

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

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

W.P.No.1935 of 2017
and WMP.No.1930 of 2017

J.Bhavani

..... Petitioner

Vs.

1.The District Collector-cum-Land
Acquisition Officer (Arbitration)
Office of the District Collectorate
Nagapattinam
Nagapattinam District.

2.The Special District Revenue Officer
(Land Acquisition)
Office of the Collectorate
Thiruvarur Post
Thiruvarur District.

.... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the record of the impugned proceedings in LA.No.100/2013 dated 28.09.2015, passed by the first respondent herein received on 3.11.2015 and quash the same as null and void and against the basic principles of natural justice and consequently direct the first respondent herein to work out the due compensation payable to petitioner in respect of the Survey No.204/6 ad-measuring 400 sq.mtr. at No.10, Athipuliur Village, Kilvellore Taluk, Nagapattinam District of National Highways Road No.67, with reference to the covered judgment of Hon'ble High Court, Karnataka in W.P.Nos.42505, 42506 of 1999 c/w. W.P.No.35755/2000 dated 11.10.2002 in Lalitha and Another Vs. Union of India and others reported in AIR 2003 Karnataka, 165 also with reference to the proceeding of the National Highways Authority of India dated 18.8.2015 by strictly complying the mandatory provisions of circular dated 18.8.2015 issued by the National Highways Authority of India.

For Petitioner : Mr.G.Thangavel
For Respondents : Mr.A.Zakir Hussain
Government Advocate

O R D E R

1.1. The petitioner is the owner of a piece of land measuring an extent of 400 sq.mtrs. in Survey No.204/6, No.10, Athupuliyur Village, Keelvelur Taluk, Nagapattinam. This property was acquired under the provisions of the National Highways Act, 1956, for formation of National Highways NH-67, and an award was passed by the second respondent on 10.04.2012, fixing the value of the land at Rs.18/- per sq.mtr. Aggrieved by the inadequacy of the compensation awarded, the petitioner has preferred an appeal before the first respondent, and the appellate authority/first respondent Vide its order dated 28.09.2015, has increased the compensation only to Rs.21.82/- per sq.mtr.

1.2. In the appeal filed by the petitioner, it is contended that the properties of the adjacent land owners that was also acquired under the said acquisition in the year 2007, was granted a compensation of Rs.270/- per sq.mtr. Even in the affidavit filed in support of this petition, the petitioner had brought to the notice of the Court that for the property of certain Manickam, which is 450 feet away from his land, the land value was determined at Rs.1,615/- per sq.mtr., Vide Award No.3/2015-16 dated 19.08.2015. Hence, the petitioner seeks parity in determining the compensation for the subject matter of her property also.

2. The learned counsel for the petitioner in support of his contention has relied on the judgment of High Court of Karnataka in W.P.Nos.42505, 42506 of 1999 c/w.W.P.No.35755 of 2000 dated 11.10.2002 in Lalitha and Another Vs.Union of India [AIR 2003 KARNATAKA 165].

3. No counter in this case has been filed. Heard the learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government Advocate for the respondents.

4.1. The learned counsel for the petitioner also brought to the notice of this Court Chakrapani case, challenging the Constitutional validity of 3-J the National Highways Act, 1956. This Court Vide its order dated 04.03.2011 in W.P.Nos.15699 of 2008 & batch etc., [Chakrapani & others Vs Union of India and others, (2011 Writ L.R.193)], has held that Section 3J of the

National Highways Act, 1956 is unconstitutional. Section 3J of the National Highways Act, 1956 excluded the operation of the Land Acquisition Act, 1894 in matters connected with the former Act, and this provision created irrational and arbitrary disparity in the matter of compensating the owners whose lands were acquired under the National Highways Act, 1956 on the one hand and those whose lands were acquired under the Land Acquisition Act, 1894.

4.2. Challenging the said order of this Court dated 04.03.2011 W.P.Nos.15699 of 2008 & batch etc., the land acquisition authority preferred Special Leave Petition in C.A.Nos.Nos.129-159 of 2014. The Supreme Court, however confirmed the Order of this Court holding that Section 3-J is unconstitutional and directed that the "respondents - writ petitioners be paid solatium as due in terms of the impugned order(s) along with interest thereon". Consequently, the petitioners became entitled to be treated in par with those owners who fall within the ambit of Land Acquisition Act, 1894, and have become entitled to solatium and interest payable in terms of the said Act.

4.3. The petitioner's contention is that since there was a direction by the Hon'ble Supreme Court Vide its order dated 11.07.2016 in Civil Appeal Nos.129 to 159 of 2014, to grant compensation to the land owners under the repealed Land Acquisition Act, 1894, the same parity may be shown to her, as her property, the subject matter of the present case, is also involved in the acquisition proceedings initiated by the National Highways Authority. The learned counsel for the petitioner reiterated that the present petitioner, since was similarly if not identically placed with those petitioners in Chakrapani case, she too would be entitled to the benefit based on the law declared by the Hon'ble Supreme Court.

5. There is no denying the fact that Sec.3J of the National Highways Act, 1956 has been declared unconstitutional. Necessarily, those who were denied benefit earlier would be entitled to the benefit now.

6. This petition is therefore allowed with a direction to the respondent concerned to grant the petitioner the benefits such as solatium and the interest that were denied to the petitioner contrary to the decision of this Court and the Hon'ble Supreme Court holding that Sec.3J of the National Highways Act, 1956, as unconstitutional, within a period of

twelve weeks from the date of receipt of copy of this order.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector-cum-Land
Acquisition Officer (Arbitration)
Office of the District Collectorate
Nagapattinam
Nagapattinam District.
2. The Special District Revenue Officer
(Land Acquisition)
Office of the Collectorate
Thiruvarur Post
Thiruvarur District.

+1cc to Mr.G.Thangavel, Advocate, S.R.No.14333
+1cc to the Government Pleader, S.R.No.14229

W.P.No.1935 of 2017

CS(CO)
CS/05/07/18

सत्यमेव जयते
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