

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.2332 of 2017

R.Srinivasan

... Petitioner

-Vs-

1.Union of India

Rep by Secretary
National Highways Department
New Delhi.

2.National Highways Authority of India

Rep by its Project Director
Incharge of NH 45
Dindivanam
Villupuram District
Tamil Nadu.

3.The District Collector

Villupuram.

4.The Competent Authority (L.A.)

NH-45, Thindivanam Bye Pass
Villupuram Collectorate
Villupuram District
Tamil Nadu

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the fourth respondent to grant compensation under the repealed Land Acquisition Act 1894 as amended under Sections 23 (1-A), 23(2), 28 and other provisions of the said Act as declared in Civil Appeal No.129 to 159 of 2014 by the Apex Court dated 11.07.2016 in Union of India and Others Vs. T.Chakrapani and others pertaining to my lands in S.No.11/1B2 measuring an extent of 270 sq.mtrs. or 2906 sq.ft. at Kidangal Village, Tindivanam, Villupuram District.

For Petitioner : Mr.David Tyagaraj

For Respondents : Mr.M.Karthikeyan

Additional Government Pleader [R3 & R4]

Mrs.S.R.Sumathy [R2]

ORDER

1.1. The petitioner is the owner of a piece of land measuring 5.33 acres in Survey Nos.19/14, 6A, 20/1A, 1B, 1C, 2D and 2E of Kidangal Village, Tindivanam Taluk, Villupuram District, and another piece of property measuring 270 sq.mtrs (2906 sq.ft.) in Survey No.11/1B2 of the same village. This property was acquired under the provisions of the National Highways Act, 1956, for formation of National Highways NH-66 in Tindivanam Taluk, and an award too was passed by the fourth respondent on 18.12.2009, fixing the value of the land at Rs.192/- per sq.ft.

1.2. It is submitted by the petitioner that he had filed W.P.No.15818 and 15819 of 2008 challenging the Constitutional validity of 3-J the National Highways Act, 1956. Section 3J of the National Highways Act, 1956 excluded the operation of the Land Acquisition Act, 1894 in matters connected with the former Act, and this provision created irrational and arbitrary disparity in the matter of compensating the owners whose lands were acquired under the National Highways Act, 1956 on the one hand and those whose lands were acquired under the Land Acquisition Act, 1894. This Court Vide its Order in [Chakrapani & others Vs Union of India and others, (2011 Writ L.R.193)] dated 04.03.2011 in W.P.Nos.15699 of 2008 & batch etc., has allowed the said writ petition and has held that Section 3J of the National Highways Act, 1956 is unconstitutional.

1.3. Challenging the order of this Court dated 04.03.2011 W.P.Nos.15699 of 2008 & batch etc., the first respondent preferred Special Leave Petition in C.A.Nos.Nos.129-159 of 2014, in which the petitioner is the contesting respondent in C.A.Nos.130 and 131 of 2014. The Supreme Court, however confirmed the Order of this Court 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.

2.1. In the meantime, aggrieved by the compensation amount granted to him, the petitioner filed an application dated 30.07.2014 under Section 3G(5) of the Act for enhancement of compensation. The Arbitrator and District Collector, Villupuram Vide his order dated 09.9.2016 has enhanced the compensation value of the petitioner's land by 30% and fixed the land value at Rs.249.60/- per sq.ft. (or) Rs.2,688.40 per sq.m. plus 10%

additional amount to the enhanced rate and interest at the rate of 9% on the excess amount from the date of taking possession, under Section 3D of the Act till the date of issuance of the said order copy.

2.2. 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 and it lies adjacent to the properties that was covered under said acquisition in Civil Appeal Nos.129 to 159 of 2014.

3. The second respondent in its counter has alleged that the petitioner has filed Arbitration Petition in Arb.O.P.No.13 of 2017, challenging the order of the Arbitrator/District Collector, Villupuram under Sec.34 of the Arbitration and Conciliation Act, 1996 and the same is pending before the Principal District Judge, Villupuram. So far as the present prayer of the petitioner is concerned, it is alleged that the prayer of the petitioner cannot be accommodated as per the provisions 3-J of the National Highways Act, which on the face of it excludes the applicability of the Land Acquisition Act, 1894.

4. Mr.David Tyagaraj, learned counsel appearing for the petitioner submitted that while the facts as narrated in the affidavit is self-explanatory of the rights of the petitioner to seek compensation in terms of the Land Acquisition Act 1894. He reiterated the legal consequences that flows out of the judgment of the Supreme Court confirming the Order of this Court that held that Sec.3J of the National Highways Act is unconstitutional. Section 3J of the National Highways Act, 1956, excluded the operation of the Land Acquisition Act, 1894 in matters connected with under the former Act. The present petitioner, since are similarly if not identically placed with those petitioners in Chakrapani case, they too would be entitled to the benefit based on the law declared by the Hon'ble Supreme Court.

5. Heard Mr.M.Karthikeyan, learned Additional Government Pleader enters appearance for the second and third respondent and Mrs.S.R.Sumathy, learned counsel enters appearance for the second respondent.

6. 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.

7. This petition is therefore allowed with a direction to the fourth respondent 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
Villupuram.

2.The Competent Authority (L.A.)
NH-45, Thindivanam Bye Pass
Villupuram Collectorate
Villupuram District
Tamil Nadu

+2cc to Mr.DAVID TYAGARAJ, Advocate, S.R.No. 15602

W.P.No.2332 of 2017

LRS (CO)
TR(23/05/2018)

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