



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

WEB COPY

W.P(MD) No. 8331 of 2011

and

M.P(MD) No. 1 of 2011

K. Jayagopal

.. Petitioner

Vs.

1. The Competent Authority (Land Acquisition)
and District Revenue Officer,
Tiruchirappalli.

2. The Special Tahsildar (Land Acquisition)
Tiruchi-Karur National Highways No. 67
Tiruchirappalli.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned order dated 07.04.2011 in Na.Ka.C.29527/2007 passed by the first respondent and second memoranda dated 21.06.2011 bearing No.Na.Ka.A 1/11/2008 issued by the second respondent and quash the same.

For Petitioner

: Mr. I. Irulappan

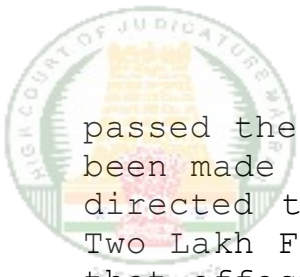
For Respondents

: Mr. M. Alagathevan,
Special Government Pleader

ORDER

This writ petition has been filed by the petitioner seeking a Writ of Certiorari, to quash the impugned order passed by the first respondent in Na.Ka.C.29527/2007, dated 07.04.2011 and the consequential memoranda passed by the second respondent in Na.Ka.A.1/11/2008 dated 21.06.2011.

2. According to the petitioner, his land in Survey No.143/5G2, measuring to an extent of 14 square metres was acquired by the respondents, under the National Highways Act and a compensation amount of Rs.4,98,375/- (Rupees Four Lakh Ninety Eight Thousand Three Hundred and Seventy Five only) was also awarded on 27.07.2010, in favour of the petitioner and the same was deposited in his account. While so, the grievance of the petitioner is that the respondents without issuing any notice,



passed the present impugned orders stating that excess payment has been made to the petitioner, with regard to the acquired lands and directed the petitioner to refund a sum of Rs.2,14,974/- (Rupees Two Lakh Fourteen Thousand Nine Hundred and Seventy Four only), to that effect. Aggrieved thereby, the present writ petition came to be filed.

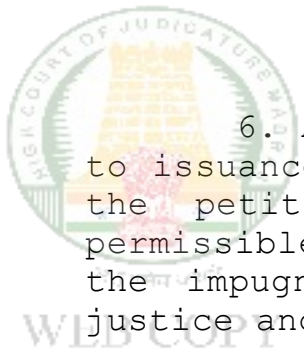
3. The learned Special Government Pleader filed a detailed counter affidavit contending that it was the excess payment alone, which the petitioner was directed to repay. The relevant portion of the same is as under:

"...Likewise in Serial No: 91, Award has been passed for S.F.No:143/5F, in which land value was fixed as Rs.1244.16. But there is no structure value, since there is structure value from the Competent Authority i.e PWD. But the PWD authority has issued value certificate for S.F.No:143/5G in two times. But they have mistakenly issued value certificate for 143/5F as 143/5G. For which one Murugan son of Thirugnanam appeared for enquiry under section 3G(3). But his claim was not tallied with the revenue records. Hence the said amount is ordered to be held over.

I submit that in Serial No: 092, Award has been passed for S.No:143/5G. In which the land value has been fixed as Rs.967.68. The structure value has been fixed as Rs.4,52,033/-. In which the structure value for S.F.No:143/5F of Rs.2,17,145/- has been mistakenly issued in S.F.No:143/5G instead of S.F.No:143/5F. Hence, the notification issued under section 3G(3) for S.F.No:143/5G for structure is mistaken one. For which Pattadar Jeyagopal appeared in person before Competent Authority under section 3G(3)"...

4. On the other hand, the learned Counsel for the petitioner stoutly refuted the averments made in the counter affidavit and submitted that the land of the petitioner was acquired pursuant to the acquisition proceedings initiated by the respondents and due compensation had also been paid to the petitioner by following all the legal formalities. Being satisfied with the same, the petitioner did not raise any litigations. But to his shock and surprise, the present impugned order of recovery came to be passed by simply stating that excess amount had been paid to the petitioner as compensation, that too, without proper intimation as well as without hearing the petitioner. Hence the improper recovery proceedings initiated cannot stand in the eyes of law, as the same is arbitrary exercise of power.

5. Heard the learned Counsel appearing for the petitioner and Special Government Pleader appearing for the respondents.



6. Admittedly, no notice was issued to the petitioner prior to issuance of recovery proceedings for the excess amount paid to the petitioner. It is a settled law that no recovery is permissible without following the due process of law. Therefore, the impugned order is violative of the principles of natural justice and the same is liable to be set aside.

7. In the result, the writ petition is allowed. The impugned order passed by the first respondent dated 07.04.2011 and the consequential memoranda passed by the second respondent dated 21.06.2011, are hereby set aside. The respondents are directed to issue notice along with all the relevant details to the petitioner, regarding the mistake crept-in in awarding the excessive amount effected in favour of the petitioner. Upon receiving the same, the petitioner is directed to file necessary objections and thereafter, it is open to the respondents to pass appropriate orders, on merits and in accordance with law, after affording due opportunity of hearing to the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Competent Authority (Land Acquisition)
and District Revenue Officer,
Tiruchirappalli.
2. The Special Tahsildar (Land Acquisition)
Tiruchi-Karur National Highways No.67
Tiruchirappalli.

+1cc to I.Irulappan, Advocate Sr.No.74350
+1cc to The Spl.Government Pleader Sr.No.74300

GK

VB/SV/MMS/SAR3/15/09/2017/3P/5C

ORDER MADE IN
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and
M.P (MD) No.1 of 2011
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