

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.18492 of 2017

and

W.M.P.Nos.20062 to 20064 of 2017

S.Pancharathinam

... Petitioner

Vs

1. The State of Tamilnadu,
Represented by its Principal Secretary,
Highways and minor ports (HS2) department,
St.Fort George, Chennai-600 009.
2. The Principal Secretary and
Commissioner of land administration,
Ezhilagam, Chepauk,
Chennai - 600 005.
3. The District Collector
O/o The District Collector
Coimbatore District.
4. The Chief Engineer, (Highways)
Construction and maintenance,
Tamilnadu state highways Department,
Ezhilagam, Merina Road,
Chennai - 600 005.
5. The District Revenue Officer,
Coimbatore District,
Coimbatore 641 018.
6. The Revenue Divisional Officer,
Coimbatore (North), Coimbatore - 641 018.
7. The Divisional Engineer, (Highways)
Construction and maintenance,
Coimbatore - 641 018.
8. The Superintending Engineer, (Highways)
Construction and maintenance,
Coimbatore - 641 018.

9. The Divisional Engineer,
National Highways,
Coimbatore - 641 001.
10. The Assistant Divisional Engineer,
National Highways,
Coimbatore - 641 001.
11. The Assistant Engineer,
National Highways,
Section-1,
Coimbatore - 641 001.
12. The Tahsildar,
Coimbatore-North,
Coimbatore District.
13. The Secretary
Department of Revenue,
Secretariat, Fort St. George,
Chennai. ... Respondents
(R13 is suo-motu impleaded
by this Court on 06.03.2018)

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari Mandamus calling for the entire records pertaining to the order of the 7th respondent in his proceedings in Na.Ka.No.3438/2011/A2 dated 27.10.2016 and consequential proceedings of the 6th respondent in Na.Ka.No.1508/2016/A1 dated 12.07.2017 and Na.Ka.No.1508/2016/A1 dated 17.07.2017 and quash the same consequently direct the Respondents herein to initiate proceedings for acquisition and determination of compensation of the lands of the Petitioner comprised in S.F.No's.766/1, 766/2, 772/1A measuring 28.5 cents, 34.5 cents and 80 cents respectively at Kalapatti village, Coimbatore North Taluk, Gandhipuram Sub-registration Taluk, Coimbatore Registration District in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay the Petitioner compensation under the said Act.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.M.Karthikeyan
1 to 8, 12 Additional Government Pleader

ORDER

1.1. The petitioners owned a block of 1.43 acres in Kalapatti village spread over three survey numbers, the details where of are tabulated below:

Sl.No.	S.F.No.	Measurement
1	772/1A	80 cents
2	766/1	28.5 cents
3	766/2	34.5 cents

In S.F.No.772/1A, the petitioner had constructed a building. While so, the respondents more particularly, the Highways Department have forcibly occupied and utilized the entire land for widening the road without resort to any land acquisition process. The building referred to above was demolished. This occupation and utilisation had taken place between 2008 and 2010 in two phases.

1.2. The entire exercise by the machinery of the Government is an insult to the rule of law. The petitioner, driven to the streets, and defenseless, raised his objections to the atrocious invasion on his right to property but they were not powerful enough to pierce the conscience of the authorities. He then moved this Court with W.P.No.20129 of 2008, wherein the respondents undertook to acquire the land the manner known to law, which *stricto sensu* is a promise to legitimise an illegality and it was accordingly disposed of on 19.08.2008. That promise / undertaking made before the Court was not kept which forced the petitioner to approach this Court a second time, now with Contempt Petition No.891/2008. That was closed after recording the statement of the Tahsildar to the effect that the property does not belong to any individual.

1.3. Thereafter, the petitioner was offered Rs.250/- per sq.ft., towards value of the property utilised, but the petitioner did not agree to this offer price. Subsequently, a meeting with the District Level Committee for negotiating on an agreeable price was held and now the petitioner was offered compensation based on the guideline value relevant to the year 2010. This was also confirmed by the Commissioner of Land Administration, Chennai, on 22.02.2012. Subsequently, the 3rd respondent / The District Collector had addressed the communication to the petitioner dated 17.03.2013 informing him that the negotiated price agreed during the meeting of the District Level Committee had been forwarded to the Government for obtaining necessary approval and that amounts would be disbursed to the petitioner thereafter. On

11-04-2014, the Government has passed a Government Order according administrative sanction for the land measuring 28.5 cents in S.No.776/1 and 80 cents in S.No.772/1A. The petitioner had again sent his representation dated 18.06.2014 and this time he required the authorities to work out 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), that came into force on 01-01-2014.

1.4. The petitioner having lost his property, was also driven to desperation when his right to be paid the just value of the property was not respected with the degree of sensitivity his cause demanded. He was under compulsion to get his 24 year old daughter married, and this circumstance was well exploited authorities and consequently he was constrained to execute: (a) a sale deeds in respect of the properties in 28.5 cents in S.No.766/1 for a sum of Rs.18,82,250/-. He was handed over a cheque for Rs.16,45,734/-, after deducting Income Tax; (b) another sale deed for 10 cents in S.No.772/1A for a total sum of Rs.45,18,914/- and he was issued a cheque for Rs.40,67,023/- after deducting the difference amount towards Income Tax.

1.5. Subsequently, they authorities prevailed upon the petitioner to accept the price for the building in S.No.772/1A which it determined at Rs.6,83,621/- and handed over a cheque for Rs.6,14,809/-, after adjusting the difference amount towards Income Tax.

1.6. Thereafter, the petitioner renewed his request through representation dated 20.11.2015, 02.06.2016 and 29.06.2016 to pay him a compensation in terms of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013). While so, on 03.07.2017, the Authorities came with heavy materials to demolish his cycle stand on S.F.No:772/1-A without payment of any compensation. They also planted a notice board on the property as if the same was acquired. This perceived highhandedness of the authorities has yet again compelled the petitioner to approach this Court with the present petition seeking issuance of a writ of certiorari for quashing the proceedings of the Divisional Engineer, Highways Department, dated 27.10.2016, where under compensation was payable based on the negotiated price was reduced to writing followed by another proceedings of the Revenue Divisional Officer in Na.Ka.No.1508/2016/A1 dated 12.07.2017, wherein the respondents are directed to execute a sale deed as regards 0.70 cents in S.No.772/1A.

2. Counter filed by the 12th Respondent and the same was adopted by the respondents 3, 4 and 6. It is primarily alleged that the petitioner was offered at least 50% more than the guideline value than prevailing guideline value at the relevant time for the properties in Survey Nos.766/1 & 772/1A and the value of the building was determined based on the Public Works Department's scheduled rate. It is also made clear that total amount of Rs.3,19,81,771/- is to be paid for a plot of 70 cents in Survey No. 772/1A and so far as others are concerned, the petitioner has voluntarily executed the sale deed.

3. The learned Counsel for the petitioner expressed the agony of the hapless citizen when the State which ought to protect its fundamental and other legal rights became its predator and hunted on them mercilessly. It is a case, argued the learned counsel, the entire power of the State machinery was unleashed on a defenseless citizen and that he was forced to sign on the dotted lines for receiving whatever that was offered as compensation. This apart, the learned counsel submitted that the respondents are also in occupation of 34.5 cents in Survey No.766/2 and the respondents are not bringing this property either to the negotiation table or consider it for a proper acquisition though post utilization of the property.

4. Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the respondents submitted that to remedy the wrong, the Government has adopted the method of private negotiation in order to expedite the process for paying him the just and fair value of the property. It is hence, he has executed at least two sale deeds as concerning two plots of land, one, as regards 10 cents in S.No.772/1A, and the other, for 28.5 cents in Survey No.766/1. The authorities are now ready with compensation for another extent of 70 cents in Survey No.772/1A, but the petitioner has been refusing to receive the same. The learned counsel also submitted that in both cases, the authorities have offered a compensation at least 50% in excess of the then prevailing guideline value.

5.1. As to the allegation of the petitioner that no compensation was offered for an extent of 34.5 cents in 766/2 is concerned, when this case was listed on 27.02.2018, it was stated on behalf of the Government that this plot of land was not utilised for laying the road and that as per the revenue records, this plot lie away from the road alignment in S.No.766/1. Since this aspect can be verified on land, this Court directed the Highways Authorities presented before this Court to conduct a survey by the Taluk Head Surveyor after giving notice to the petitioner on 03.03.2018, and 04.03.2018. It is reported that this exercise is since completed.

5.2. Mr.P.Manivannan, Assistant Divisional Engineer, Highways-Construction & Maintenance, Coimbatore South and Mr. A.K.Muthukumar, Deputy Inspector of Survey, Coimbatore North Taluk, Coimbatore and Mr.G.Nimalan Christopher, Firka Surveyor-Saravanampatty, Coimbatore North Taluk, Coimbatore are present before this Court. Mr.G.Nimalan Christopher, Head Surveyor has made a statement through the learned Additional Government Pleader that S.No.766/2 has an extent of 35.75 cents out of which, 33.25 cents have been utilised for widening the road by the respondents and in remaining extent of 2.5 cents there are encroachers.

6. The learned Additional Government Pleader made a statement on instruction that the Government would take necessary steps either to go for private negotiation with the petitioner or would acquire the land after obtaining necessary administrative approval from the Government in this regard.

7. Even though the petitioner has alleged in his affidavit that he has been in duress to execute the sale deed, inasmuch as the jurisdiction of this Court in judicial review is limited, it cannot go into question of fact and as on date, he may not even be able to challenge the same before the Civil Court. However, the learned Counsel for the petitioner submitted on instruction that the petitioner is willing to accept the compensation as has been determined so far for 1.08 acres out of which, he has already obtained compensation for 38.5 cents. And, as to the 33.25 cents in Survey No.766/2 is concerned, since the respondents have admitted that the same has been utilised for widening the road almost after a span of 10 years, it necessarily have to compensate the petitioner.

8. It is however made clear that inasmuch as the petitioner has already accused the respondents of forcing the compensation amount on him by exploiting his financial constraints, it is necessary for the respondents to make payment of balance compensation amount that represents the compensation amount for 70 cents in Survey No.772/1A which is now ready for payment as a condition precedent for quantifying the compensation for 33.25 cents in S.No.766/2. So far as the 33.25 cents in S.F.No:766/2 is concerned, the respondents 3 and 7 are directed either to negotiate with the petitioner on the current value of the property or to initiate appropriate acquisition proceedings and determine the compensation as per law now applicable to the situation. The entire exercise shall conclude within a period of six months from today.

9. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10. Post the matter for reporting compliance on 03.09.2018.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn

To

1. The State of Tamilnadu,
Represented by its Principal Secretary,
Highways and minor ports (HS2) department,
St.Fort George,
Chennai-600 009.
2. The Principal Secretary and
Commissioner of land administration,
Ezhilagam, Chepauk,
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12. The Tahsildar,
Coimbatore-North,
Coimbatore District.
13. The Secretary
Department of Revenue,
Secretariat,
Fort St.George,
Chennai.
14. The Section Officer,
Writ Section,
High Court Madras.

+2cc to Mr.R.Selvakumar, Advocate, S.R.No.17245

+1cc to the Government Pleader, S.R.No.18099

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LRS (CO)

RRK (05/04/2018)