

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.6076 of 2018
and
W.M.P.Nos.7492 & 7493 of 2018

G.Rajesh

...Petitioner

Versus

1. The State of Tamil Nadu,
Represented by its
Secretary to Government,
Highways and Minor Ports Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Tiruvallur District,
Tiruvallur.
3. The District Revenue Officer,
Tiruvallur District,
Tiruvallur.
4. The Revenue Divisional Officer,
Ambattur Sub-division,
Ambattur.
5. The Tahsildar,
Maduravoyal.
6. The Divisional Engineer,
(Highways),
Tiruvallur District,
Tiruvallur.
7. The Assistant Engineer, (Highways),
Ambattur Sub division,
Ambattur.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorarified Mandamus calling for connected records from the file of first

respondent and quash the Government Order published vide G.O.Ms.No.59 dated 29.05.2014 and further quash the entire proceedings of the fifth respondent and the impugned order No.1/2017 vide Na.Ka.No.4277/2014/B1 dated:14.12.2017 passed by the fifth respondent and to direct the respondents to make equitable acquisition and further compute compensation afresh having regard to the total compensation and other benefits payable as per Right to Fair Compensation Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

For Petitioner : Mr.K.Kulandaivelu

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

ORDER

1.1. The case of the petitioner is that he owns a piece of land in Survey No.640/24B and 640/27B situated in Alapakkam Main Road, Alapakkam Village, Tiruvallur District. This property abuts Alapakkam Main Road and has a total extent of 1,060 Sq.ft. There is a residential house constructed with a built up area of 2,600 sq.ft and another with 1,100 sq.ft. This property originally belonged to the petitioner's father Gnanasekaran and that the petitioner had obtained this property under a settlement deed dated 17.03.2014. While so, petitioner's property is sought to be acquired under the provisions of Tamil Nadu Highways Act, 2001 (hereinafter referred to as "Act") for widening the Alapakkam Road.

1.2. According to the petitioner, substantial portion of his property is likely to be consumed in the acquisition. After issuing necessary Notification under Section 15(1), an interim award was passed on 27.01.2017, where compensation was fixed in terms of the old Act with a promise to work out the compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Central Act 30 of 2013) (hereinafter referred to as "Right to Fair Compensation Act"). Subsequently, this was done in terms of G.O.Ms.No.59 Highways and Minor Ports (HF1) Department dated 29.05.2014 under Section as well as an interim compensation award dated 14.12.2017.

2. By consent, this case is taken up for final disposal.

3. The learned counsel for the petitioner argued that the entire acquisition is bad in law, inasmuch as, Section 105-A, inserted by Tamil Nadu Amendment into the Central Act 30 of 2013 itself prima facie suffered from unconstitutionality. This is an ingenuity of the legislature to deny the petitioner's right

to obtain all benefits under the Central Act 30 of 2013.

4. Mr.Akhil Akbar Ali, the learned Government Advocate takes notice for the respondents. He submitted that the final award would be passed after reckoning all the beneficial provisions of Right to Fair Compensation Act. He argued that the award has not yet been passed and it is under process. This Court therefore records the statement of the learned Government Advocate.

5. The learned counsel for the petitioner would now submit that it is not so much about determining the final compensation amount payable in terms of the Central Act 30 of 2013 that matters but the actual payment of compensation. He submitted that Section 38 of the Central Act 30/2013 mandates the Land Acquisition Authority shall pay the compensation in entirety within three months from the passing of the award.

6. Mr.Akhil Akbar Ali, the learned Government Advocate would argue that when Notification under Section 15(1) of the Act is issued, as per Section 16 of the Act, the land get vested in the Government and it can take possession of the property.

7. This Court experiences innumerable situations where compensation though determined, possession of the property acquired is though taken and utilised for purposes intended by the acquisition, yet compensation amount have not been paid in time. The fact that Section 16 of the Act enables the Government to take possession of the property does not imply or minimise their obligation to pay the compensation as and when the award is passed. Secondly, in every case of delayed payment, considerable amounts are paid as interest at a rate higher than the market rate. This is an atrocious way of managing public funds, and this pattern is noticed in several cases. Thirdly, every failure to pay the compensation amount in time invariably leads to the land owner approaching this court to ensure its payment, and this is not in the best interest of the legal system. An avoidable litigation shall be avoided, and it is impermissible to let the system develop cracks due to the irresponsibility of the land acquisition authorities.

8. In conclusion, this Court directs the third respondent to pass a final award in terms of the new enactment and Right to Fair Compensation Act within a period of three months till atleast 80% of the final compensation is paid. The possession of the property shall not be disturbed.

9. Accordingly, this Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

mrr

To :

1. The Secretary to Government,
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+1 CC to Mr.R. Karthikeyan, Advocate sr 21079.

+1 CC to Mr.R. Karthikeyan, Advocate sr 21079. (18/06/2018)

W.P.No.6076 of 2018

SP(04/06/2018)