

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.2385 of 2014

and

W.P.M.P.Nos.1 & 2 of 2014, 1 of 2015

Veerapathira Chettiyar

...Petitioner

Versus

1. The Government of Tamil Nadu,
Energy Department,
Fort St.George,
Chennai - 600 009.
 2. The District Collector,
Kancheepuram District.
 3. The Special Tahsildar,
Land Acquisition Unit II ,
Ultra Mega Power Project,
Cheyyur, Kancheepuram District.
- ...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the impugned Notification in G.O.Ms.No.107 (C1) Energy Department dated 24.11.2011 published in the Tamil Nadu Government Extraordinary Gazettee No.442 of part II Sec.2 in so far as it relates to the petitioner's land is concerned of 3.76.0 Hectares in Survey No.208/1 of No.54 Chitharkadu Village, Cheyyur Taluk, Kancheepuram District and all subsequent proceedings pursuant thereto and quash the same.

For Petitioner : Mrs.A.L.Ganthimathi

For Respondents : Mr. Akhil Akbar Ali,
Government Advocate

O R D E R

The case of the petitioner is that he owned 3.76 hectares of land in Survey No.208/1 of Kancheepuram District. The said land along with others were proposed to be acquired under the provisions of the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997 (hereinafter referred to as "Industrial Purposes Act") for Ultra Mega Power Project at Cheyyur.

Necessary notification under Section 3(1) of the Act was published in the Gazette on 24.11.2011. The petitioner challenges the said notification on twin grounds:

a) That the mandatory personal notice under Section 3 (2) followed by an enquiry thereof under the Industrial Purposes Act was not complied in the manner contemplated by the statute and the District Collector was incompetent to issue the same.

b) That in view of the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (Central Act 30 of 2013), any acquisition may have to be initiated only under the aforesaid Act.

2. Mr.Akhil Akbar Ali, the learned Government Advocate entered appearance for the respondents. No counter affidavit is filed in this case. The learned Government Advocate submitted on instructions that in view of Section 105-A, which was inserted Vide Tamil Nadu Amendment to the Central Act 30 of 2013 read with Schedule-V, the acquisition was initiated under Industrial Purposes Act. He further added that the award is yet to be passed in this case which in terms of Section 105A too cannot be a derogation to the principles for quantifying the compensation under the Central Act 30 of 2013.

3. Section 105-A reads as follows:

"105-A. Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications-

(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3)
....."

3. The learned counsel for the petitioner now would respond that inasmuch as the Court has to presume the Constitutionality of Section 105-A of the Act for the present. The petitioner would be satisfied if an award would be passed instantaneous with the principles of quantifying the compensation conferable in terms of the Central Act 30 of 2013.

4. In view of the stands finally taken by the learned counsel for the petitioner, this Court modifies the prayer and directs the third respondent to issue notices to the petitioner to the address given in the Writ Petition to enable him to participate in the enquiry for passing the award and the said award shall be passed after granting an adequate and effective opportunity of hearing to the petitioner.

5. The third respondent shall take into account the principles of Central Act 30 of 2013 that provides for determining the compensation while passing the award. It is further directed that the respondent shall not disturb the petitioner till 80% of the compensation is paid.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mrr

To:

1. The Government of Tamil Nadu,
Energy Department,
Fort St. George,
Chennai - 600 009.

2. The District Collector,
Kancheepuram District.

3. The Special Tahsildar,
Land Acquisition Unit II ,
Ultra Mega Power Project,
Cheyyur, Kancheepuram District.

+1cc to Mr.AL.GANTHIMATHI, Advocate, S.R.No. 11418
+1cc to the Government Pleader, S.R.No. 12888

W.P.No.2385 of 2014

TR(07/06/2018)



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