

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 26.10.2018

Judgment Delivered on : 02.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

W.A.No.1719 of 2018
and
C.M.P.No.13767 of 2018

1. Mr.E.Sambandam
2. Ms.S.Mythili
3. Mr.S.Rajasekaran
4. Mr.S.Hari Baskar
5. Mr.S.Jeyshankar
6. Mr.S.Prabakar
7. Ms.Sridevi Kumaran
8. Mr.M.Chokkalingam
9. Ms.R.Uma
10. Ms.J.Ramya

... Appellants

Vs.

1. The District Collector,
Kancheepuram District.
2. The Special District Revenue Officer (LA),
SIPCOT Irungattukottai Indus. Expn. Scheme,
SIPCOT Project Office,
Pillaipakkam,
Near Sriperumbadur.

.. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.02.2018 passed by the learned Single Judge in W.P.No.16136 of 2017 on the file of this Court.

Praying in WP No.16136/2017 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus, directing the respondents to consider the representation dated 21.01.2017 and 14.02.2017 claiming the solatium and the additional amount in terms of Section 23(1) (A) and 23(2) of Land Acquisition Act 1 of 1894 and also to follow g.O.45 dt .14.5.2014 and declare all the Awards are interim compensation subject to payment of Additional Compensation under the Right to Fair Compensational Transparency

in and Acquisition Rehabilitation and Resettlement Act 2013 (Act 30 of 2013) if not all the Awards Passed under the repealed Act 1894 will become void.

For appellants : Mr.G.Ethirajulu

For respondent : Mr.C.Thirumaran, Spl.G.P.

JUDGMENT

R.SUBBIAH, J

This Writ Appeal has been filed as against the order dated 13.02.2018 passed in W.P.No.16136 of 2017, whereby the learned Single Judge has dismissed the Writ Petition filed by the appellants/writ petitioners to consider the representations dated 21.01.2017 and 14.02.2017 claiming the solatium and the additional amount in terms of Sections 23(1-A) and 23(2) of the Land Acquisition Act 1 of 1894 and also to follow G.O.No.45, dated 14.05.2014 and declare that all the Awards are interim compensation subject to payment of additional compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) if not, all the Awards passed under the repealed Act 1894 will become void.

2. Brief facts of the case are as follows:

(a) The appellants herein who are the writ petitioners before the learned Single Judge are the owners of the lands in Pillaipakkam Village, Sriperumbudur Taluk, Kanchipuram District. The particulars of the lands are as follows:

- (i) Survey No.78/3A1, 78/3A2, 24576 (Award No.20/2016);
- (ii) S.No.73/2A,1A, PT, 73/6A, 1PT (Award No.21 of 2016) (111374 Sq.Ft);
- (iii) S.No.73/A1APL, (19247 Sq.Ft) Award No.22/2016, Block (5) Unit-I;
- (iv) S.No.33/2Pr, 34/22Pr and 34/54Pr (120575 Sq.Ft.) Award No.22/16, Block I, Unit-I;
- (v) S.No.33/2 and 34/54 (58282 Sq.Ft.), Award No.23/16-Block I, Unit-I;
- (vi) S.No.40/16 to 40/30 (71478 Sq.Ft), Award No.11/16, Block 1, Unit-II.

The above lands were plotted out and an approved lay-out was formed and several of the plots were not sold, as there were no takers due to the likelihood of acquisition by the Government.

(b) While so, the aforesaid lands were acquired by the Government of Tamil Nadu for SIPCOT Irunkattukottai expansion scheme, vide Government Gazette, dated 10.03.2008. Subsequently, SIPCOT sold about 385 acres including the writ petitioners' lands specified above to M/s.Ashok Leyland for the purpose of establishing industry under the Special Economic Zone Scheme. While awarding compensation for the lands and the earmarked

portions for public purposes, viz., road, park, OSR etc., which were converted as industrial lands through 10.03.2008 Gazette Notification, were not taken into consideration, as the same were deemed to have been gifted to local authorities and the compensation would not be paid to the land owners, but only to the local bodies.

(c) Aggrieved by the action of the respondents, the appellants/writ petitioners filed Writ Petitions in W.P.Nos.24460 and 24461 of 2011 before this Court. Both the Writ Petitions were allowed by order dated 16.02.2012 and the respondents were directed to award compensation for the said lands also, which were not OSR lands after 10.03.2008 Notification, but industrial lands for which Patta and Revenue Records are registered in the name of the appellants/writ petitioners and also notified in the Gazette. Aggrieved by the aforesaid order of this Court, the respondents preferred Writ Appeals in W.A.Nos.1557 and 1558 of 2012 and a Division Bench of this Court dismissed the Writ Appeals on 31.03.2015 holding that the writ petitioners are entitled to compensation, pursuant to which, the respondents ordered interim compensation, vide Awards dated 22.02.2016 (20/16), dated 11.05.2016 (21/16), dated 19.09.2016 (22/16) (two Awards, one in Block-I and the other in Block-V), dated 19.09.2016 (23/16), dated 19.09.2016 (11/16-Unit II), dated 19.09.2016.

(d) The appellants/writ petitioners received the compensation Awards bearing No.(1) 20/2016, dated 22.02.2016, (2) 21/16, dated 11.05.2016, (3) 22/2016, Block V, Unit I, dated 19.09.2016, (4) Award No.22/16, Block I, Unit I dated 19.09.2016, (5) 23/16, dated 19.11.2016, (6) 11/16, Unit II dated 19/2016 under Section 7(2) of the Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997, under protest, as the quantum was not fixed in accordance with the provisions of the Land Acquisition Act. However, the appellants/writ petitioners were asked to sign an agreement in terms of Section 7(2) of the Act of 1997, and the amount so worked out, shall be in accordance with Sections 23, 23(1A) and 23(2) of the Act 1 of 1894 and included in the agreement. But the amount of compensation had not been worked out under Section 23(1A) and 23(2) of Act of 1894, and included, but only market value paid as per Section 23(1) in the agreement. The Land Acquisition Officers have not applied their mind to the fact that as this amount is not the contract amount fixed for the sale of the land negotiated between the Land Acquisition Officers and the appellants/writ petitioners--the land owners outside the scope of the Act of 1997, by giving individual notice under Section 7(5) of the Act of 1997, but the amount was fixed after following the land acquisition procedures.

(e) The Government already fixed market value based on the report of the Collector after following land acquisition procedure under Sections 23 and 24 of the Act 1 of 1894,

scrutinized and approved by the State Level Committee and then approved by the Government in G.O.141, dated 14.07.2008. When the appellants/writ petitioners' lands were allotted to M/s.Ashok Leyland Limited, these amounts were collected from M/s.Ashok Leyland Limited, and therefore, the appellants/writ petitioners are not objecting to the determination of market value. In the agreement executed, the statutory amounts to be paid under Sections 23(1-A) and 23(2) of the Act of 1894 being compulsory acquisition, had not been included as was done in the case of agreements executed under Section 11 of the Land Acquisition Act 1 of 1894 (vide Form C of the land acquisition (Tamil Nadu) Rules, G.O.Ms.No.892, Revenue Department, dated 11.06.1991). The market value agreed as per G.O.No.141, dated 14.07.2008, does not include solatium under Section 23(2) and 12% additional market value under Section 23(1-A). The Award has to include the break-up figures: (i) market value (ii) solatium under Section 23(2) and (iii) 12% additional market value under Section 23(1-A) and these may be ordered to be included.

(f) The State High Level Committee and the Government had kept the ground realities in mind and fixed the market value. Therefore, this is not a contract amount negotiated on one-to-one basis, but the market value was fixed as per the land acquisition procedures, though no opportunity was given to the appellants/writ petitioners under Section 7(5) of the Act of 1997, to negotiate the sale price. The appellants/writ petitioners made representations dated 21.01.2017 and 14.02.2017 to the respondents stating that as the Awards were passed by the Collector who is authorised to sign the Awards in his/her name and designation only under Section 7(3) of the Act of 1997 when it is referred to him, vide Section 7(3). All the Awards passed by the Collector are therefore under Section 7(3) of the said Act. Since the above representations were not considered, the appellants/writ petitioners have filed the present Writ Petition, which was dismissed by the learned Single Judge, against which the present Writ Appeal is filed by the appellants/writ petitioners.

3. When the Writ Appeal is taken up for consideration, learned counsel for the appellants/writ petitioners submitted that for arriving at the compensation, the amount has to be determined under Section 7 of the Act of 1997 and it does not mean that the amount determined under Section 7 is the final compensation. Sections 7(2) and 7(3) of the Act of 1997 are equivalent provisions and the only difference between these provisions is that under Section 7(2), the amount is determined by the agreement entered into between the parties. Further, in the present case, the parties entered into agreement under Section 7(2) of the Act of 1997 for determination of the amount alone and not for final compensation. The appellants/writ petitioners chose to protest the payment of final compensation

under Section 7(2) of the said Act. Learned counsel for the appellants further submitted that the appellants and the respondents never arrived at common grounds for the agreement. It is clear from the representation made by the appellants in November 2016 that the understanding of the appellants is that the determination of amount under Section 7(2) of the Act of 1997, will be followed by grant of compensation as per the new Land Acquisition Act of 2013. Hence, there was never a common understanding between the parties. Thus, learned counsel for the appellants/writ petitioners sought for a direction to the respondents to consider the representations dated 21.01.2017 and 14.02.2017 and prayed to allow the Writ Appeal.

4. Learned Special Government Pleader appearing for the respondents, by inviting the attention of this Court to Section 7(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, submitted that the subject lands along with the other lands were sought to be acquired for the purpose of expansion of the existing Irungattukottai Industrial Park at the request of the SIPCOT. The notification under Section 3(1) of the said Act of 1997, was published in the Gazette on 10.03.2008 after over-ruling the objections of the land owners as contemplated under Sections 3(2) and 3(3) of the said Act. Further, for the purpose of determining the amount payable to the land owners including the writ petitioners, the land value has been fixed as per the provisions of Section 7(2) of the said Act by way of private negotiations as agreed by the appellants/writ petitioners, who have consented to fix the land value through private negotiation. Accordingly, the District Level Committee and State Level Committee have sent recommendation to the Government based on the guideline value, transaction value of one year prior to Section 3(2) notice, dated 04.07.2007 and the prevailing land price in respect of the villages covered under acquisition and the Government, after careful consideration, accepted the recommendation of the State Level Committee and accorded permission to the District Collector to proceed further under Section 7(2) of the said Act of 1997. Thereafter, the appellants/writ petitioners had executed the agreements in Form-F, Rule 10 of the Tamil Nadu Acquisition of Land for Industrial Purposes Rules, and received the compensation knowing fully well that the agreement amount did not contain any other benefits such as solatium and interest as contemplated under Section 7(3) and 7(6) of the Act of 1997. In cases where no agreements have been reached, determination of the amounts had been arrived at by following the provisions of Sections 7(3) and 7(6) of the Act. In the instant case, the compensation amount had been determined and paid based on the agreement between the parties, and hence, the appellants/writ petitioners are not entitled to give representation. Therefore, learned Special Government Pleader submitted that there is no merit in the Writ Appeal and prayed that the Writ Appeal may be

dismissed.

5. Keeping in mind the above submissions made by the learned counsel appearing for the parties, we have carefully considered and the same and perused the materials available on record.

6. It is an admitted case that the amount of compensation was received by the appellants by executing the agreement under Section 7(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997, which reads as follows:

"Section 7: Determination of amount: ..

.. . . .

(2) Where the amount has been determined by agreement between the Government and the person to whom the amount has to be paid, it shall be paid in accordance with such agreement."

7. It is seen that the appellants/writ petitioners have executed the agreement under Form-F, Rule 10 of the Tamil Nadu Acquisition of Land for Industrial Purpose Rules. Clause 3 of Form-F reads as follows:

".. . . . Now, THEREFORE, the owner/person interested do hereby agrees with the Government as follows:-

.. . . .
.. . . .

(3) The owner/person interested shall not claim any amount in addition to the amount agreed upon aforesaid as compensation and accept it without any protest."

8. The said agreement was signed by the parties fully knowing well that they will not claim any further amount. The compensation received under Section 7(2) of the said Act of 1997, did not contain any other benefits such as solatium and interest as contemplated under Sections 7(3) and 7(6) of the said Act. Therefore, after receiving the amount without any protest, the question of directing the respondents to consider the representation(s) does not arise at all. In fact, the learned Single Judge, by well considered order, dismissed the Writ Petition by observing as follows:

"6. Reading Section 7(2) along with Section 7(4) of the Act would indicate that a consensual agreement as to the value payable for the acquired land may be arrived either under Section 7(2) of the Act or even during the pendency of an award proceedings under Section 7(3) of the Act. But the statute is

categorical that in either case, the amount payable to the owners of the land would be the one agreed upon between the parties under Section 7(2) of the Act. Necessarily it excludes the operation of Section 7(6) of the Industrial Purposes Act or any other provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30/2013) that might have replaced it. "

9. Therefore, we do not find any merit in the Writ Appeal, which is accordingly dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram District.
2. The Special District Revenue Officer (LA),
SIPCOT Irungattukottai Indus. Expn. Scheme,
SIPCOT Project Office,
Pillaipakkam, Near Sriperumbadur.

+1cc to Mr.G.Ethirajulu, Advocate SR.No.76017
+1cc to Government Pleader SR.No.76457 (21/12/2018)

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W.A.No.1719 of 2018

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