

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.16653 of 2017

Mr.Ritesh Kumar Dhariwal

... Petitioner

Vs

1. The State of Tamil Nadu,
Represented by its Secretary,
Industries Department,
Secretariat, Chennai-600 009.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Special Tahsildar (L.A.),
Oragadam Scheme,
SIPCOT, Irungattukottai,
Sriperumbudur Taluk,
Kancheepuram District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to redeliver the physical possession of the petitioner's land measuring 4.33 acres comprised in Survey Nos.467/1A and 467/1B, Mathur Village, Sriperumbudur Taluk, Kancheepuram District to him or in the alternative to pay appropriate compensation to him towards acquiring the same in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within the time frame fixed by this Court.

For Petitioner : Mr.T.Mohan
for M/s.K.Surendar

For Respondents : Mr.M.Karthikeyan
Additional Government Pleader

ORDER

The short question involved in this case is whether the petitioner is entitled to the benefit under Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act, 30 of 2013) or in the alternative to any other reliefs.

1.1. The petitioner owned a piece of property, measuring 4.33 acres in S.No.467/1A and 467/1B of Mathur Village in Sriperumbudur Taluk, Kancheepuram District, which he had purchased under two separate sale deeds dated 18.05.1992 and 25.05.1992, and these lands were acquired under the provisions of the Land Acquisition Act, 1894 for the purpose of formation of an Industrial Estate by the Tamil Nadu SIPCOT. After due issuance of notification under Section 4(1) followed by a declaration under Sec.6, on 06.05.1999, an award was made on 15.03.2001. At the relevant time, when the acquisition was underway, the petitioner had raised finance by mortgaging the property with the City Union Bank.

1.2. The case of the petitioner is that after passing of the award the authorities have not deposited the amount or paid the compensation amount either to him, or to the mortgagee, nor has it deposited it in the bank. Besides no notice of passing of the award contemplated under Section 12(2) of the Act too was served on the petitioner.

1.3. In the said circumstances, when the petitioner came to know of the passing of the award, it moved the authority to refer the matter under Section 18 of the Land Acquisition Act, to the concerned Civil Court. As this representation of the petitioner was preserved in the cold storage by the authority concerned, the petitioner has moved this Court in W.P.No.18691 of 2009, and this Court Vide its order dated 07.07.2010 directed the Special Tahsildar to consider the representation of the petitioner seeking reference under Section 18 of the Land Acquisition Act within four weeks. Even this order of this Court did not alter the status quo and therefore, the petitioner again sent another representation to the Special Tahsildar on 01.11.2010, reminding the latter of his application to make reference in terms of the Order of this Court in W.P.No.18691 of 2009. A reference was thereafter made and the same was taken on file in L.A.O.P.No.4 of 2011 and the same is still pending.

1.4. Be that as it may, the Land Acquisition Authority still did not pay the sum originally awarded either to the petitioner or to the mortgagee or deposited the same into the Court. In these circumstances, the petitioner has come forward with this

petition seeking to invoke Section 24(2) of the Central Act, 30 of 2013.

1.5. To support his contention, the learned counsel for the petitioner brought to the notice of this Court a communication received from the Special Tahsildar that the compensation amount was deposited in Sub-Court, Kancheepuram on 05.05.2017. The learned counsel further added that the petitioner's right to seek reference under Section 18 of the Act will operate independently of the obligation of the Land Acquisition Authority to pay the compensation amount in terms of the award originally passed under Sec.11 of the Act, either to the petitioner or to those interested in the property, or to deposit the same in the Court. Since none of them have happened prior to the commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act, 30 of 2013) on 01-01-2014, the entire acquisition proceedings has lapsed under Section 24 (2) of the said Act.

2. No counter is filed by the respondents. Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the respondents 1 to 3 and assisted by Mr.A.Thangaraj, Special Tahsildar (LA), Oragadam Existing Scheme, Irunkattukottai, Sriperumbudur made a statement that the compensation amount has been deposited only in the year 2017. However, the learned Additional Government Pleader submitted that the entire property has been utilised for the purposes connected with the industrial estate and therefore, even if a relief is granted under Section 24(2) of the said Act, it would be difficult to hand over possession back to the petitioner, a consequence that may visit the respondents in terms of the said provision. He also added in situation where the said lands lies about middle of the total property acquired even then it will hold inconvenience to leave a piece of land for the benefit of the petitioner as the same cannot be used for any purpose other than industrial purposes.

3. Mr.T.Mohan, learned counsel for the petitioner would submit that the petitioner would now settle for a compensation in terms of the Central Act 30 of 2013.

4. There is considerable force in the submission of the learned counsel for the petitioner. It may be that there is a case pursuant to the Reference made and the same is pending before the concerned Sub Court, but even here the respondents had dragged their feet almost infinitely. However, making a statutory reference to enable the owner of the land to seek enhancement of compensation is no answer to the official failure in failing to pay compensation in whatever mode available under law. Since the same has not taken place, the case falls within

the bounds of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act, 30 of 2013), instantly, and consequently the entire land acquisition proceeding should be declared as lapsed. However, in view of the prevailing state of affairs where it would be difficult for the petitioners to be put back in possession of the property, the prayer sought has to be necessarily modified, and accordingly the award dated 15.03.2001 alone needs to be set aside and the case must be treated as one that falls under Sec.24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act, 30 of 2013). In this regard, the petitioner himself has sought for an alternate prayer.

5. Nothing disturbs the conscience of this Court more than the manner in which the land acquisition authorities have dealt with the case such as this. In view of the state of affairs now created, the Government would be duty bound to defray more towards compensation in terms of the Central Act, 30 of 2013, and it is not an impressive or efficient way of handling public finance. This Court therefore, requires the Chief Secretary to Government of Tamil Nadu to hold an enquiry, fix responsibility on such officials who are responsible for the present state of affairs within six months from today and report the same to this Court on the action taken.

6. To conclude, this petition is partially allowed and the award dated 15.03.2001, is set aside and the respondents are directed to quantify the compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (Central Act, 30 of 2013) within a period of six months from today, and should report compliance to this Court, and where this Order is not so complied with, the land acquisition authority is directed to make a personal appearance and to explain why this order is not complied. Whatever amount already awarded may be paid to the petitioner and the same may be adjusted from the compensation amount to be determined in terms of this order. No costs.

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Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

ssn

To

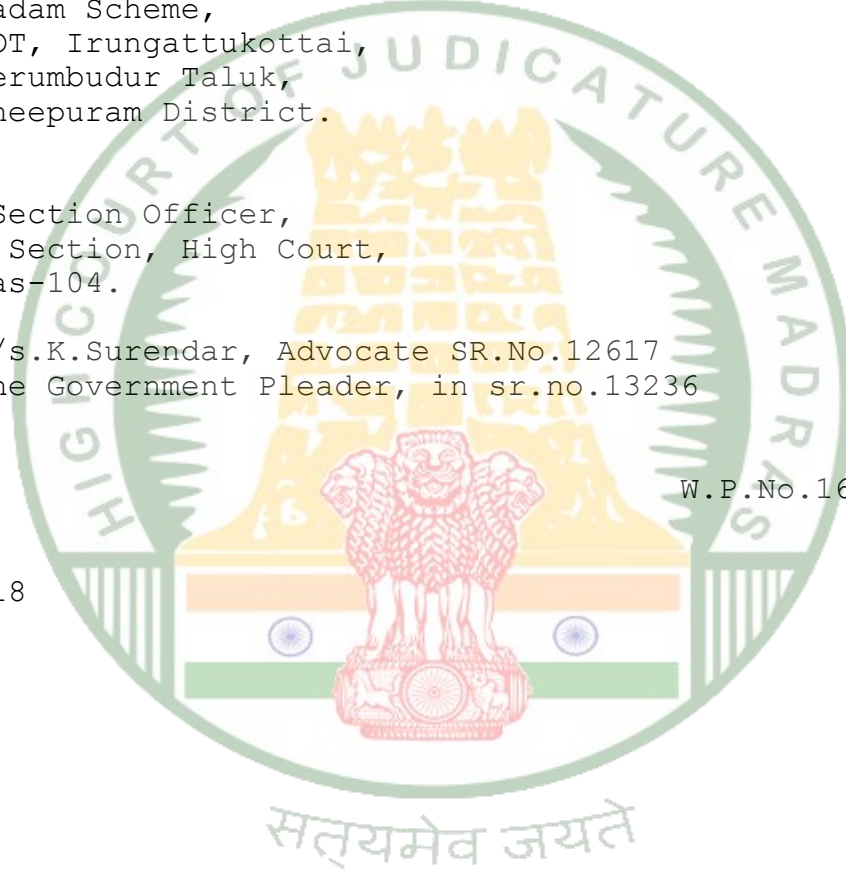
1. The Secretary,
Government of Tamil Nadu,
Industries Department,
Secretariat, Chennai-600 009.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Special Tahsildar (L.A.),
Oragadam Scheme,
SIPCOT, Irungattukottai,
Sriperumbudur Taluk,
Kancheepuram District.

Copy To
The Section Officer,
Writ Section, High Court,
Madras-104.

+1cc to M/s.K.Surendar, Advocate SR.No.12617
+1cc to The Government Pleader, in sr.no.13236

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CS/24/05/18



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