

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2017

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.38596 of 2004
and W.P.M.P.No.46130 of 2004

M/s Pappichetty Ragaviah

Chetty's Charities,
No.39, Narayana Mudali Street,
Chennai-600 079.

Rep., by its Trustee Mr.V.Sudhakar

... Petitioner

Vs.

1.The Collector of Chennai,
Singaravelar Maaligai,
No.32, Rajaji Salai,
Chennai-600 001.

2.The Tahsildar,
Egmore-Nungambakkam Taluk
Acquisition Officer, Taluk Office,
Spur Tank Road, Chetpet,
Chennai-600 031.

3.The Railway Mail Service,
Tirupati Division,
Head Post Office,
Tirupati-1.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to call for the records in respect of the order No.Rc.B4/23408/98 dated 22.08.2003 and the consequential communication No.Rc.B4/23408/98 dated 1.11.2004 passed by the 2nd respondent, quash the same as illegal and unconstitutional and consequently, direct the respondents to award compensation amount of Rs.17,77,800 as detailed by the petitioner in their calculation sheet, computed in terms of Section 23 of the Land Acquisition Act.

For Petitioner : Mr.R.Parthasarathy

For Respondents: Mr.M.Elumalai
Government Advocate for R1 & R2

O R D E R

Challenging the orders of the second respondent in No.Rc.B4/23408/98 dated 22.08.2003 and No.Rc.B4/23408/98 dated 1.11.2004 and seeking to direct the respondents to award compensation amount of Rs.17,77,800/- as detailed by the petitioner in their calculation sheet, computed in terms of Section 23 of the Land Acquisition Act, the petitioner has filed the above writ petition.

2. The brief facts of the case are as follows:

2.1. The petitioner is a Public Charitable Trust formed by Pappichetty Ragaviah Chetty in the year 1912. The petitioner is the owner of the properties admeasuring 16 grounds 2011 sq.ft comprised in R.S.No.380/1 part newly subdivided as R.S.No.380/4 and 4 grounds 1215 sq.ft. Comprised in R.S.No.380/1, Poonamallee High Road, Chennai. The third respondent was a lessee in the property in Survey No.R.S.No.380/4 measuring 16.2011 grounds, since 1965. Since the lease of the property in favour of the third respondent had expired in 1975, the petitioner had filed a suit in O.S.No.1889 of 1976 on the file of the City Civil Court, Chennai, for eviction and the same was decreed on 17.07.1978. Thereafter, there were negotiations between the petitioner and the third respondent and the petitioner has agreed to extend the lease on certain terms. Pending negotiation, the third respondent had approached the first respondent for the acquisition of the said property for its use. Therefore, the first respondent issued Notification under Section 4(1) of the Land Acquisition Act, .. (hereinafter referred to as "the Act") and the same was published on 05.10.1983. Declaration under Section 6 of the Act was published on 27.09.1986.

2.2. The petitioner has challenged the said acquisition proceedings in W.P.No.1497 of 1987 and the same was dismissed on 07.01.1988. Aggrieved by the said order, the petitioner filed W.A.No.317 of 1988. Pending appeal, the petitioner made an offer of an alternative site to the third respondent and in the light of the same, the writ appeal was disposed of with a direction to the petitioner to make a representation to the first respondent seeking alternative site, with a further direction to the third respondent to consider the representation of the petitioner. Pursuant to the said order, a representation was given by the petitioner on 09.10.1991 and the said offer of alternative site was accepted by the third respondent. The Government has also accepted the offer of the petitioner by letter dated 25.04.1994 and directed the first respondent to proceed with the acquisition of the alternative site and pay the market value of the property. Thereafter, the petitioner made

its claim of compensation on 06.04.1995. But the Government dropped the acquisition of the alternative site and directed the acquisition of the original land measuring 16.2011 grounds. The said decision of the Government was challenged by the petitioner in W.P.No.14313 of 1998 and the same was allowed by an order dated 17.09.1999, in which, this Court while quashing the action of the Government in rejecting the offer of the alternative site by the petitioner, directed to pay the compensation amount to the alternative site measuring 4.1215 grounds comprised in R.S.No.380/1 at the prevailing market rate as on the date of the original 4(1) notification i.e. on 05.10.1993 issued in respect of the 16.2011 grounds in R.S.No.380/4 within two months from the date of the order. As the respondents failed to comply with the said orders of this Court, the petitioner filed Contempt Petition No.106 of 2001 and the same was disposed of by an order dated 30.03.2001 recording the fact that the third respondent had deposited a sum of Rs.26,00,000/- on 31.03.1987. In pursuant to the said order, the second respondent sent a letter dated 08.07.2002 requesting the petitioner to collect a sum of Rs.7,00,000/- as compensation for the alternative site. Without prejudice to the rights of the petitioner, it has handed over the possession on 08.08.2002 and received a sum of Rs.7 lakhs. But, the petitioner sent a letter dated 10.08.2002 to the second respondent contending that the amount received was only a part payment and made a representation on 24.04.2003. Since, no action was taken, the petitioner has filed W.P.No.18845 of 2003 seeking to consider the representation. This Court, by an order dated 08.07.2003, directed the second respondent to consider the representation of the petitioner and pass orders within two weeks. Accordingly, the second respondent disposed the representation dated 22.08.2003 stating that the consideration of Rs.7 lakhs was the full and final compensation amount. Aggrieved by the same, the present writ petition has been filed.

3. The learned counsel appearing for the petitioner submits that since the proceedings contemplated under Section 23 of the Land Acquisition Act was not followed, the amount fixed by the second respondent-Tahsildar is arbitrary and hence, the same is liable to be set aside.

4. The learned Government Advocate appearing for the respondents submitted that part III is the procedure to be adopted by the Court for higher compensation. On a perusal of the said provision, it is for the petitioner to make a representation to the Land Acquisition Tahsildar to refer the matter to the Civil Court for determination of compensation and thereafter, the Court shall follow the procedure under Chapter III of the Land Acquisition Act for fixing the compensation and hence, the writ petition is not maintainable and the same is liable to be dismissed.

5. In view of part III of the Land Acquisition Act, the prayer sought for in the writ petition cannot be granted and it is for the civil Court to determine the higher compensation. Accordingly, the writ petition stands dismissed with liberty to the petitioner to work out the remedy in the manner known to law. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-CCC)

//True Copy//

Sub Assistant Registrar

raa

To

1.The Collector of Chennai,
Singaravelar Maaligai,
No.32, Rajaji Salai,
Chennai-600 001.

2.The Tahsildar,
Egmore-Nungambakkam Taluk
Acquisition Officer, Taluk Office,
Spur Tank Road, Chetpet,
Chennai-600 031.

+ 1 cc to Mr.R. Parthasarathy, Advocate Sr.70556
+ 1 cc to Government Pleader SR.70620

W.P.No.38596 of 2004

VGI (CO)
EU(23/11/2017)

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