

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM : THE HON'BLE Mr.JUSTICE N.SESHASAYEE

W.P.No.31975 of 2017

Narayanasamy.R

..... Petitioner

Vs.

1.The District Collector
Office of the District Collectorate
Nagapattinam
Nagapattinam District.

2.The Special District Revenue Officer
(Land Acquisition)
Office of the Collectorate
Thiruvarur Post
Thiruvarur District.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the record of the impugned proceedings in Na.Ka.No.13244/2012 001 dated 22.05.2017, passed by the first respondent herein and quash the same as null and void and against the basic principles of natural justice and consequently direct the first respondent herein to work out the due compensation payable to petitioner in respect of the property to an extent of 1535 sq.mtr. under Survey Nos.221/26 (200 sq.mtr), 221/28 (400 sq.mtr.), 221/31B1 (450 sq.mtr. house) and 221/29 (485 sq.mtr) at No.10, Athipuliur Village, Kilvellore Taluk, Nagapattinam District of National Highways Road No.67, with reference to the covered judgment of Hon'ble High Court, Karnataka in W.P.Nos.42505, 42506 of 1999 c/w. W.P.No.35755/2000 dated 11.10.2002 in Lalitha and Another Vs. Union of India and others reported in AIR 2003 Karnataka, 165 also with reference to the proceeding of the National Highways Authority of India dated 18.8.2015 by strictly complying the mandatory provisions of circular dated 18.8.2015 issued by the National Highways Authority of India.

For Petitioner : Mr.G.Thangavel

For Respondents: Mr.A.Zakir Hussain

Government Advocate

O R D E R

1.1. The petitioner is the owner of a property measuring an extent of 1535 sq.mtrs. in Survey Nos.221/26 (200 sq.mtr), 221/28 (400 sq.mtr.), 221/31B1 (450 sq.mtr. house) and 221/29 (485 sq.mtr) at No.10, Athipuliur Village, Kilvellore Taluk, Nagapattinam District. This property was acquired under the provisions of the National Highways Act, 1956, for formation of National Highways NH-67, and an award was passed by the second respondent on 10.04.2012, fixing compensation at Rs.18/-per sq.mtr. for lands and Rs.140/-per sq.mtr for house premises. Aggrieved by the inadequacy of the compensation awarded, the petitioner has preferred an appeal before the first respondent and the appellate authority/first respondent. Vide its order dated 22.05.2017, has rejected the claim of the petitioner, wherein it is stated that as per the letter in NHAI/11013/Deputy General Manager (LA & Coord) RFCTLARR/2015/FTS-3247/70412 EHS dated 18.08.2015 of National Highways Department, New Delhi, the Awards that were issued on 01.01.2015 or after 01.01.2015 under National Highways Act 1956, were alone taken for consideration for enhancing the compensation under the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 2013), whereas insofar as the petitioner's case is concerned, the award was passed as early as 10.04.2012, and hence the petitioner's request cannot be considered. Challenging the impugned order dated 22.05.2017, the petitioner has filed the present writ petition.

1.2. In the affidavit filed in support of this petition, the petitioner had brought to the notice of the Court that for the properties of the adjacent land owners, the market value was determined at Rs.1,615/- per sq.mtr., Vide Award No.3/2015-16 dated 19.08.2015. Hence, the petitioner seeks parity in determining the value of the subject matter of his property also. Besides he would say that the petitioner must be given the benefit that would accrue consequent to the judgment of High Court of Karnataka in W.P.Nos.42505, 42506 of 1999 c/w.W.P.No.35755 of 2000 dated 11.10.2002 in Lalitha and Another Vs.Union of India [AIR 2003 KARNATAKA 165]. whereunder Section 3J of the National Highways Act, 1956 has been declared unconstitutional.

2. The learned counsel for the petitioner confined his argument to the beneficial consequences that would accrue in favour of the petitioner, consequent to the judgment in W.P.Nos.15699 of 2008 & batch etc., [Chakrapani & others Vs Union of India and others, (2011 Writ L.R.193)] and submitted that the petitioner would be entitled to all the benefits that flow out of the judgment of this Court dated 04.03.2011 in

Chakapani case, which was later confirmed by the Hon'ble Supreme Court Vide its order dated 11.07.2016 in Civil Appeal Nos.129 to 159 of 2014, holding that Section 3-J is unconstitutional and directed that the "respondents - writ petitioners be paid solatium as due in terms of the impugned order(s) along with interest thereon". Consequently, the petitioners became entitled to be treated in par with those owners who fall within the ambit of Land Acquisition Act, 1894, and have become entitled to solatium and interest payable in terms of the said Act.

3. No counter has been filed. Heard the learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government Advocate for the respondents.

4. The petitioner's contention is that since there was a direction by the Hon'ble Supreme Court Vide its order dated 11.07.2016 in Civil Appeal Nos.129 to 159 of 2014, to grant compensation to the land owners under the repealed Land Acquisition Act, 1894, the same parity may be shown to him, as his property, the subject matter of the present case, is also involved in the acquisition proceedings initiated by the National Highways Authority. The learned counsel for the petitioner reiterated that the present petitioner, since he was similarly if not identically placed with those petitioners in Chakrapani case, he too would be entitled to the benefit based on the law declared by the Hon'ble Supreme Court.

5. There is no denying the fact that Sec.3J of the National Highways Act, 1956 has been declared unconstitutional. Necessarily, those who were denied benefit earlier would be entitled to the benefit now.

6. This petition is therefore allowed with a direction to the respondent concerned to grant the petitioner the benefits such as solatium and the interest that were denied to the petitioner contrary to the decision of this Court and the Hon'ble Supreme Court holding that Sec.3J of the National Highways Act, 1956, as unconstitutional, within a period of twelve weeks from the date of receipt of copy of this order. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To

1.The District Collector
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Nagapattinam
Nagapattinam District.

2.The Special District Revenue Officer
(Land Acquisition)
Office of the Collectorate
Thiruvarur Post
Thiruvarur District.

+1cc to Mr.G.Thangavel, Advocate, S.R.No.14331

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CS/05/07/18



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