

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.23008 of 2010
and
W.P.M.P.Nos.1 & 2 of 2010

Zeno Pereira

...Petitioner

Versus

1. The Collector,
Kancheepuram District,
Kancheepuram.

2. The Special Tahsildar (L.A),
SIPCOT Office 5,
Sriperumbudur Expansion Scheme,
Sriperumbudur,
Kancheepuram District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorari calling for the records on the file of the respondent relating to the impugned notice in Na.Ka.12/2010 dated 08.02.2010 passed by the second respondent pertaining to the acquisition of lands belonging to me in Survey Number 242/7, Plot No.484 measuring an extent of 2242 Sq.ft at No.178, Karanipattu Village have been acquired by the second respondent for SIPCOT Expansion Scheme in Sriperumbudur, Kancheepuram District and to quash the same

For Petitioner : Mr.David Thygaraj

For Respondents : Mr.M.Karthikeyan,
Additional Government Pleader

O R D E R

In this Writ Petition, the petitioner challenges a Notice dated 08.02.2010 issued under Section 3(2) of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (TN Act 10 of 1999) (hereinafter referred to as "Act").

2. Mr.M.Karthikeyan, the learned Additional Government Pleader appearing for the respondents submitted that an enquiry under Section 3(1) of the Act has been issued in G.O.Ms.No.182 Industries (SIPCOT-LA). However, he added that an award has not

been passed. The learned counsel for the petitioner submits that in view of the fact that a Notification has already been passed and the petitioner ought to challenge the said notification.

3. Responding to the same, the learned counsel for the petitioner would submit that he might not press the original relief sought in the writ petition but would be satisfied if the award is passed as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) (hereinafter referred to as "Right to Fair Compensation Act"). On this, the learned Additional Government Pleader submitted that an award to be passed in terms of the provisions of Central Act 30 of 2013.

4. As there is a consensus about the law or principles to be applied for computing the compensation and other allied benefits, and passing of the award, and since the petitioner is also not pressing hard the relief he has originally sought in this petition, the relief sought has to be suitably modified.

5. The ancillary issue here is, if the principles or the manner by which compensation is to be paid under the Right to Fair Compensation Act, 2013, should be telescoped into the Industrial Purposes Act. Here Section 105-A becomes relevant and it reads :

"105-A. Provisions of this Act not to apply in certain cases or to apply in certain Tami Nadu Acts or to apply with certain modifications-

(1) Subject to sub-section(2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(3)
....."

6. This Court has to presume the Constitutionality of Section 105-A, challenge to it notwithstanding, now pending consideration before a Division Bench of this Court. Section 105-A(2), if closely read, does not attempt to carve out an absolute exemption from the operation of the Right to Fair Compensation Act, more particularly, those that deal with the beneficial aspects to the owners of the lands acquired. It only requires a notification to do it, but it also ushers in to declare the same should not "reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement". The Government too came up with G.O.(Ms.)No.182 Industries (SIPCOT-LA) Department, and extended the benefits that the Right to Fair Compensation Act confers on the owners of the lands acquired to those who are similarly placed in an acquisition proceedings under the Industrial Purposes Act. And, this is no more res integra, and is decided in V.Sathish Kumar and Others Vs. The Secretary to Government, Industries Department, Government of Tamil Nadu and Others reported in [MANU/TN/1116/2017]. This Court is in agreement with the said view.

6. In the end, this Writ Petition is disposed of with the modification with a direction to the Land Acquisition Authority to pass an award in terms of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) after issuing due notice to the petitioner at the address given in the petition. Since the acquisition matter is pending for a considerable length of time, now the whole exercise is directed to be completed within a period of six months from now.

7. Accordingly, this Writ Petition is disposed of with the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

सत्यमेव जयते
Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

mrr

To

1. The Collector,
Kancheepuram District,
Kancheepuram.

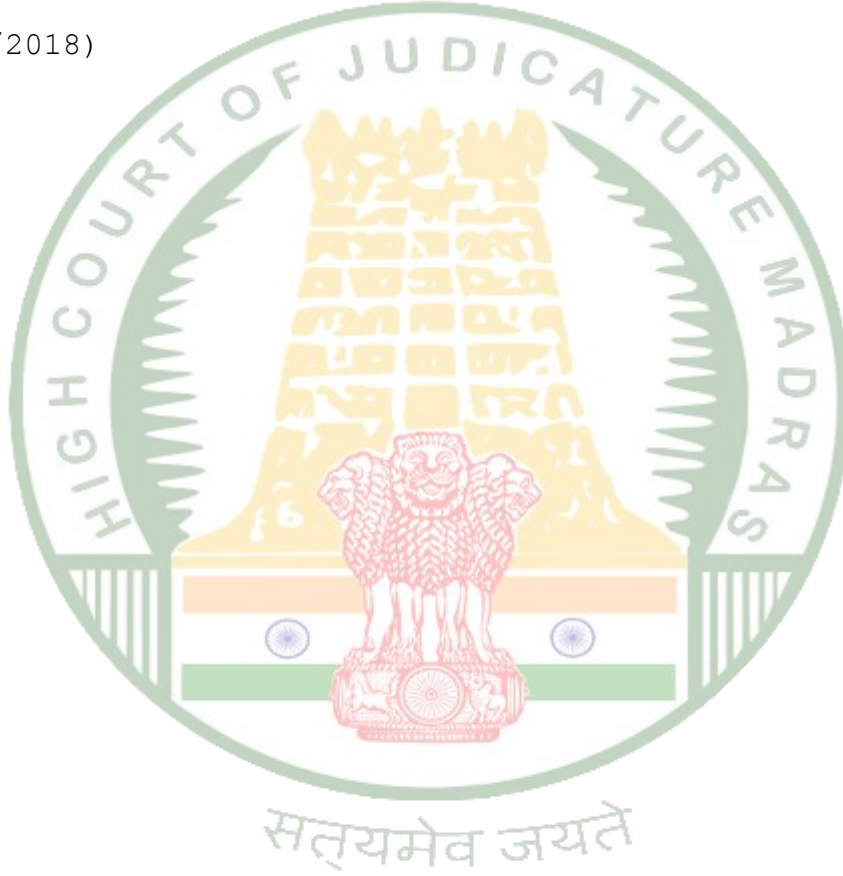
2. The Special Tahsildar (L.A),
SIPCOT Office 5,
Sriperumbudur Expansion Scheme,
Sriperumbudur,
Kancheepuram District.

+2cc to Mr.David Tyagaraj, Advocate, S.R.No.20988

W.P.No.23008 of 2010

SSD (CO)

RRK (17/05/2018)



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