

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.290 to 292 of 2018

and

C.M.P.Nos.2212, 2213, 2214 and 2215 of 2018

1. The District Collector,
Kancheepuram District,
Kancheepuram.
 2. The Special Tahsildhar,
Land Acquisition,
IT Expressway Scheme,
Tambaram Taluk Office Building,
Chennai-600 047
- ... Appellants in W.A's

..Vs..

- 1.K.Sudhakar
 - 2.Amaresan
- .. Respondents in W.A.No.
290 of 2018
- 1.C.Mahonarangan
- .. Respondent in W.A.No.
291 of 2018
- 1.P.Paranthaman
 - 2.Kaliammal
 - 3.P.Sridhar
- .. Respondents in W.A.No.
292 of 2018

Prayer: Writ Appeals filed under Clause 15 of Letter Patent Act, against the order dated 15.06.2017 made in W.P.Nos.7517, 7518 and 5884 of 2017.

For Appellants : Mrs.A.Sree Jayanthi
(in all writ appeals)
For Respondents : Mr.S.Parthasarathy
(in all writ appeals)

COMMON JUDGMENT

(Judgment of the Court was delivered by K.K.SASIDHARAN, J.)

The competent authority under the Tamil Nadu Highways Act, 2001 issued a notice under Section 15(2) of the Tamil Nadu Highways Act proposing to acquire the land in the possession of the respective respondents for extension of six lane I.T.Expressway. The respondents in the respective Writ Appeals (hereinafter referred to as the respondents), raised objections. However, the Collector without passing orders for paying compensation took steps for taking possession. The Writ Petitions filed by the respondents were allowed by the learned Single Judge and a direction was given to the appellants to determine the compensation by treating the lands in the possession of the respondents as private lands.

The said order is under challenge in these intra court appeals.

2. We have heard the learned Special Government Pleader on behalf of the appellants. We have also heard the learned counsel for the respondents.

3. The documents available on record indicates that a notice under Section 15 (2) was issued calling upon the land owners or any other person having interest in such land to show cause as to why the land should not be acquired for creating six lane I.T. Expressway. The notice was published in "Dinathanthi" on 08 February 2009. The names of the respondents were shown in the said notice. The respondents submitted their objections wherein they have claimed ownership and possession of the lands in question. However, there was no follow up action taken to pay them compensation. The respondents therefore filed individual Writ Petitions for issuance of a Writ of Mandamus forbearing the appellants from evicting them from the lands stated to be in their possession and enjoyment. The learned Single Judge found that the land in question was "Gramanatham". The learned single Judge on the basis of the documents produced by the respondents arrived at a finding that

they have put up construction long back and they are in possession of the superstructure. The learned single Judge therefore arrived at a conclusion that the lands are private lands of the respondents and as such they are entitled to compensation. The learned Single Judge therefore directed the District Collector to determine the compensation payable to the respondents. The District Collector is aggrieved by the finding given by the learned single Judge with respect to the right claimed by the respondents.

4. The core question is as to whether the learned single Judge was correct in determining the nature of possession or the ownership of the land in question in a Writ Petition, under Article 226 of Constitution of India.

6. The Tamilnadu Highways Act, 2001 contains detailed provisions for acquisition of the land, determination of the compensation, reference to the Court and apportionment of the amount.

7. Section 15 (2) of the Tamil Nadu Highways Act gives an indication that not only the owner but even the person having interest in

the acquired lands are entitled to notice. The respondents have produced string of documents to prove their interest in lands. Therefore the possession of land ought to have been taken note of by the District Collector taking into account the documents filed by the respondents. Section 18 of the Tamilnadu Highways Act provides that even owners or person interested shall be entitled to receive compensation. Section 19 deals with determination of the amount. The Collector is competent to decide the question with regard to payment of compensation.

8. Section 19 (iii) of the Tamil Nadu Highways Act provides that in case there is no agreement with respect to payment of compensation, the Government shall refer the case to the Collector not only for the determination of the amount but also to decide the persons to whom such amount shall be paid. It is therefore very clear that Sub Section (iii) of Section 19 of the Act gives authority to the Collector for determination of the amount and as to the persons to whom the amount shall be paid.

9. Since the authority is constituted under the TamilNadu High Ways Act 2001 to determine the right claimed by those who are in

possession of land, the Court must relegate the parties to the competent Authority. There is no question of the Court taking over the designated function of the Collector under Section 19 (3) of the Act. We are therefore of the view that the learned single Judge was not correct in determining the right claimed by the respondents and thereafter directing the Collector to determine the compensation. Both the functions should be carried out by the Collector in his capacity as the authority under Section 19 (3) of the Tamilnadu Highways Act, 2001. We therefore of the view that the order passed by the learned single Judge requires modification.

10. The common order dated 15 June 2017 is set aside. The Writ Petitions in W.P.Nos. 7517 , 7518 and 5884 of 2017 are disposed of with a direction to the Collector to invoke Sub Section (3) of the Section 19 of the Tamilnadu State Highways Act, 2001 for determination of the amount payable for acquiring the land in question and the persons to whom such amount shall be paid.

11. The collector shall consider the entire documents produced by the respondents to take a decision as to whether they are entitled to

compensation. While taking such decision, the Collector shall also take note of Section 15(2) and Section 18 of the Tamil Nadu State High Ways Act 2001. The order must contain the reasons for taking decision one way or the other. It is open to the respondents to produce additional documents if any in support of their contentions that they are entitled to receive compensation on account of the acquisition. The respondents must also be given liberty of personal hearing before passing final orders by the District Collector, Kancheepuram. We make it clear that the District Collector shall consider the matter independently not withstanding the contentions taken in the counter affidavit.

12. We direct the District Collector/first appellant to dispose of the matter as expeditiously as possible and in any case, within a period of eight weeks from the date of receipt of a copy of this Judgment. The status-quo as on today with regard to the possession of the land shall be maintained till the disposal of the matter by the District Collector.

13.The intra Court appeals are disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

(K.K.SASIDHARAN, J.) (P.VELMURUGAN, J.)

26.03.2018

Index:Yes/No

Internet:Yes/No

Speaking Order/Non Speaking Order

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K.K.SASIDHARAN, J.
and
P.VELMURUGAN, J.

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W.A.Nos.290 to 292 of 2018

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