

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2017

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

W.P. No.21827 of 2016

and W.M.P.No.18684 of 2016

Zeenath Banu

... Petitioner

vs.

1. The District Collector,
Vellore District, Vellore.
 2. The District Revenue Officer,
[Special D.R.O. (N.H.)]
Vellore.
 3. The Special Tahsildar, (Land Acquisition),
National Highways, Six Ways,
Vellore - 632 009.
 4. The Village Administrative Officer,
Keelachur Village, Pallikonda,
Vellore Taluk, Vellore District.
 5. The Project Director,
National Highways Authority of India,
'B' Block, Collectorate, Sathuvachari,
Vellore District - 632 006.
- ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of mandamus, forbear the respondents and their men from in any manner demolishing or acquiring the land and building viz., (1) comprised in Survey No.521/94B, New Sub-divided Survey No.521/94B1 measuring 465 sq.ft. of land (930 sq.ft. of building (4 sq.meters acquired and compensation paid) (2) Survey No.521/46A, New sub-divided Survey No.521/46A1 measuring 768 Sq.ft. of land and 1536 sq.ft. of building (Out of which 301.28 sq.ft. = 28 sq.meters acquired, but only land value determined and building value has not been not determined and paid) (3) Survey No.521/110B, measuring 714 sq.ft. With building consisting ground and first floors (this entire land and building is acquired and compensation paid) and (4) Survey No.521/47B3 measuring 450 sq.ft. land 900 sq.ft. of building (450 sq.ft. of building each in ground and first floors) (No notice issued and no compensation fixed and paid) and all these properties are situated in Keezhachur Village, Pallikonda Town Panchayat, originally Vellore Taluk, now Anaicut Taluk, Vellore District, without fixing the value of the building (1) comprised in Survey No.521/46A, New Sub-divided Survey No.521/46A1 measuring 768 Sq.ft. of land and 1536 sq.ft.

of building (out of which 301.28 sq.ft. = 28 sq.metres (ground and first floor acquired) and (2) Land comprised in Survey No.521/47B3 measuring 450 sq.ft. land and 900 sq.ft. of building (450 sq.ft. of building each in ground and first floors) (No notice and no compensation fixed for both the land and buildings).

For Petitioner : Mr.K.Premkumar
For R-1 to R-4 : Mr.S.Diwakar,
Special Government Pleader.

For R-5 : Mr.Richardson Wilson for
M/s.P.Wilson Associates.

ORDER

The petitioner, who is the owner of the land, has come forward to file this writ petition forbearing the respondents from demolishing or acquiring it as no compensation has been paid.

2. The learned counsel appearing for the petitioner would submit that though compensation has been paid in so far as the Survey Nos.521/94B1, 521/46A1, 521/110B1, no such compensation has been paid for Survey No.521/47B3. In such view of the matter, the writ petition will have allowed.

3. The learned counsel appearing for the fifth respondent would submit that the petitioner has made a statement on 18.05.2012 stating that he has received the compensation for the land acquired. Thereafter, an award was passed on 31.10.2012, followed by the possession taken as per the certificate dated 27.02.2013. Therefore, it is only an afterthought. Though the petitioner has received the compensation, she has obtained an interim order covering the entire land acquired which is inclusive of the building. The building comes up in two Survey Numbers and thus the confusion. The petitioner has subsequently filed another writ petition for the very same relief in W.P.No.22492 of 2016, which has been dismissed as withdrawn without liberty and therefore the principle of estoppel and res judicata would apply.

4. The learned Special Government Pleader appearing for respondents 1 to 3 would submit that the entire confusion has occasioned since Survey No.521/47B3 was sub-divided into Survey No.521/111 and as well as Survey No.521/47B3 as such.

5. From the submissions made, it appears that for the building, compensation has been paid. Though the learned counsel for the petitioner would submit that no compensation has been quantified for the building, factually it has been paid

since the building comes under four Survey Numbers. Therefore, the compensation has been fixed for the building as such coming under one Survey Number and that is the reason why it was shown as '0' valuation with respect to other Survey Numbers. Therefore, the aforesaid contention is rejected. However, this Court finds some force in the submission made by the learned counsel for the petitioner with respect to new subdivisions made to the Survey No.521/47B3 for which compensation was paid in part for the extent of 9 Sq.Mtrs alone standing in the name of Abdul Jabar, S/o.Addul Rahim. This can be seen from the Affidavit filed by the second respondent, which is extracted here under:

"7. With regard to Para 6 of the affidavit, it is submitted that as stated supra in supra in Para 4 a residential RCC building having Ground floor, 1st floor 2nd floor and go down in one combined building are situated comprising in survey no's 521/46A1 and 521/110B state on ground, the length of the above buildings is 5.2 meters. As such the Divisional Engineer, National Highways, Vellore is also valued the building as follows:

Sl.No	Length	Breadth	Total	Value	
1.	5.20	5.60	29.12	Rs.1,43,125	(for Ground floor)
2.	5.20	5.60	29.12	Rs.1,33,806	(for 1 st floor)
3.	3.00	3.00	9.00	Rs.41,940	(for 2 nd floor)

Iron gate 12.65 m2 - Rs.1309

At the same time another combined RCC building having ground floor and first floor with 3 shops is situated in comprised Survey No's.521/94B1 and 521/47B3, subsequently, it was subdivided as 521/111 as per the revenue records. This building length is also 9.2Mts state on ground, the Divisional Engineer, National Highways, Vellore is also valued the buildings situated comprising in Survey no's.521/47B3 new sub division 521/111 and 521/94B1 as furnished below:

Sl.No	Length	Breadth	Total	Value	
1.	9.20	5.20	47.84	Rs.2,35,134	(for Ground floor)

Sl.No	Length	Breadth	Total	Value	
2.	9.20	5.20	47.84	Rs.2,19,825	(for 1 st floor)
			Shutter	Rs.16.88 m2	Rs.22,535/-
			Tiles	Rs.41.43 m2	Rs.14,501/-

So, the building valued for the both buildings situated comprising in S.No.'s.521/46A1 & 521/110B and S.No.521/94B1 & 521/47B3 new sub-division No.521/111. Land value for comprising in S.No.521/46A1 (14 Sq.Mtr) 521/110B(18 Sq.Mtr) and S.No.521/94B (4 Sq.Mtr) was paid but land value for S.No.521/47B3 new sub-division No.521/111 to an extent of 36.8 Sq.Mtrs was not paid to the Writ petitioner as the new sub-division 521/111 is not noticed at the time of acquisition because the S.No.521/47B1, S.No.521/47B2, 521/47B3 were already published and compensation was paid as detailed below:

Sl.No	S.No.	Extent in Sq.Mtr	Name of the Landowner	Amount
1.	521/47B1	16	V.P.Sarbunnissa W/o.Abdul Rajith	Rs.1,53,683/-
2.	521/47B2	12	T.V.Shabeer S/o.Abdul Rajith	Rs.1,48,436/-
3.	521/47B3	9	Abdul Jabar S/o.Abdul Rahim	Rs.34,638/-

But in this office award proceeding is mentioned as the both building are situated in Survey No.521/94B1 and 521/110B by mistake instead of 521/46A1, 521/110B, 521/94B1 and 521/47B3 (new sub-division No.521/111). S.No.521/47B3 was already stands in the name of Abdul Jabar and compensation was paid in the name of Abdul Jabar. So the contention of the writ petitioner that land value only was paid to Survey No.521/46A, and building value is paid to her is not correct. As the writ petitioner name did not stands in revenue records for S.No.521/47B3 and hence, notice did not serve to her, even though the building value was paid to her. (Necessary combined sketch and copies of village accounts are enclosed herewith for kind persual). It is submitted that the contention of writ petitioner is wrong."

6. Therefore, after going through the aforesaid paragraph and taking note of the fact that there was no acquisition per se for the aforesaid extent of 36.8 Sq.mtrs belonging to the petitioner, without going into the technical aspects of the matter which would govern the acquisition proceedings not covering the above said extent and the petitioner having filed the writ petition subsequently for the aforesaid relief and withdrawn and without seeking liberty.

7. The learned counsel for the petitioner was asked to get instructions as to whether the petitioner is willing to receive the compensation on the market value as on date to be payable by the fifth respondent. Today on instructions, both counsel for the petitioner and the fifth respondent submit that the aforesaid recourse can be adopted. In such view of the matter, the writ petition stands disposed of by directing the fifth respondent to determine the present market value for an extent of 36.8 Sq.Mtrs. situated in old Survey No.521/47B3 corresponding to 571/111 after affording an opportunity to the petitioner. Such determination, which will have the status of an Award, has to be made within a period of eight weeks from the date of receipt of copy of this order. If the petitioner has got any grievance about the aforesaid determination, she can receive it under protest and thereafter work out her right as per law.

8. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

27.06.2017

This matter having been listed under the caption for 'being mentioned' on 29.06.2017 pursuant to the order of this court dated 27.06.2017 and made herein in the presence of the Mr.K.Premkumar Advocate for the Petitioner and Mr.S.Diwakar Special Government Pleader for the Respondents 1 to 4 this Court made the following order:

This matter is listed today under the caption 'for being mentioned' at the instance of the learned counsel appearing for the petitioner.

2.Learned counsel appearing for the petitioner would submit that the petitioner, in compliance with the order passed, would handover the vacant possession by demolishing the constructed portion, within a period of one month from today.

3.Considering the above said submission and taking note of the fact that the petitioner is in possession as of now, this Court is of the view that the said request deserves to be considered. Accordingly, the petitioner is granted a further period of one month from today to handover the vacant possession of the property in question after demolishing the structure.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mmi/kak

To

1. The District Collector,
Vellore District, Vellore.
2. The District Revenue Officer,
[Special D.R.O. (N.H.)]
Vellore.
3. The Special Tahsildar, (Land Acquisition),
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5. The Project Director,
National Highways Authority of India,
'B' Block, Collectorate, Sathuvachari,
Vellore District - 632 006.

+1 cc to M/s.K.Premkumar Advocate sr 44572
+1 cc to the Government Pleader sr 44741,45758

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W.P. No.21827 of 2016

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