

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.5509 of 2015

R.Jothi

... Petitioner

Vs

1.The State of Tamil Nadu
Rep by its Secretary
Industries Department
Fort St.George
Chennai - 9.

2.The District Collector
Kanchipuram District.

3.The District Revenue Officer Land Acquisition
Cheyyur Ultra Mega Power Project
Cheyyur
Kanchipuram District.

4.The Special Tahsildar
Land Acquisition
Cheyyur Ultra Mega Power Project
Cheyyur
Kanchipuram District.

5.K.Rajeswari

[R5 impleaded Vide order dated 05.03.2018 in
WMP.No.1937/2018 in WP.No.5509/2015]

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus by calling for the records of the second respondent in his proceedings in Na.Ka.No.G.1/1199/2014 dated 17.11.2014 which was communicated to the petitioner by the proceedings of the fourth respondent in Na.Ka.No.45/2010/A dated 28.11.2014 and quash the same and consequently direct the second respondent to pass the award for the lands acquired from the petitioner in tune with the provisions of the Tamil Nadu Acquisition of Land of Industrial Purposes Act and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

For Petitioner : Mr.D.Ravichander

For Respondents: Mr.Akhil Akbar Ali
Government Advocate [R1 to R4]
Mr.N.Nagu Shah [R5]

ORDER

The petitioner owns a piece of land in Survey No.212/1, 212/2, 212/6, 213/3, 213/5B, 213/6B1, 213/6B3, 213/8A, 244/3, 244/6, 244/9A, 244/9C in Sithaarkadu Village, Cheyyur Taluk, Kancheepuram District under a registered sale deed dated 08.06.2009, executed by a certain Karunakaran, his wife Uthira and their legal heirs, and this was acquired under the provisions of the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 [T.N.Act 10 of 1999] (hereinafter referred to as "Industrial Purposes Act" in brevity). The petitioner contends that he was invited by the fourth respondent through a notice dated 4.09.2013 issued under Section 7(2) of the Act for fixing the compensation, and was offered Rs.6,500/- per cent. Since the petitioner did not consent to it, the matter was referred to the District Collector, Kancheepuram, the second respondent herein for determination of fair compensation. Be that as it may, the petitioner received a notice dated 13.01.2004 issued by the fourth respondent under Section 7(5) and 7(7) of the Act, whereunder the petitioner was directed to appear before the District Collector, Kancheepuram on 28.01.2014, to put forward her statement with regard to the acquisition proceedings. Thereafter, the petitioner visited the office of the District Collector, along with required documents and submitted a written representation insisting for payment of compensation at Rs.25,000/- per cent. This was not accepted by the authorities and the petitioner was informed to accept the amount of Rs.6,500/- as compensation. Resisting to it, the petitioner has filed her written objection before the fourth respondent.

1.2. To the shock and surprise of the petitioner, later he received the impugned proceedings dated 28.11.2014 from the fourth respondent, wherein it is stated that since the petitioner has not agreed to the compensation amount determined by the Government, the Land Acquisition Authorities has imposed its own value under Section 7(3) of the Act, and it had fixed the compensation at Rs.700/- per cent for wet lands and Rs.600/- per cent for dry lands. Dissatisfied with the act of the Land Acquisition Authorities in determining the compensation, the petitioner has filed the present writ petition to quash the impugned proceedings dated 28.11.2014.

2. Heard Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents 1 to 4 and Mr.Nagu Shah, learned counsel for the fifth respondent. The respondents 1 to 4 have filed their counter affidavit along with a petition in MP.No.2

of 2015, praying to vacate the interim stay granted by this Court on 27.02.2015 in MP.No.1 of 2015. The defence taken by the respondents in the counter affidavit is that the writ petitioner had approached the respondents on three occasions making a stake claim of Rs.25,000/- per cent , then Rs.80,000/- and now claims Rs.44,700/- per cent as compensation for the lands acquired, which shows that the petitioner does not have a definite idea as to what to claim, and hence, no award has been passed in the case of the petitioner. Furthermore, since the writ petitioner had challenged the impugned proceedings of the second respondent under Section 7(3) of the Act, the question of invoking Section 8 of the Act does not arise at this stage, contended the respondents.

3. The fifth respondent herein is impleaded Vide order of this Court dated 05.3.2018 in WMP.No.1937 of 2018. The fifth respondent had stated in the affidavit filed in support of the said miscellaneous petition that the property acquired originally belonged to her father Late Pavadai Chettiar and after his demise, the right of property devolved to her and her sisters Uthira, Maheswari and Maragatham, that each of them were entitled to undivided $\frac{1}{4}$ share of the property. Of the said property, the share that belonged to my sister Uthira alone was sold to the petitioner and hence the petitioner is entitled only to $\frac{1}{4}$ share in the said acquired properties and not the entire acquired lands and therefore, he cannot agitate his rights or stall the acquisition proceedings of the entire property acquired.

4. The counsel for the petitioner submitted that the statute is clear and straight forward when it pointedly declared that where an agreement could not be arrived on the compensation payable under Section 7(2) of the Act, resort should necessarily have to be made to Section 7(3) of the Act. And given the fact that Right to Fair Compensation Act, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) has come into force, any process of procedure by which an award is passed under Sec.7(3) of the Industrial Purposes Act should not ignore the beneficial provisions of the Right to Fair Compensation Act.

5. The learned Government Advocate, on instruction made a fair statement to this Court that compensation and other benefits would be given to the petitioner only in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013).

6. There is a broad consensus that award should be passed and compensation should be awarded only under Sec.7(3) of the Industrial Purposes Act. The ancillary issue 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 Sec.105-A becomes relevant and it reads :

105-A. Provisions of this Act not to apply to certain Tamil 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 Fifth 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)
.....

7. This Court has to presume the Constitutionality of Sec.105-A, challenge to it notwithstanding, now pending consideration before a Division Bench of this Court. Sec.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.251 Industries (SIPCOT-LA) Department dated 31.12.2014, 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 Ors. Vs. The Secretary to Government, Industries Department, Government of Tamil Nadu and Ors. [MANU/TN/1116/2017]. This Court is in agreement with the said view.

8. Accordingly, this petition is allowed and the impugned proceedings of the fourth respondent dated 28.11.2014 insofar as the property purchased by the petitioner is concerned, it is hereby quashed and the matter is remanded back to the Land Acquisition Officer, who is directed to quantify the compensation either through private negotiations or by an enquiry but in all cases without diluting the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) as mandated in Sec.105-A(2) of the said Act, and pass an award. The respondents are further directed to afford adequate and effective opportunity of hearing to the petitioner. The Land Acquisition Authority is directed to complete the proceedings of passing an award within six months from the date of receipt of a copy of this order. No Costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To:

- 1.The State of Tamil Nadu
Rep by its Secretary
Industries Department
Fort St.George
Chennai - 9.
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Land Acquisition
Cheyyur Ultra Mega Power Project
Cheyyur
Kanchipuram District.

+lcc to Mr.N.Nagu Shah, Advocate SR.No.16670
+lcc to Government Pleader Sr.No.17128

sm:6.6.2018

W.P.No.5509 of 2015
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