to produce entire files to show that during the negotiation process, while fixing the compensation at Rs.4,250/- per sq.ft, the respondents had factored the quantum of soltium and interest and the total amount of Rs.4,250/- per sq.ft. is all inclusive.

11. On production of files, I find that the Collector has accepted the recommendations made by the Sub Collector, Tondiarpet, Sub Division, vide his report dated 01.02.2017 and from the report it is seen that the rate, as recommended by the Sub Collector at Rs.4,250/- per sq.ft. is the market value of the land, as originally acquired vide award No.1 of 2004.

12. Thus when the report was accepted by the Collector, there is no record to show that solatium and interest were taken into consideration for arriving at the just compensation. Thus, this Court is of the considered view that the petitioner would be entitled for solatium and interest. However, for which purpose, this Court cannot issue directions in this Review Application, which has already been held to be devoid of merits.

13. In the result, this Review Application is dismissed and there will be direction to respondents 4 to 7 to proceed as per the directions issued in the order dated 09.03.2016 and initiate action under the Act 30 of 2013, to enable the petitioner to workout its remedies in accordance with law. No costs.

Sd/-
Assistant Registrar(CS-iii)

//True Copy//

Sub Assistant Registrar

dna/srk
To

1.The Principal Secretary to Government
Housing and Urban Development
Department, Fort St. George, Secretariat,
Chennai 600 009.

2.The Member Secretary,
M/s.Chennai Metropolitan Development
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

3.The District Collector,
Chennai District,
Singaravelar Maligai,
No.62, Rajaji Salai,
Chennai 600 001.

4.The Special Deputy Collector,
Land Acquisition Cell,
Chennai Metropolitan Development,
Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai 600 008.

+1cc to Mr.K.RAJASRINIVAS, Advocate, S.R.No. 10383
+1cc to Mr.JAYESH B DOLIA, Advocate, S.R.No.10237
+2cc to Mr.M.ANANDARAJ, Advocate, S.R.No.10096

Review Application No.51 of 2016
in W.P.No.28313 of 2015

NM(CO)
TR(27/02/2018)