

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.34287 of 2017

1. Habibunissa
 2. Mohammed Tamimul Ansari
 3. Mumtaj Begum
 4. Mohammed Sithi Bathul
 5. Mohammed Aashiq Palkiya
 6. Mohammed Hibuna Suhidu
 7. Abdul Basit
- (rep by their power agent Mohammed Tamimul Ansari the 2nd Petitioner herein)
- ... Petitioners

Vs

1. The District Collector,
Kancheepuram District.
 2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.
 3. The Special Tahsildar (Land Acquisition) Vth
TNHB Schemes, Nandanam, Chennai-600 035.
 4. The District Revenue Officer,
Kancheepuram District,
Kancheepuram.
- ... Respondents

Prayer:

Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 2nd respondent to pay the petitioners the enhanced compensation under Section 28A of the Land Acquisition Act. (Prayer amended as per order dated 09.01.2018 by NSSJ in W.M.P.No.579/2018 in W.P.No.34287/2017).

For Petitioners : Mr.Mohammed Fayaz Ali

For Respondents : Mr.Akhil Akbar Ali
Government Advocate
[For R1, R3 & R4]
Mr.B.Vivekavan
[For R2]

ORDER

The 2nd petitioner before this Court is the Power Agent of his mother Habibunnisa and other siblings. The case of the petitioners is that a piece of petitioners' property in S.Nos.334/1, 237/1A, 237/1B3 and 237/1A admeasuring 3.24 acres was acquired under the provisions of the Land Acquisition Act, 1894, and an award was passed by the 1st respondent dated 25.06.1993 in Award No.2/1993 and value of the property was fixed at Rs.550/- per cent for wet land and Rs.500/- per cent for dry land.

2. Challenging the inadequacy of the compensation awarded several land owners have moved for Referring the matter to the concerned Civil court under Section 18 of the Land Acquisition Act, 1894, and it was so referred, and was taken on file by the Sub-Court, Poonamallee in L.A.O.P. No.146 of 1994 batch of cases. By a common order dated 27.09.1995, the learned Sub-Judge enhanced the market value of the acquired property to Rs.10,000/- per cent. There was a further challenge to this Court, this time by the respondent in first appeal. This Court however, has reduced the market price from Rs.10,000/- to Rs.4,600/- per cent. In a batch of appeals arising from other connected awards of the Sub court, the Government had preferred appeals to this Court wherein this Court has fixed the market value at Rs.4,600/- per cent. This is followed by the Sub-Court, Poonamallee, in LAOP No.57/2001 and other cases that were disposed of on 30.07.2004. In other words, the market value payable towards compensation is fixed at Rs.4,600/- and it is not in dispute.

3.1. Be that as it may, pursuant to the representation of the petitioners seeking parity in payment of compensation under Sec.28-A of the Act, the same was taken up for an enquiry and Collector has passed an order dated 26.07.2010 allowing petitioners' request for grant of compensation to them in terms of Section 28A of the Land Acquisition Act, at the rate of Rs.4,600/- per cent.

3.2. The proceedings of the Collector also indicates that he requires the beneficiary namely, Housing Board, which is arrayed as 2nd respondent herein, to make available necessary funds to enable the petitioners and those who are similarly placed to have the enhanced amount paid to them.

4. The case of the petitioners is plain and straight forward. He requires the authority to pay compensation in terms of the proceedings of the District Collector dated 26.07.2010.

5. Mr.Akhil Akbar Ali, learned Government Advocate appearing

for the respondents 1, 3 and 4 and Mr.B.Vivekavanam, learned counsel appearing for the 2nd respondent.

6. The learned Government Advocate submitted a candid statement that it is waiting funds from the housing Board. This Court reminds the Government that its duty to pay compensation can never be made contingent upon Its beneficiary paying it. Its duty to the landowner is immediate, and from the stand point of the land owner, one who has been deprived of his substantial right to property, the obligation of the beneficiary to make available the funds for the acquisition-authority is irrelevant.

7. Mr.B.Vivekavanam, learned counsel for the Housing Board made a statement on instruction from Mr.Jayakumar, Special Tahsildar, Land Acquisition, Tamil Nadu Housing Board with the Government Order and taken a decision to address the pending claims of various land owners who were also part of the order of the District Collector under Section 28A of the said Act and the process of mobilising funds is underway.

8. The statement of the 2nd respondent is recorded.

9. In view of the fact that the authority concerned have woken up to the demands of the circumstances, this Court considers it appropriate to direct the respondents to make necessary payments payable to the petitioner pursuant to the order of the District Collector dated 26.07.2010 within a period of three months from the date of receipt of a copy of this order. With this direction, this petition is disposed of. No costs.

Post the case for reporting compliance on 07/09/2018.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ssn

To

1. The District Collector,
Kancheepuram District.
2. The Chairman,
Tamil Nadu Housing Board,
Nandanam, Chennai-600 035.

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3. The Special Tahsildar (Land Acquisition) Vth
TNHB Schemes, Nandanam, Chennai-600 035.

4. The District Revenue Officer,
Kancheepuram District,
Kancheepuram.

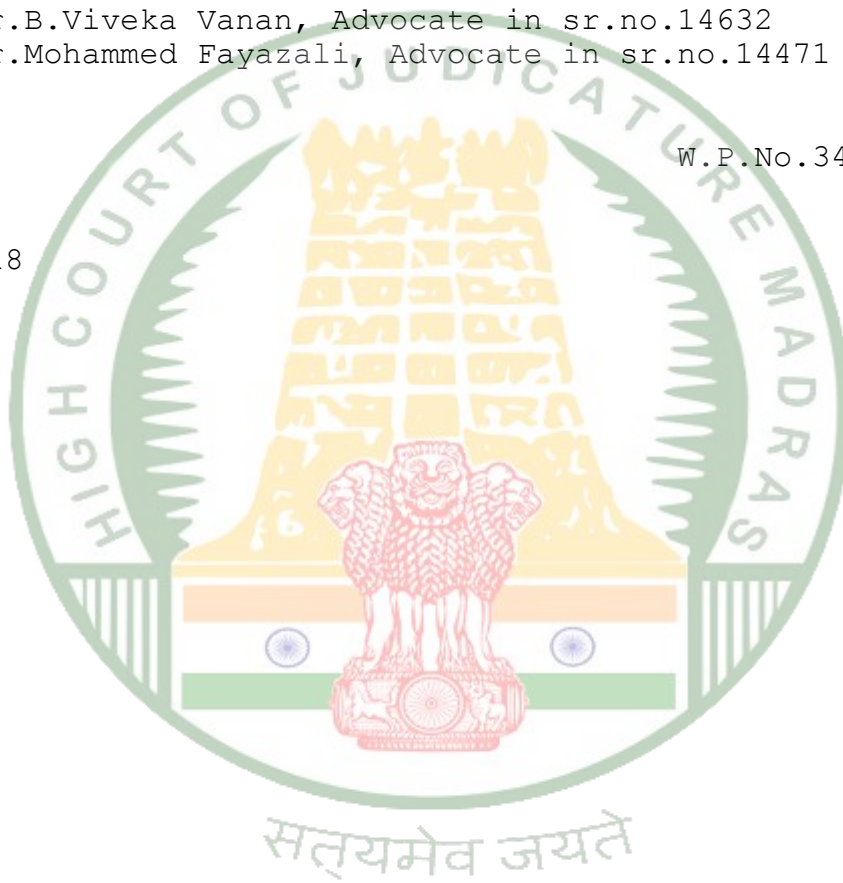
Copy To
The Section Officer,
VR Section, High Court,
Madras-104. (2 Copies)

+1cc to Mr.B.Viveka Vanan, Advocate in sr.no.14632

+1cc to Mr.Mohammed Fayazali, Advocate in sr.no.14471

W.P.No.34287 of 2017

RJ(CO)
CS/25/05/18



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