

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.Nos.22898,37978 & 37979 of 2016
and WMP.No.19588 of 2016 in W.P.No.22898 of 2016

- 1.Rajarathinam Catchirayar
... Petitioner in WP.No.22898/2016
- 2.G.Manuvel
... Petitioner in WP.No.37978/2016
- 3.Sundararajan
Rep by his Power Agent P.Govindan
... Petitioner in WP.No.37979/2016

-Vs-

- 1.The District Collector
Villianur District
Pondicherry.
- 2.The Sub Collector (Revenue)-
cum-Land Acquisition Officer
Vilianur District
Pondicherry.
- 3.The Executive Engineer
National Highways Department
Public Works Department
Pondicherry.
- 4.The Government of Pondicherry
Pondicherry.
..... Respondents in all WP'S

Prayer in WP.No.22898 of 2016 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus to direct the respondents to pay the compensation for acquiring the property of the petitioner situate at R.S.No.66/1 and 66/4, Villianur Commune Panchayat, Othiampet Revenue Village, measuring 0.15.61 Ha. And 0.04.26 Ha. respectively for the purpose of laying a link road, connecting the South of Puducherry-Villupuram Railway line, passing through Arumparathapuram-Natesan Nagar Segment of NH-45A.

(Prayer Amended as per order dt.19.02.2018 in WMP.No.1611/18 IN WP.22898/2016)

Prayer in WP.No.37978 of 2018 :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pay the compensation for acquiring the property situated at R.S.No.66/1B Villllianur Commune Panchayat, Othiampet Revenue Village to an extent of 1 acre 14 cents lands for the purposes of laying a link road, South of Puducherry - Villupuram Railway line passing through Arumparthapuram - Natesan Nagar segment of NH-45A.

Prayer in W.P.No.37979 of 2016:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to pay the compensation for the lands acquired in R.S.No.71/8B Villlianur Commune Panchayat, Othiampet Revenue Village to an extent of 1000 sq.ft. for the purposes of constructing link road, South of Puducherry - Villupuram Railway line passing through Arumparthapuram - Natesan Magar segment of NH-45A.

For Petitioner : Mr.V.Raghavachari
(in all Wps)

For Respondents : Mr.J.Kumaran
(in all Wps) Government Advocate (Pondy)

COMMON ORDER

1. In this batch of cases, which arise out of the same acquisition proceedings, and the grievances expressed by the petitioners are that in an acquisition proceedings commenced under the Land Acquisition Act, 1984, compensation amount has not been given, and require a direction that the respondent pay the compensation due to them.

2.1 Facts in the case share a commonness among them: The Government of Puducherry has issued a notification under Section 4(1) r/w Section 17 of the Land Acquisition Act 1894 (hereinafter referred to as "Act" in brevity) on 30.09.2006, proposing to acquire the petitioner's property along with the adjacent properties for the purpose of formation of bye-pass road south of Pondicherry-Villianur railway line, bye-passing Arumparthapuram-Natesan Nagar segment of NH45A at Kurumbapet and Odiampet Revenue Villages. A declaration under Section 6(1) of the Land Acquisition Act, 1894 was issued on 01.12.2006 and an award was passed on 16.11.2009.

2.2. In this acquisition petitioners' properties were acquired, the details whereof are tabulated hereunder:

W.P. No.	Property Details		Title How Obtained
	S.F.No.	Village	
22898 of 2016	R.S.No.66/1 & 66/4	Villianur Commune Panchayat, Othiampet Village	Purchased in 1996
37978 of 2016	R.S.No.66/1B	Kurumbapet Village	Purchased in 1997
37979 of 2016	R.S.No.71/8B	Kurumbapet Village	Purchased in 1993

2.3. The petitioners contend that no notice of acquisition was served on them at any stage of the acquisition proceedings, and that the respondents have trespassed into his property and disturbed his possession, and hence have approached this Court contending:

- a) The notification was issued under Section 4(1) of the Land Acquisition Act r/w. Section 17 of the Act on 30.09.2006 and an Award was passed on 16.11.2009, possession not taken for next nine years, and therefore, the land acquisition had a faulty start, in that, the emergent power under Section 17 of the Act is misused, if not abused.
- b) Both in W.P.22898 of 2016, and in W.P.37979 of 2016, the notification was issued in the name of the petitioners' predecessors in title even though the petitioners have purchased their respective properties long prior to the notification.
- c) Even if something is presumed to survive still, the proviso to Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as "Right to Fair Compensation Act (or) Central Act 30 /2013") will come to have application since none of the land owners have been paid the compensation before the commencement of the Right to the Fair Compensation Act. Accordingly, the petitioners are entitled to have the compensation paid to them in terms of the said Act.
- d) These aspects apart, some nine landowners had earlier moved the High court challenging the acquisition in W.P.7070 of 2010, and were successful in having the acquisition proceedings quashed and thereafter the Minister for Public Works Department, Puducherry had convened a meeting on 26.08.2016, wherein an agreement was arrived at to fix the market price as concerning the lands pertaining to them at Rs.1,800 per sq.ft., and this, at least should be extended to the petitioners, as there

cannot be any discrimination in payment of compensation.

3.1 In their counter affidavit in W.P.No:37979 of 2016 which is required to be accepted as counter in all the petitions, besides averring how the procedure contemplated for acquiring lands were complied with, it is averred that possession of lands were taken on 28-09-2015, that the sum awarded as compensation is deposited in the Civil Court on 14-11-2015, and if at all the petitioners are entitled to any remedy, they are entitled to only quantification of compensation in terms of the Right to Fair Compensation Act.

3.2 So far as W.P.No.37979 of 2016 is concerned, the petitioner has not produced previous documents to link his title.

4. Heard both sides. The learned counsel for the petitioners would argue:

- Given the date of Sec.4(1) notification on 30.09.2006 and date of taking possession on 28-09-2015, it is evident that there existed no urgency that could not brook even couple of weeks to justify that the mandatory enquiry under Sec.5-A of the Old Act could be dispensed with. Hence, invoking sec.4 (1) r/w Sec.17 of the Act, constitutes an abuse of statutory power.
- Under sec.11-A of the Old Act, the acquisition has lapsed since the award was passed after the expiry of two years from the last date of publication of declaration under Sec.6 of the Old Act.
- However, since the lands are now taken possession of by the respondents, and have been used and roads have been laid, resorting to fresh acquisition proceedings would also ultimately lead to passing an award in terms of the Act as it stands now. Even de hors the same, compensation still may have to quantified and paid in terms of the Right to Fair Compensation Act, as per the Proviso to Sec.24 thereof, since no compensation has been paid to any of the land owners till 13-11-2015.
- These petitioners are identically placed as petitioners in WP.No.7070 of 2010, where the Government has decided to acquire the land afresh under the Central Act 30 of 2013, though for different reasons.

5. Mr.J.Kumaran, learned Government Advocate has defended what prima facie appears to be the indefensible and made a valiant effort in invoking Section 114 of the Right to Fair Compensation Act. Relying on the judgment of the High Court of Bombay at its Aurangabad Bench in W.P.No.390 of 2002 in Smt.Sakharbai Haribhau Shelke

(Deceased) & Others Vs. The Sub Divisional Officer, Shrirampur & Others, argued that in all cases where an award has not been passed under the Land Acquisition Act, 1894, then under Section 24(1)(a), a fresh award can be passed under Central Act 30/2013.

6. Primarily the submissions made on behalf of the petitioner based on Sec.11-A should close the issue for the petitioners. This is not pleaded, but it is a legal plea, founded on two specific dates pertaining to acquisition proceedings. Under Section 11-A of the Land Acquisition Act, 1894, the entire proceedings of the acquisition of land will stand lapsed if an award under Section 11 is not passed within a period of two years from the last date of publication of the declaration under Section 6(1) of the Act. The details of this publication is made even in the counter affidavit and they are tabulated as below :

Mode of Publication	Date of publication
English daily "The New Indian Express"	04.12.2006
Tamil daily "Dinakaran"	03.12.2006
Gazette Publication No.154	01.12.2006
Public affixture	17.10.2007

When the Government admits the last date of publication of Section 6(1) declaration by public affixture was on 17.10.2007, then it does not require a rocket science to hold that an award passed on 16.11.2009 is hit by Section 11-A of the Act. Nothing more need to be done thereafter, as nothing can survive beyond expiry of the two years period, when a legal-lapse takes place under Section 11-A of the Act, since the Court only needs to look to the Clock or the Calendar, and not to any legal literature to know what the results are. This predicament of the respondents is self invited, and its consequences are self inflicted, and the respondents should take the blame for them.

7. Turning to the submissions of the learned Government Advocate for the respondents, more particularly in the context of his reliance on paragraph Nos.10 & 11 of the judgment in Smt.Sakharbai Haribhau Shelke case, the Bombay High Court only attempts to interpret Section 11(1) of the Right to Fair Compensation Act and the import of Section 24(1)(a) of the said Act, which may not be useful in the factual context of the present case.

8. A feeble and a less convincing argument was heard, when the learned counsel for the respondents submitted

that the petitioner has not approached this Court adequately early and the contention that the acquisition has lapsed was not adequately pleaded. It might be true. But as to the first, it is factually admitted by the respondents that no notice was served on the petitioner at any time before for him to know that there was an acquisition proceeding underway. As to the second, it is a legal plea primarily. When the acquisition proceeding has lapsed in 2009, it lapsed for the Government, and under the statute the land owner is not required to do anything. This will imply that everything that has taken place till then shall have to be restored, as if it were travel back in a time machine. And, where any vesting of property had taken place, that gets divested in this process. And, if fairness should be considered as the spelling for administration in a democracy, then Government should go to its citizen to surrender possession of the land.

9. In all cases where the authorities concerned prefer hibernation to action in doing things that which the statute mandates them do, even as the clock keeps ticking within the scheme of the Act. When acquisition lapsed, it lapses for the Government that ventured to acquire the lands, and the land owner needs to do anything. What however, saves the day for the respondents is the willingness of the petitioners to have the compensation determined in terms of the Right to Fair Compensation Act, which on principle even the respondents have agreed to resort to. The petitioners are appeared to have been guided by pragmatism, as they are now anxious about obtaining compensation under the Right to Fair Compensation Act, more than going through the full course of fresh acquisition again. It is also necessary to remember that factors like Social Impact Assessment of the project may not have relevance now since the project has been implemented.

10.1 In conclusion, this Court directs the respondents to issue notice to the petitioners, grant them adequate and effective right of hearing, not to insist on halting technicalities, and determine the compensation under 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 the date of receipt of the copy of this Order, and pay compensation forthwith, and at any rate not later than four weeks next thereof.

10.2 Any default to comply with this Order will be visited with imposition of such damages as this Court consider as just and appropriate in the factual context

of the case, for violating the petitioners' right to dignified life which their right to property ensured, and in that eventuality, all the officials in the hierarchy of the bureaucracy who become responsible for that situation will become jointly and severally liable personally for paying the said damages out of their salaries. They will also be required to appear in person to explain why the orders are not complied with.

11. These petitions are allowed with directions as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

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To:

1. The District Collector
Villianur District
Pondicherry.
2. The Deputy Collector (Revenue) -
South- cum- Land Acquisition Officer
Pondicherry.
3. The Executive Engineer
National Highways Department
Public Works Department
Pondicherry.
4. The Government of Pondicherry
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+1 CC TO GOVERNMENT PLEADER SR.NO. 15027

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and WMP.No.19588 of 2016 in W.P.No.22898 of 2016

ASK(19/11/2018)