



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

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W.P (MD) No.12604 of 2016

and

W.M.P (MD) No.9519 of 2016

1.T.S.Balasubramanian

2.B.Sekar

3.Dr.B.Vasuki

.. Petitioners

Vs.

1. The Union of India rep. by its
Principal Secretary to Government,
Ministry of Defence, Government of India,
101-A, South Block, New Delhi - 110 011.

2. The District Collector,
Thanjavur District,
Thanjavur - 613 005.

3. The Commanding Officer,
Thanjavur Air Force Station,
Thanjavur - 613 005.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondents herein to pay the fair compensation payable to the petitioners for acquisition of their lands measuring 6.70 acres of land comprised in S.No.161/2, Nanjikottai Village, Thanjavur Taluk, Thanjavur District, under Act 30/2013 and also other heads of compensation as per new enactment forthwith together with interest from final declaration came into operation on 11.12.2015.

For Petitioner

: Mr.Veera Kathiravan
Senior Counsel for
Mr.C.Jegannathan

For Respondents 1 and 3

: Mr.K.R.Laxman,
Central Govt. Standing Counsel.

For Respondent No.2

: M.Alagathevan,
Special Government Pleader.

ORDER

This writ petition is filed seeking a writ of Mandamus to direct the respondents to pay the fair compensation payable to the petitioners for acquisition of their lands measuring 6.70 acres, comprised in S.No.161/2, Nanjikottai Village, Thanjavur Taluk, Thanjavur District, under Act 30/2013 and also other heads of compensation as per new enactment forthwith together with interest from final declaration came into operation on 11.12.2015.

2. Heard both sides.

3. The case of the petitioners is that the lands admeasuring 6.70 acres comprised in S.No.161/2, Nanjikottai Village, Thanjavur Taluk, Thanjavur District, owned by them, were acquired for the purpose of Thanjavur Air Force Station and the petitioners made representations dated 06.01.2016, 18.03.2016 and 20.05.2016 to the respondents, claiming compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [hereinafter referred to as 'Act']. Since the same have not been considered so far, the petitioners are before this Court.

4. In the counter affidavit filed by the third respondent, in paragraphs 9 and 16, it is stated as under:

"9. I humbly submit that for instances, there are several restricted areas in the Country, which are near Central Government Organizations and State Government Organizations, which has restrictions for usage of the said property, in whatsoever manner. There are Petroleum Storage Premises, which has certain restriction of usage of the neighboring lands. Even Schools has certain restriction for the usage of the adjacent land for certain usages. Similarly, there are certain nuclear projects and several projects, wherein, neighboring lands has certain restrictions; in the interest of the Public Safety, those restrictions are imposed by the Statutory Provisions, wherein, for the said reason, it could never be imagined/assumed/presumed that those lands are acquired by such organizations. Further, it is pertinent to note that if ever there is any disputes arising in respect of the land in the 100 meters restricted zone in the interest of the Public, as per the Statutory Provisions, that can be sorted out only before the District Collector and this station has no role to play.

... ..

16. I humbly submit that the averments in Paragraph No.9 of the Writ Affidavit to the extent that the petitioners are entitled for compensation as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-



Settlement Act 2013 is hereby denied, wherein the said Act is not applicable in case of the petitioner as their land have not been acquired".

5. Drawing the attention of this Court to Section 2(1) of the Act, the learned counsel appearing for the petitioners would submit that the third respondent took away the right over the property vested with the petitioners, by imposing absolute restrictions and hence, it amounts to acquisition and accordingly, the right of the petitioners to claim compensation is not ousted and therefore, the petitioners are entitled for compensation under the Act.

6. The learned Central Government Standing Counsel appearing for the respondents 1 and 3 would submit that it is not a total acquisition and it is only a restriction. He also referred to the Judgment of the **Hon'ble Supreme Court in Hira Tikkoo v. Union Territory Chandigarh & Others** reported in **CDJ 2004 SC 629**, wherein it has been held as follows:

"16. Learned counsel appearing for the Administration of UTC had pointed out to us that the contents of the letter dated 20.11.2003 received by the Administration from Ministry of Defence, Government of India do show that the period of notification imposing restriction has expired but it has been intimated in the same letter that the similar restriction is under contemplation and a fresh notification imposing same is likely to be issued in future. In the aforesaid circumstances, learned counsel for the Chandigarh Administration submitted that allotment of alternative plots within 900 metres would be subject to any imposition of restriction under the Aircrafts Act and if such restrictions are imposed, the allottees of plots falling in that area would have no right to claim any compensation or damages from the Administration.

25... .. There are no allegations and material in these cases to come to a conclusion that the action of the authorities was mala fide. It may be held to be careless or negligent. In some of the English cases, the view taken is that the public authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these cases, any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public levy. The funds are in trust with them for utilisation in public interest and strictly for the purposes of the Statute under which they are created with



specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where doctrine of 'estoppel' will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non-delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees".

7.I have considered the rival submissions and perused the materials available on record.

8.The petitioners made representations dated 06.01.2016, 18.03.2016 and 20.05.2016 to the respondents, claiming compensation under the Act. Section 2(1) of the Act reads as follows:

"2.Application of Act.- (1)The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:-

(a)for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or"

9.The learned counsel for the petitioners would submit that it would be suffice, if the representations of the petitioners, dated 06.01.2016, 18.03.2016 and 20.05.2016 are disposed of by the respondents, in the light of Section 2(1) of the Act and also in the light of the Judgment of the Hon'ble Supreme Court stated supra, for which, the learned Central Government Standing Counsel appearing for the respondents 1 and 3 as well as the learned Special Government Pleader appearing for the second respondent, have no serious objection.

10.Considering the limited scope of the relief sought for, this Court, without going into the merits of the petitioners' claim, directs the respondents to consider the representations of the petitioners dated 06.01.2016, 18.03.2016 and 20.05.2016, in the light of Section 2(1) of the Act and also in the light of the Judgment of the **Hon'ble Supreme Court in Hira Tikkoo v. Union Territory Chandigarh & Others** reported in **CDJ 2004 SC 629** and pass orders on its own merit and in accordance with law, after affording due opportunity of hearing to the petitioners as well as any of the interested parties, within a period of six



weeks from the date of receipt of a copy of this order.

11. The writ petition is disposed of as above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(RTI)

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/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Ministry of Defence, Government of India,
101-A, South Block, New Delhi - 110 011.
2. The District Collector,
Thanjavur District,
Thanjavur - 613 005.
3. The Commanding Officer,
Thanjavur Air Force Station,
Thanjavur - 613 005.

+ 1 cc TO M/S.Veera Associates , Advocate in SR No. 88412

smn

AE/KK/SAR1/07.12.2017/5P/5C

ORDER MADE IN
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and
W.M.P (MD) No.9519 of 2016
20.11.2017