

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.19036 of 2016
and WMP.Nos.16584 & 16585 of 2016

Dr.C.P.Valsaraj

... Petitioner

-Vs-

1.The Government of Tamil Nadu
Represented by the Principal Secretary
Energy Department
Secretariat, Fort St.George
Chennai - 600 009.

2.The District Collector
Collectorate
Kancheepuram
Kancheepuram District.

3.The Special Tahsildar
(LA Unit-V)
Ultra Mega Power Project (UMPP)
Cheyyur Taluk, Kanchipuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in award No.1/2015 in R.C.No.3/2015 (Block No.i, Unit V) dated 28.07.2015 and quash the same as illegal and arbitrary and non est in law and consequently direct the second respondent to determine the compensation in accordance with provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within the time stipulated by this Court.

For Petitioner : Mr.S.Vijay
For Respondents : Mr.A.Zakir Hussain
Government Advocate

ORDER

The present writ petition is filed for issuance of a writ of Certiorarified Mandamus to quash the award of the second respondent passed in Award-I/2015 Vide Rc.3/2015 (Block No.I-Unit V) dated 28.07.2015.

2.1. The brief facts are: The petitioner was the absolute owner of the plots no.208 & 209 in Survey No.350/7 and 350/8 of Pannaiyur Village, Cheyyur Taluk, Kanchipuram District. It has a total extent of the property is 24,000 sq.ft. with some superstructures. While so, the lands were acquired under the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (henceforth would be referred to as Act) for setting up an Ultra Mega Power Project. Necessary notifications too were duly issued.

2.2. For the lands acquired, the Government has to pay compensation amount which is to be determined in the manner provided under Section 7 of the Act. Under Section 7(2) of the Act, compensation payable may be determined by a consensual agreement between the parties. Where no agreement is so arrived, then the Government should refer the matter to the Collector for determination of the compensation to be paid for such acquisition to the owners of the property. Accordingly, on issuance of the notice of acquisition, the third respondent began negotiating with the petitioner for arriving at a consensus as to the value of the land acquired. By a communication dated 10.09.2013, the third respondent offered to buy the property at Rs.140/- per sq.ft. Since the petitioner considered that the amount as offered by the third respondent did not match with the market value of the property, which in his estimate was about Rs.400/- per sq.ft. At the relevant time, the petitioner declined the offer. The petitioner Vide his representation dated 21.01.2015, addressed to all the respondents, conveyed to them his unwillingness to accept the compensation as determined by the third respondent under Sec. 7 (2) of the Act and requested that the matter might be referred to the second respondent, the District Collector, Kancheepuram District to determine the compensation in terms of Section 7(3).

2.3. Instead of referring the matter to the second respondent as is statutorily required, the third respondent has issued another communication in Na.Ka.No.3/2010/G.5 dated 20.02.2015, wherein the petitioner was insisted to lend his consent to accept the price of the land as fixed by the Government at Rs.140/- per sq.ft. with an arm-twist clause that should the petitioner refused this offer, he would be paid only Rs.15/- per sq.ft. under Section 7(3) of the Act plus 30% solatium and 12% additional interest. This was responded to by the petitioner through his legal notice dated 28-02-2015.

2.4. As the petitioner felt aggrieved by the aforesaid notice of the third respondent, he preferred W.P.No.6732 of 2015, for issuing a writ of certiorarified mandamus and sought a direction to the first respondent to make a reference to the second

respondent for determining the fair compensation payable under Section 7(3) of the Act. This petition was disposed of by this Court, Vide its Order dated 11.03.2015, in which this Court has directed the third respondent to consider the representation of the petitioner within four weeks. Thereafter, pursuant to the legal notice of the petitioner reminding the need to act in accordance with the Act, the third respondent issued a notice dated 13.06.2015, calling upon the petitioner for an enquiry on 26.06.2015 for determination of compensation under Section 7(3) of the Act. The petitioner appeared, participated in the enquiry and submitted his written explanation. Since no reference as directed by this Court in W.P.No.6732 of 2015 was not made, the petitioner had filed a contempt petition in Cont.P.No.2020 of 2015. During the pendency of the said contempt petition, the second respondent had passed the impugned Award-I/2015 dated 28.07.2015 under Section 7(3) of the Act. In this, the value of the land is fixed at Rs.15/- per sq.ft. This is now challenged by the petitioner in the present writ petition.

3. In the counter affidavit filed by the second respondent, it is inter alia conceded that the respondent is willing to re-fix the compensation payable at Rs.140/- per sq.ft. under Section 7(2) of the Act.

4. When this matter came up for hearing on 08.12.2017, this Court sensed the abject lack of application of mind by the second respondent in passing the award, unmindful of the legal consequences that might ensue. It therefore directed the production of the files concerning the case on 14.12.2017 and the same was made available.

5. The learned counsel for the petitioner contended that the attitude of the third respondent when he issued the notice on 20.02.2015, (which was the subject matter of W.P.No.6732 of 2015) was to arm-twist the owner of the land to submission to his offer price that he had determined and to extract a consent from an unwilling owner, and to colour it as a consensual agreement under Section 7(2) of the Act. Notwithstanding the fact that it was challenged in W.P.No.6732 of 2015, and ignoring the fact that it was allowed with a direction, an award was ultimately passed exactly in line with the alternate indicated in the communication of the second respondent dated 20.02.2015.

6. The learned Government Advocate did not attempt to defend the indefensible and only brought to the notice of the Court to the offer made in the counter where the second respondent had offered Rs.140/- per sq.ft.

7. The authorities on whom the power is conferred by the statute is required to uphold the spirit of the statute and not to abuse

the same and offend the rights of the citizen thereby. Here is a situation where the third respondent was required to negotiate with the owners of the lands to be acquired to arrive at a consensual price and is not expected to make his unilateral declaration of the price and impose the same on the owner of the property. The scheme of Sec. 7 of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, grants every person whose property is acquired, a right to disagree on the price offered and negotiated under Section 7(2) of the Act, and prescribes a procedure to refer the matter to the Collector for determining the compensation payable under Sec. 7(3) of the Act. It is too obvious to require any commentary that the legislature was anxious to avoid the cumbersome process of a quasi judicial procedure for fixing the compensation payable, avoid a potential litigation and eschew the inevitable loss of time associated with it and thereby defeat the delay in advancing the purpose for which lands are acquired. Hence Sec.7(2) where it requires the authorities to invite the owners of those properties which are identified for acquisition for a negotiated settlement of price of the land. The third respondent may have an offer price to initiate a discussion, but nothing grants him a belief that the owners of the lands should necessarily surrender their right to disagree.

8. If the approach of the third respondent at the first instance when he attempted to force-obtain a consent from the petitioner to his offer price of Rs.140/- per sq.ft., is disturbing what followed next when the second respondent toed the line of the third respondent when he passed the award fixing the value of the petitioner's property at Rs.15/- per sq. ft. is appalling. It appears that the second respondent trusted the power of perspicacity of the second respondent and placed reliance on the arm-twist clause contained in the communication of the second respondent dated 28.07.2015. Is it not a grand abdication of statutory duty to decide? Does it not indicate that he outsourced his duty to decide to the arbitrary judgement of the third respondent? Justly, the petitioner contends that the award is arbitrarily made and without proper application of mind.

9. If he would be paid only Rs.15/- per sq.ft. though it includes solatium of 30% and additional interest of 12%, which if added to Rs.15/-, it would be not more than Rs.22/- per sq.ft. On what basis has the third respondent engaged in an exercise such as this? Very unfortunately, when the ultimate award which is now impugned in this proceedings is passed that which the third respondent apprehended has become a reality.

10. Necessarily, the said award dated 28.07.2015 has to be quashed and the second respondent has to pass a fresh award in

the manner contemplated by Sec. 7(3) of the the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, after granting the petitioner appropriate opportunity of effective hearing in the matter. Since the second respondent has already offered Rs.140/- per sq.ft., it is only evident that the value of the property cannot be below Rs.140/-.

11. Before parting with this case, it may be stated that in every such cases, the administrative authority has the first opportunity to do a thing rightly and fairly in accordance with the provisions of the statute. It is their failure to act the way that statute mandates forces the citizens to approach this court. By their reluctance to be fair to the citizen in acting in accordance with the statutory provisions, the petitioner was driven to file two writ petitions and one contempt petitions, each of which could have been avoided if only the authorities had realised that they were serving only the statute which grants them no space for victimising a citizen. It is time the authorities realised that every time they fail to act timely and consistently with law, they create occasions for the citizen to approach the Courts.

12. In the result, this writ petition is allowed and the award of the Award-I/2015 in Rc.3/2015 (Block No.I-Unit V) dated 28.07.2015 is hereby quashed and the matter is remanded back with a direction to the second respondent to hold an enquiry under Section 7(3) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 and pass an award, after granting due and effective opportunity of hearing to the petitioner and arrive at a compensation which as indicated may not be below Rs.140/- per sq.ft. within eight weeks from the date of obtaining copy of the order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

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Energy Department
Secretariat, Fort St.George
Chennai - 600 009.

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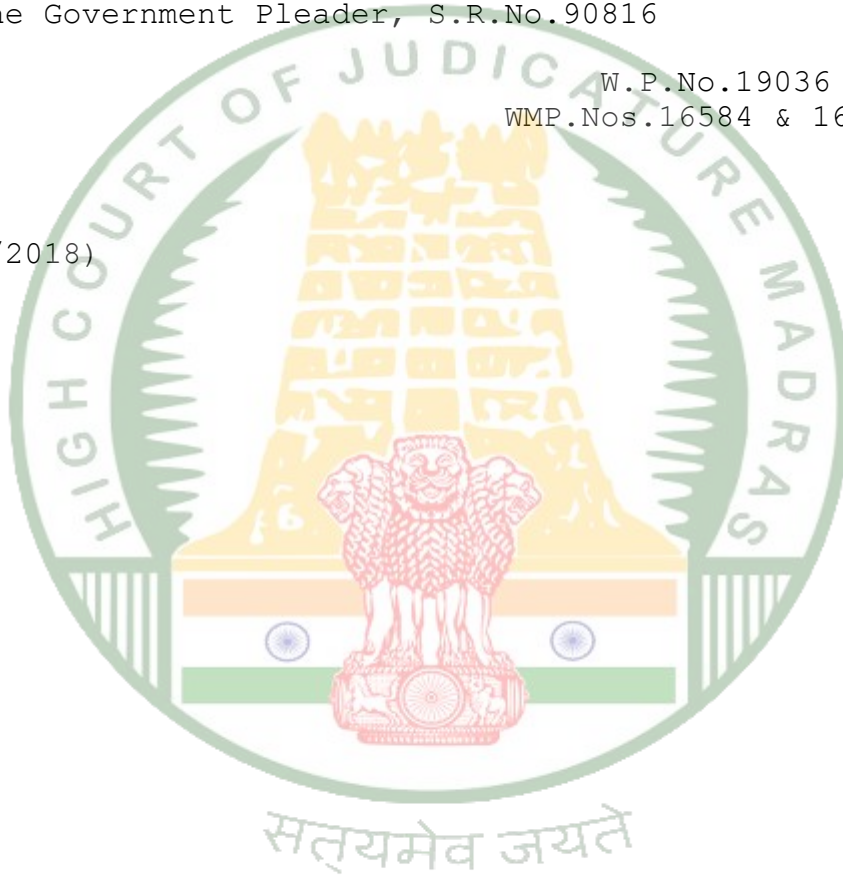
+2cc to Mr.B.Vijay, Advocate, S.R.No.90638

+1cc to the Government Pleader, S.R.No.90816

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SVI (CO)

RRK (20/03/2018)



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