

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.23564 of 2017
and
WMP.No.24714 of 2017

1.S.Jayavel
2.S.Muruganandam
3.S.Arul

... Petitioners

-Vs-

- 1.The Government of India
Ministry of Road Transport and Highways
Transport Bhavan
No.1, Parliamentary Street
New Delhi - 110 001.
- 2.The National Highways Authority of India
Rep by its Chairman
G-5&6, Sector 10, Dwarka
New Delhi - 110 075.
- 3.The Government of Tamil Nadu
Rep by its Principal Secretary
Department of Highways and Minor Port
Secretariat
Chennai - 9.
- 4.The District Collector cum Arbitrator
Collectorate
Kancheepuram
Kancheepuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to appoint the legally trained person as an Arbitrator under Section 3G(5) of the National Highways Act to decide the application of the petitioners for the redetermination of compensation by following the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 relating to the determination of the compensation in accordance with the First Schedule and Rehabilitation and Resettlement specified in the Second and Third Schedules in view of the order passed by the first respondent in S.O.2368(E) dated 28.08.2015, within the prescribed time.

For Petitioners : Mr.D.Muthukumar
For M/s.Paul and Paul

For Respondents : Mr.K.S.Jeyaganesh [for R1]
Mrs.S.R.Sumathy [for R2]
Mr.Akhil Akbar Ali
Government Advocate [for R3 & R4]

ORDER

1. The petitioners' case is that they owned a piece of property in Survey No.18/2 of Tambaram Village, Chennai and the same was acquired under the provisions of the National Highways Act, 1956, that the acquisition proceedings had commenced in the year 2008, and that an award was passed on 08.01.2014. The petitioners thereafter, submitted their request for referring the matter for statutory arbitration under Section 3G(5) of the National Highways Act, 1956 since they felt dissatisfied over the quantum of compensation awarded. In the meantime, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) (hereinafter would be referred to as Right to Fair Compensation Act) came into force on 01.1.2014. As per Section 105 of the Central Act 30/2013, as many as 13 Central enactments mentioned in the IV Schedule were initially exempted from the operation of Central Act 2013, but the same is made subject to Section 105(3) of the Central Act 2013.

2.1. Apprehending that the District Collector who is notified as the Statutory Arbitrator under the National Highways Act, 1956 might not have requisite legal acumen and expertise, and might not be able to interpret Sec.105 of the Central Act 30/2013 in its application to the arbitral dispute before him, the petitioners have come forward with the present petition with a prayer to direct the Government to notify someone who is trained in law to consider the arbitral dispute that they have raised under Section 3G(5) of the National Highways Act, 1956.

3. The second respondent has filed its counter. It is essentially directed against the prayer sought in the petition. It is contended that it is not given to the petitioner to seek who should be appointed as a Statutory Arbitrator, and at any rate the same cannot be case specific, specific to the case of the petitioner.

4. Heard Mr.D.Muthukumar, learned counsel appearing for the petitioners, Mr.K.S.Jeyaganesh, learned counsel for the first respondent, Mrs.S.R.Sumathy, learned counsel for the second respondent and Mr.Akhil Akbar Ali, learned Government Advocate

for the third and fourth respondents.

5. The learned counsel for the petitioners reiterated petitioners' apprehension that the District Collector may not have the requisite expertise in law to appreciate subtle aspects raised in his case. However, he conceded that if only the petitioners' apprehension are allayed, he may not even insist for a prayer such as the one sought, but would settle for a relief that can take care of the petitioners' apprehension.

6. Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) reads as below :

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications-

(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central 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 Fourth 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.

(4) -----

7. Under Schedule IV of the Right to Fair Compensation Act, the National Highways Act, 1956 is one of the statute exempted from the operation of the Central Act 30/2013. However, the Ministry for Rural Development has come with an Order dated

28.08.2015, issued in terms of Section 105(3) of the Central Act, 30/2013, that has enabled reading the provisions pertaining to payment of compensation, or extending rehabilitation or resettlement as might be required to be made under the Right to Fair Compensation Act to the acquisition made under the National Highways Act, 1956. This order was to take effect from 01.09.2015.

8. As indicated, the National Highways Act, 1956, is kept outside the purview of application of the Right to Fair Compensation Act, but only subject to what is stated in sub-section 3 of the Act. It can be deduced from a close reading of Section 105-A(3) : (a) that the Central Government shall by notification within a year from 01.01.2014, the date of commencement of Central Act 30/2013, direct any of the provisions of this Act that deal with determination of compensation, and rehabilitation and resettlement are provided who are being benefited to the affected families shall apply to cases of acquisition covered by 13 enactments listed in the IV Schedule; (b) that at any rate any such exemption or modification if contemplated, they shall not reduce the compensation or dilute the provision regarding compensation or rehabilitation or resettlement as provided in the Act. Therefore, it is possible to deduce that even dehors a notification as contemplated in Sec.105 (3), the spirit behind the same still guides one to understand that Parliament did not intend to differentiate or discriminate the land owners whose lands are acquired under any of the Statutes in Schedule IV, from the one whose lands are acquired under the provisions of Right to Fair Compensation Act.

9. The learned counsel for the petitioner submitted that the award in this case was passed on 08.01.2014, which is after the commencement of the Central Act 30/2013. He further argued that when award was not passed under the Land Acquisition Act, 1894, wherein the acquisition was initiated under the Land Acquisition Act 1894 and award was passed on 08.01.2014, after coming into force of the Central Act 30/2013 under Section 24(1) (b), award shall be passed only in terms of the Central Act 30/2013. He further argued that even though the Section 105(1) made an exemption to application of this provision as concerning the acquisition under the National Highways Act, 1956 inasmuch as Section 105 (1) is made subject to Sec. 105(3), the benefit of the new legislation shall not be denied to the petitioners as that would induce palpable discrimination of different categories of citizens who are affected by acquisition under various enactments. Therefore, it is necessary to apply the principles under the Central Act 30/2013 and since what is now arbitrated is, but a continuation of original proceedings the Arbitrator should apply principles governing payment of

compensation under the Central Act 30/2013.

10. There is considerable merit in the submission of the learned counsel appearing for the petitioner. However, the petitioner is well advised to place the same arguments for consideration of the Statutory Arbitrator. It is for the Statutory Arbitrator to appreciate the same. If the petitioner has not taken up any such grounds for invoking the Central Act 30/2013 before the Arbitrator, they are permitted to raise such additional grounds as may be necessary.

11. Accordingly, this petition is partially allowed with a modification that the petitioners may file additional grounds before the Statutory Arbitrator, within four weeks from the date of receipt of a copy of this order and the Statutory Arbitrator/ the fourth respondent shall dispose of the matter within four months thereafter, after affording effective opportunity to the petitioners to place their case. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

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To:

1. The Secretary,
Ministry of Road Transport and Highways
Government of India, Transport Bhavan
No.1, Parliamentary Street
New Delhi - 110 001.

2. The Chairman,
The National Highways Authority of India
G-5&6, Sector 10, Dwarka
New Delhi - 110 075.

3. The Principal Secretary
Government of Tamil Nadu
Department of Highways and Minor Port
Secretariat, Chennai - 9.

4.The District Collector cum Arbitrator
Collectorate, Kancheepuram
Kancheepuram District.

+1cc to Mr.K.S.Jeya Ganeshan, Advocate SR.No.10836
+1cc to Mr.Paul & Paul, Advocate SR.No.10818
+1cc to Mr.S.R.Sumathy, Advocate SR.No.10609

W.P.No.23564 of 2017

GN(12/03/2018)



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