

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2018

CORAM : THE HON'BLE Mr.JUSTICE N.SESHASAYEE

W.P.No.16136 of 2017
and W.M.P.No.17431 of 2017

1.E.Sambandam
2.S.Mythili
3.S.Rajasekaran
4.S.Haribsakar
5.S.Jey Shankar
6.S.Prabhakar
7.Sridevi Kumaran
8.M.Chokkalingam
9.Uma
10.J.Ramya

.... Petitioners

Vs.

1.The District Collector,
Kancheepuram District,

2.The Special District Revenue Officer (LA)
SIPCOT Irungattukottai Industrial Expansion Scheme
SIPCOT Project Office, Pillaipakkam
Near Sriperumbudur.

.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents to consider the representation dated 21.01.2017 and 14.02.2017, claiming the solatium and the additional amount in terms of Section 23(1)(A) and 23(2) of the Land Acquisition Act 1 of 1894 and also to follow G.O.No.45 dated 14.05.2014 and declare all the awards are interim compensation subject to payment of additional compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) if not, all the awards passed under the repealed Act 1894 will become void.

For Petitioners : Mr.T.Murugamanickam
Senior Counsel
Assisted by Ms.K.Kala

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

ORDER

1. The case of the petitioners is that they owned a piece of property spread over several survey numbers and they were acquired under the provisions of the Tamil Nadu Acquisition of Land for the Industrial Purposes Act, 1997 (hereinafter referred as "Industrial Purposes Act" in brevity). Earlier petitioners offered some resistance to the said acquisition and the second and third petitioners herein have moved this Court with separate petitions in W.P.No.24461 of 2011 and W.P.No.24460 of 2011 respectively, and both the petitions were allowed on 16.02.2012, with a direction to the respondents to award compensation for their lands etc., Thereafter, the respondent have passed interim awards in Award No.20 of 2016 dated 22.02.2016, Award No.21 of 2016 dated 11.05.2016, Award No.22 of 2016 dated 19.09.2016, Award No.23 of 2016 dated 19.09.2016 and Award No.11 of 2016 dated 19.09.2016.

2. The learned counsel for the petitioners added that the petitioners were asked to sign an agreement under the terms of Sec. 7(2) of the said Act. However, the award amount must conform to Sections 23 and 23(1)(A) of the Land Acquisition Act, 1894. He would contend that Section 7(5) and Section 7(6) of the Act would also apply to the awards passed under Section 7(2) of the Act and therefore, when the Collector determines the price under Section 7(2) of the Act, the same shall not be in derogation or in contravention to Section 7(6) of the Act. In view of coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30/2013) the solatium has to be worked in terms of the Central Act 30/2013.

3. Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents has filed his counter. The essential point raised in the counter is that the compensation is paid in terms of the Section 7(2) of the Industrial Purposes Act, and therefore, the petitioner cannot claim anything that would not be part of the award unlike an award passed under Section 7(3) of the Act. The learned Government Advocate specifically brought to the notice of the Court that the representation made by the petitioners in this regard, which is available in the typed set of papers at Page Nos.28 and 38, wherein they have admitted that the award was passed in terms of Section 7(2) of the Industrial Purposes Act, 1997.

4. The rival submissions are carefully weighed. This Court is afraid that the petitioners' interpretation of Section 7 of the Industrial Purposes Act may not be correct. Section 7 of the Tamil Nadu Acquisition of Land for the Industrial Purposes Act, 1997 reads as follows :

7. Determination of amount:- (1) Where any land is

acquired by the Government under this Act, the Government shall pay an amount for such acquisition which shall be determined in accordance with the provisions of this section.

(2) Where the amount has been determined by agreement between the Government and the person to whom the amount has to be paid, it shall be paid in accordance with such agreement.

(3) Where no such agreement can be reached, the Government shall refer the case to the Collector for determination of the amount to be paid for such acquisition as also the person or persons to whom such amount shall be paid:

Provided that no amount exceeding such amount as the Government may, by general order, specify to be paid for such acquisition shall be determined by the Collector without the previous approval of the Government officer as the Government may appoint in this behalf.

(4) Notwithstanding anything contained in sub-section (3), after the case is referred to the Collector under that sub-section, but before he has finally determined the amount, if the amount is determined by agreement between the Government and the person to whom the amount has to be paid, such amount shall be paid by the Collector in accordance with such agreement.

(5) Before finally determining the amount, the Collector shall give an opportunity to every person to whom the amount has to be paid to state his case as to the amount.

(6) In determining the amount, the Collector shall be guided by the provisions contained in sections 23 and 24 and other relevant provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894), subject to modifications that, -

(a) in the said section 23, the references of the date of publication of the notification under section 4, sub-section (1) and the time of publication of the declaration under section 6 of the said Act shall be construed as references to the date of publication of notice under sub-sections (2) and (1), respectively, of section 2 of this Act; and

(b) in the said section 24, the references to the date of publication of notification under section 4, sub-section (1) and the date of publication of the declaration under section 6 of the said Act shall be construed as references to the date of publication of notice under sub-sections (2) and (1) respectively, of section 3 of this Act.

(7)
.....

5. Sec.7 does not employ the word 'compensation', but only the word 'an amount' to be paid for acquiring the land. In fact, this is the very expression that Parliament found convenient to employ to substitute the word 'compensation' when Art.31 was still an integral part of our Constitution. Sec.7(2) provides an option to the acquisition authority to purchase the land on private negotiation, where the parties, out of their free will, would determine the consideration payable, irrespective of how it is described in the statute. The statutory mode of determining the amount payable does not have a role here as the same stood replaced by the option of the land owner to consent to any price that is negotiated.

6. Reading Section 7(2) along with Section 7(4) of the Act would indicate that a consensual agreement as to the value payable for the acquired land may be arrived either under Section 7(2) of the Act or even during the pendency of an award proceedings under Section 7(3) of the Act. But the statute is categorical that in either case, the amount payable to the owners of the land would be the one agreed upon between the parties under Section 7(2) of the Act. Necessarily it excludes the operation of Section 7(6) of the Industrial Purposes Act or any other provision of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act 30/2013) that might have replaced it.

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7. In the result, this Court does not find any merit in the petition and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd

ASSISTANT REGISTRAR (C C C)

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SUB ASSISTANT REGISTRAR

To

1.The District Collector,
Kancheepuram District,

2.The Special District Revenue Officer (LA)
SIPCOT Irungattukottai Industrial Expansion Scheme
SIPCOT Project Office, Pillaipakkam
Near Sriperumbudur.

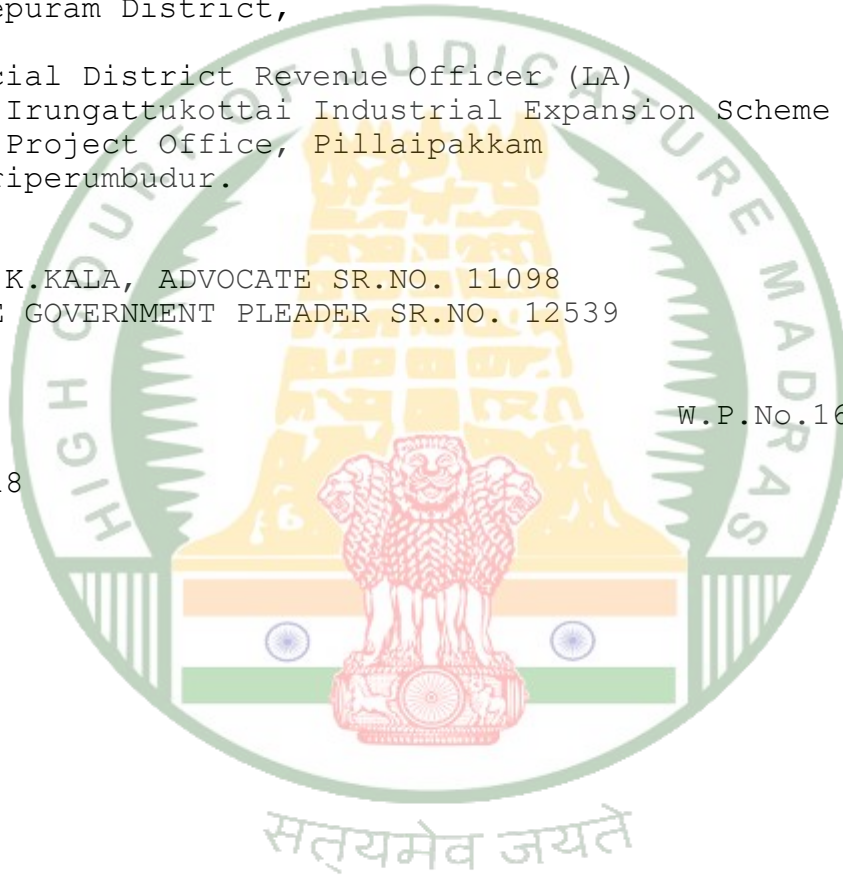
1CC TO Ms.K.KALA, ADVOCATE SR.NO. 11098

1CC TO THE GOVERNMENT PLEADER SR.NO. 12539

W.P.No.16136 of 2017

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