

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

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

W.P.No.9324 of 2015

P.Thanigaivel

... Petitioner

Vs.

1.The District Collector
Tiruvannamalai District
Tiruvannamalai.

2.The Special Tahsildar (LA)
SIPCOT Expansion Scheme
Unit 9, Cheyyar
Tiruvannamalai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing respondent No.1 to consider the present market value of the land acquired for the purpose of determining the compensation payable to the petitioner pursuant to the notice bearing Rc.No.A9/87/2013 dated 07.10.2014 and to pay the amount of compensation to the petitioner within a reasonable time as may be fixed by the Court.

For Petitioner : Mr.M.Radhakrishnan
For Respondents : Mr.A.Zakir Hussain
Government Advocate

ORDER

1.1. The case of the petitioner is that the lands in Mathur Village, Cheyyar Taluk, Tiruvannamalai District was acquired by the Government under the provisions of Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997 (hereinafter referred to as "Act") for setting up SIPCOT Industrial Complex and a notification under Section 3(1) of the Act was published in the Gazette on 27.05.2010. The acquisition included the property of the petitioner also. In the matter of payment of compensation, a State Level Committee was constituted to approve the rates fixed for the lands acquired, and the Government Vide its G.O.Ms.No.22 Industries (SIPCOT-LA) Department dated 07.02.2013 has accepted its recommendations and fixed the value for the lands acquired in the Cheyyar Taluk for the said scheme.

1.2. According to the petitioner, the said G.O. is contrary to Section 7(5) of the Act and he had also brought to the notice of the Court a similar case in WP.No.13083 of 2013, wherein this

Court Vide its order dated 12.02.2015, has directed the respondents to fix the value of the land as per the provisions of Sections 7(5) and 7(7) of the Act, without considering the G.O.(Ms) No.22 Industries (SIPCOT-LA) Department, dated 07.02.2013. However, the respondents ignored the directions of the Court and fixed the value of the lands only as per the rates fixed in the said G.O. Further, the petitioner contends that the respondents ought to have determined the compensation payable to him within two years from the date of notification i.e., on or before 27.05.2012, but, the respondents have issued the notice dated 07.10.2014, under Section 7(5) and 7(7) of the Act to appear in person for fixing the compensation, that too without following the procedure contemplated under Section 7(2) and 7(3) of the Act. Hence, the petitioner is before this Court seeking a writ of mandamus to direct the first respondent to consider the present market value in fixing the compensation payable for the lands acquired in the present acquisition.

2. The respondents have filed their common counter affidavit n W.P.No.9316 to 9324 of 2015 and W.P.No.9312 of 2015, wherein it is admitted that the petitioner herein have interest over the lands that were notified by the Government for Cheyyar Industrial Expansion Scheme SIPCOT project and that as per G.O.Ms.No.22 Industries (SIPCOT-LA) Department dated 07.02.2013, the Government has determined the value of the lands acquired. Admittedly, the compensation amount would be determined based on the agreement between the owners of the acquired property and the Government, and in case no agreement was entered into between them, the petitioner can make a Reference to the Collector concerned under Section 7(3) of the Act, in which case, Collector would offer an opportunity to the petitioner under Section 7(5) of the Act and determine the value of the property. Moreover, even before the disposal of this writ petition, the petitioner had assured that he would file his statement before the respondent in response to the communication dated 28.10.2014. But the petitioner failed to respond to it till date. As to quantifying the compensation, the notification under Section 3(2) of the Act was published in 2009, and accordingly the market value of the property as in 2009 would be reckoned for quantifying the compensation amount payable.

3. Heard Nr.M.Radhakrishnan, learned counsel for the petitioner and Mr.A.Zakir Hussain, learned Government Advocate for the respondents 1 and

4. If the property was acquired in 2009, why no award was passed till date? The authority in default who was singularly responsible for denying the petitioner of his right to be benefited out of his property, even in the face of acquisition, cease to have the authority to tell the petitioner the base year for fixing compensation.

5. It is an undenial fact that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) came into force on 01-01-2014. The 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)
.....

6. 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.

7. Accordingly, this petition is allowed and the Land Acquisition Officer is directed to quantify the compensation either through private negotiations or by an enquiry 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 V)

//True copy//

Sub Assistant Registrar

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To:

1.The District Collector
Tiruvannamalai District
Tiruvannamalai.

2.The Special Tahsildar (LA)
SIPCOT Expansion Scheme
Unit 9, Cheyyar
Tiruvannamalai District.

+1cc to Mr.M.Radhakrishnan, Advocate SR.No.14577

W.P.No.9324 of 2015

SSV(CO)
GN(01/06/2018)