IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.Nos.1004 to 1008 of 2018

and

C.M.P.Nos.8513 to 8517 of 2018

Muthulakshmi ... Appellant in W.A.No.1004 of 2018
Veera Perumal ... Appellant in W.A.No.1005 of 2018
K.S.Loganathan ... Appellant in W.A.No.1006 of 2018
R.Karunanidhi ... Appellant in W.A.No.1007 of 2018
Mookaiya ... Appellant in W.A.No.1008 of 2018

versus

1.The District Collector,
Thiruvallur District.

2.The Tahsildar,
Thiruvallur

3.The Divisional Engineer,
National Highways,
Project Division - I,
Chennai.

4.The Commissioner,
HR & CE Administration,
Chennai. ... Respondents in all the Writ Appeals

PRAYER:

W.A.No.1004 of 2018: Appeal filed against the order passed by this Court dated 16.04.2018 passed in W.P.No.7427/2018.

W.A.No.1005 of 2018: Appeal filed against the order passed by this Court dated 16.04.2018 passed in W.P.No.7430/2018.

W.A.No.1006 of 2018: Appeal filed against the order passed by this Court dated 16.04.2018 passed in W.P.No.7431/2018.

W.A.No.1007 of 2018: Appeal filed against the order passed by this Court dated 16.04.2018 passed in W.P.No.7385/2018.

W.A.No.1008 of 2018: Appeal filed against the order passed by this Court dated 16.04.2018 passed in W.P.No.7386/2018.

W.P.Nos.7427,7430,7431,7385,7386 of 2018:

Common Prayer

Writ Petition filed Under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in proceedings Na.Ka. No.24058/ 2014/A1 dated 14.03.2018 on the file of 2nd respondent and quash the same as illegal incompetent and wholly without justification and further direct the respondents their men agents servants and subordinates not to interfere with the possession of the petitioners property in Survey No.140/1, No.1/67, Bazar Street, (Ayyanar Sweet Stalls), Survey No.140/1, No.1/65 Bazar Street, (Ayyanar Sweet Stalls), survey Number 140/1, No.1/67, Bazaar Street, (Saravana Stores) Survey No.140/1 No.1/69, Bazaar Street (Nandhini Sweet Stalls), Survey No.140/1(Part) No.1/66, Bazaar Street, (Murugan stores) respectively in Kadambathur Post, Tiruvallur.

For Appellants
in all the Writ Appeals : Mr.V.Raghavachari

For Respondents
in all the Writ Appeals : Mr.M.Karthikeyan
Additional Government Pleader
For respondents 1 to 3

Mr.M.Maharaja
Special Government Pleader
(HR & CE), for 4th respondent.

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in these intra Court appeals is to the common judgment made in W.P.Nos.7385, 7386, 7427, 7430 and 7431 of 2018 dated 16.04.2018 dismissing the said Writ petitions.

2. The challenge in the Writ Petitions was to the notices dated 14.03.2018 issued by the Tahsildar, Thiruvallur, the 2nd respondent herein, in and by the said notice, the 2nd respondent had assessed the compensation payable to the notices for the building put up by them in the land in S.No.140/1 of Kadambathur Village which was taken over by the Government from Arulmighu Muktheeswarar Temple.

The brief facts that led to the filing of the Writ Petitions are as follows:-

3. The petitioners claimed that they are tenants under the temple, they have put up constructions on the leased land and have been either residing there or doing business. An extent of about 1490 sq. metres in S.No.140/1 of Kadambathur Village, was required by the Government for construction of a road over bridge in the place of an existing railway level crossing.

4. It is not in dispute that the temple which was the owner of the land accepted the proposal of the Government for acquisition of the land and had received the compensation payable for the land in questions. It is also not in dispute that the land in question was leased out to various persons who had put up constructions. When the Government attempted to take possession of the lands after removal of the superstructures, certain other persons who were in occupation of the land in question by putting up constructions therein had filed Writ Petitions in W.P.Nos.7626 to 7630, 9736 and 9743 of 2016. Those Writ Petitions came to be disposed of by a common order dated 22.03.2017 directing the Government to make proper valuation of the buildings put up by the petitioners and pay compensation to them. While doing so this Court had observed as follows:

> " 4. Learned Additional Government Pleader appearing behalf of the respondents 1 to 3 submitted that a due valuation in accordance with P.W.D's guideline valuation of the superstructures will be arrived at, before their eviction.
>
> 5. Recording the submissions made by the respondents, this Court direct the respondents 1 to 3, to fix the value of the superstructures in the land as per the latest P.W.D's guideline value regulations. Only after payment of such value to the superstructures, they can seek for eviction"

5. It is not in dispute that pursuant to the said order, the respondents had assessed the compensation payable to various petitioners and had paid the same. The value of the buildings put up by the present appellants was not assessed when the exercise of assessing the value of the other superstructures was undertaken by the respondents. Subsequently, it was found that the buildings belonging to the present appellants were also situated in the land measuring 1708 sq. metres in S.No.140/1 and 142 that was taken over from Arulmighu Muktheeswarar temple. Following the earlier judgment of this Court referred to above, the Tahsildar, Thiruvallur, the 2nd respondent herein issued the impugned notices to the appellants indicating the value of the construction put up by them and requiring them to appear before him on 16.03.2018 for an enquiry. The said notices dated 14.03.2018 were the subject matter of challenge in the Writ Petitions.

6. The primary contention of the petitioners/ appellants before the Writ Court was that the land on which the superstructures belonging to them stood was not subject matter of acquisition and hence, the notices issued on 14.03.2018 are not enforceable. On the above contentions the petitioners sought for a Writ of Certiorarified mandamus to quash the notices dated 14.03.2018 and to forebear the respondents from interfering with the possession of the petitioners of the buildings that are in their occupation.

7. A common counter affidavit was filed by the 3rd respondent viz., The Divisional Engineer, Highways Department, Project Division, Chennai-44, wherein, it was claimed that when the proposals to acquire land for the purposes of construction of road over bridge were initiated, notices under Section 15(2) were issued to the owners of the land and publications was also made in tamil newspaper Dhinakaran on 05.01.2011. Subsequently, when it was brought to the notice of the Government that an extent of 1490 sq. metres in S.No.140/1 and an extent of 218 sq. metres in S.No.142 which were sought to be acquired belong to the Arulmighu Muktheeswarar Temple, the Government order was passed in G.O.Ms.No.180 dated 04.08.2015, in and by which, a compensation of Rs.1,37,88,685/- was paid to the temple towards the value of the land alone subject to the condition that the buildings, structures, residence and shops should be removed by the Highways Department on their own. It was also contended that the compensation of Rs.1,37,88,685/- has been paid over to the temple.

8. When the Authorities sought to take possession of the superstructures, the 7 of the occupants filed Writ Petitions in this Court in W.P.Nos.7626 to 7630, 9736 and 9743 of 2016. It was those Writ Petitions which came to be disposed of by a common order dated 22.03.2017, directing the Authorities to assess the value of the superstructure and pay the same to the occupants. Pursuant to the said order the value of the buildings put up by nearly 17 occupants were assessed and the compensation of Rs.98,80,563/- has been paid to them. The 17 occupants also handed over possession of the buildings to the Highways Department and the superstructures were demolished on 10.11.2017, 20.11.2017 and 22.11.2017. Thereafter, the Deputy Chief Engineer, Construction, Southern Railway by his letter No.148/CN/MAS/MK/861/A reported that the foundation work for the pillars could not be continued for want of clearance of site and on receipt of the said letter when an inspection was carried out it was found that the super structures belonging to the appellants which were situate in the portion of the land acquired in S.No.140/1, subsequently, subdivided as S.No.140/1B were not identified at the time when the other occupants were paid compensation. Hence, the 2nd respondent adopted P.W.D rates and arrived at a compensation of Rs.11,39,357/- payable to those 6 persons whose buildings were omitted to be valued when the valuation was done earlier during the year 2017. Following the earlier order made in the Writ Petitions, the 2nd respondent had after inspecting the buildings assessed the value of the building and issued notices dated 14.03.2018. It is at this juncture, the petitioners approached this Court claiming that the land on which their buildings are situate did not form part of the 1490 sq. metres in S.No.140/1 that was subject matter of the acquisition.

9. The learned Single Judge who heard the Writ Petitions by a common judgment dated 16.04.2018 dismissed the Writ Petitions holding that the lands in question did form part of an extent of 1490 sq. metres which was already acquired by the Government after paying the compensation to the temple. On such conclusion, the learned Single Judge dismissed the Writ Petitions. Aggrieved the petitioners in the Writ Petitions have come forward with these intra-Court appeals.

10. We have heard Mr.V.Raghavachari, learned counsel appearing for the appellants and Mr.M.Karthikeyan, learned Additional Government Pleader for respondents 1 to 3 and Mr.M.Maharaja, Special Government Pleader (HR & CE) for the 4th respondent.

11. When the matters were listed on 27.04.2018 in the light of the contentions of Mr.V.Raghavachari, learned counsel appearing for the appellants that the lands on which the superstructures of the appellants stood did not form part of the earlier acquisition proceedings, we had directed the learned Additional Government Pleader to produce the files relating to acquisition. Accordingly, the learned Additional Government Pleader produced the files relating to the acquisition. A perusal of the entire files demonstrates that the land on which the superstructures belonging to the petitioners stand did in fact form part of 1490 sq. metres acquired in S.No.140/1, which was subsequently subdivided as S.No.140/1B. The entire records have been placed before us. On a perusal of the records we are convinced that the land in question did form part of the land acquired from Arulmighu Muktheeswarar Temple. Therefore, the appellants will be entitled to only the limited relief of payment of compensation for the buildings put up by them as per the earlier order passed by this Court in W.P.Nos.7626 to 7630 of 2016 etc., batch.

12. Mr.V.Raghavachari, would however point out that in some of the correspondence, it is stated that the area for which compensation has been paid to the 17 persons as per the earlier orders passed in W.P.Nos.7626 to 7630 of 2016 etc., batch is more than 1708 sq. metres which was total land that was acquired from Arulmighu Muktheeswarar Temple. Relying upon such correspondence, Mr.V.Raghavachari, would attempt to project as if the lands which are in possession of the petitioners/ appellants were not subject matter of the acquisition.

13. We have examined the correspondence that has been produced by the learned counsel. The said correspondence is available in the files also. A perusal of the same would show that the area specified in those letters is the area of the buildings and not the land. The tabular column annexed to one such letter dated 21.03.2018 would show that the measurements found therein are the area of structures and not the area of the land.

14. Mr.V.Raghavachari, learned counsel appearing for the appellants would however contend that the valuation of the buildings put up by the appellants must be done in their presence after notice to them. He would submit that the valuation done in their absence cannot be taken note of by this Court.

15. Mr.M.Karthikeyan, learned Additional Government Pleader would fairly submit that no notice was issued to the appellants before the valuation was done by the 2^{nd} respondent. He would also point out that Section 20 of the Tamil Nadu Highways Act provides for a reference to the Court in the event of the land/ building owners are not satisfied with the valuation fixed by the Land Acquisition Officers.

16. We see some force in the contentions of Mr.V.Raghavachari, learned counsel appearing for the appellant regarding the valuation. As already pointed out, we are convinced that the land on which the buildings belonging to the petitioners/ appellants have been put up forms part of the area of 1490 sq. metres already acquired by the Government. Therefore, we reject the contentions of Mr.V.Raghavachari, learned counsel that the lands do not form part of the area that was acquired.

17. What remains to be considered is the payment of compensation for the value of the superstructures only. Taking note of the submission made by the learned Additional Government Pleader that the value of the buildings prescribed in the notices dated 14.03.2018 issued to the petitioners/ appellants was not determined after notice to the petitioners/ appellants. We deem it fit to direct the respondents to make a revaluation after issuing notices to the petitioners/ appellants and pay the compensation as fixed under the revaluation to the petitioners/ appellants before evicting them from the buildings in their occupation. It is open to the petitioners/ appellants to seek enhancement of the valuation if they desire so by invoking the provisions of Section 20 of the Tamil Nadu Highways Act which provides for a reference to the same.

18. In the light of the above conclusion we dispose of the above Writ Appeals with the following directions:

(i) The respondents are directed to issue individual notices to the appellants for inspection of the buildings in possession of the appellants and assess the value of the buildings.

(ii) After such assessment the respondents shall pay the value of the buildings as assessed by them to the petitioners.

(iii) On such payment to the petitioners/ appellants shall vacate and deliver vacant possession of the buildings in question.

19. It is seen that the buildings put up by the petitioners are either commercial or residential buildings. Taking note of the fact that the project was commenced even in the year 2011 it is already been late by nearly 7 years. We deem it fit to fix an outer time limit by which the process of valuation is completed and possession is handed over to the respondents. We therefore, direct the respondents to complete the process of valuation within four (4) weeks from the date of receipt of a copy of the judgment and offer the compensation to the appellants. The appellants shall vacate and handover possession of the buildings in their possession within a period of four (4) weeks thereafter on payment of compensation. It is made clear that the fixation of valuation of the buildings shall be final and shall not be called in question except by way of proceedings under Section 20 of the Tamil Nadu Highways Act.

20. Hence, the above Writ Appeals are disposed of with the above observations, however, in the circumstances there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Thiruvallur District.

2.The Tahsildar,
Thiruvallur.

3.The Divisional Engineer,
National Highways,
Project Division - I,
Chennai.

4.The Commissioner,
HR & CE Administration,
Chennai.

+1cc to the Government Pleader Sr.32799 & 32832

+2cc to M/S.V.Raghavachari, Advocate Sr.32164

sg[co]

srg 08/06/2018