

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 6138 of 2016 and W.M.P. 5478 of 2016
and

W.P. 1374 of 2018 and W.M.P.s 1744 & 1745 of 2018

W.P. 6138 of 2016

P.Krishnamurthy

... Petitioner

Vs.

The Competent Authority cum

Special District Revenue Officer (L.A.),
National Highways-5,
Kancheepuram and Tiruvallur District,
Poonamallee, Tiruvallur District.

... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to the impugned notice Na.Ka.480/2013/A/N.H.5, dated 27.01.2016 and quash the same as arbitrary, unjustifiable and illegal and consequently direct the respondent to inspect the land of the petitioner, provide award copy and also inspection report and other relevant particulars of determination of compensation to the petitioner and to decide their claim of repayment of excess compensation in accordance with law.

W.P. 1374 of 2018

P.Krishnamurthy

... Petitioner

Vs

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1. The Competent Authority cum

Special District Revenue Officer (L.A.),
National Highways-5,
Kancheepuram and Tiruvallur District,
Poonamallee, Tiruvallur District.

2. The Chairman,
National Highways Authority of India,
G-5, Sector-10, Dwaraka,
New Delhi-110 007.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent pertaining to the impugned notice dated -12-2017 and quash the same as arbitrary, unjustifiable and illegal and consequently direct the respondent to consider the representation of the petitioner dated 11.08.2017 and to provide a copy of the award along with the particulars of the exact land acquired and also the total compensation amount awarded in respect of the petitioner's property, being land and structure, comprised in Survey No.76/4 (part), Subdivided Survey No.76/4B as per Patta No.317, measuring an extent of 3925 square feet (i.e.) 0.03.5 hectare situated at Azhinjivakkam Village, Jagannathapuram Revenue Village, Ponneri Taluk, Tiruvallur District.

For Petitioner : Mr.R.Munuswamy

For Respondent in W.P. 6138 : Mr.M.Elumalai,
of 2016 Government Pleader

For Respondents in : Mr.C.Thirumaran,
W.P.No.1374 of 2018 Special Government Pleader
for R1

Mrs.S.R.Sumathy,
Standing Counsel for R2

O R D E R

1.1 The Writ Petition in W.P. 6138 of 2016 has been filed challenging the order passed by the respondent seeking to recover the compensation amount paid in excess to his entitlement.

1.2 The Writ Petition in W.P. 1374 of 2018 has been filed challenging the order passed by the 1st respondent to hand over the possession of the property.

2. The grievance of the petitioner in both the Writ Petitions is that he is the owner of the property in Survey No. 76/4(part), present Survey No.76/4B as per Patta No.317, measuring an extent of 3925 sq.ft. (i.e.) 0.03.5 hectare situated at Azhinjivakkam Village, Jagannathapuram Revenue Village, Ponneri Taluk, Tiruvallur District. He has purchased the property by way of a registered sale deed. A part of the above land with the building to an extent of 66 square meters is

sought to be acquired by the respondent under the National Highways Act. In the notification, the survey number of the petitioner's land has been wrongly mentioned as Survey No.76/4A1B2, and the owner of the land and building was also wrongly mentioned as G.Vivekanandan and Kesavan. On coming to know about the same, immediately, the petitioner has approached the 1st respondent, and produced all the materials to show that he is the owner of the said property. But, his representation was not considered. Thereafter, the award has been passed, and a notice was issued to the petitioner asking him to appear before the respondent with relevant records. But, the copy of the award was not served on the petitioner, but the respondents were informed orally that a total sum of Rs.14,32,236/- has been awarded as compensation. Later, he came to know that a sum of Rs.12,89,012/- has been credited in his account.

3. Thereafter, during the 2nd week of September 2015, the 1st respondent called the petitioner for enquiry, and informed him that they have paid excess compensation to the petitioner, and asked him to repay the amount. The petitioner appeared before the 1st respondent on 23.12.2015 along with the relevant records relating to the property, and explained them that no excess compensation amount has been paid to the petitioner, the compensation has been paid as per his entitlement. But, without considering the objections, the impugned order has been passed on the ground that the amount payable to Vivekanandan has been wrongly awarded to the petitioner, and the petitioner is only entitled for a sum of Rs.99,618/-, but a sum of Rs.9,91,937/- has been wrongly paid to the petitioner, and he was directed to repay the sum of Rs.8,92,319/-. Now, challenging the said order, the present Writ Petition has been filed by the petitioner.

4. The 1st respondent has filed a counter affidavit stating that an extent of 62 sq. mtrs. of land in Survey No.76/4A1B2 was notified for acquisition in Jagannathapuram I Village, Ponneri Taluk, for widening of National Highways-5 from Chennai to TADA. The Writ Petitioner is the owner of an extent of 00.35 acres of wet land in Survey No.76/4B. In the earlier notification, the land in Survey No. 76/4 Part, in which 62 sq.mtrs has been notified, and the names of G.Vivekanandan and G.Kesavan have been mentioned as interested persons. On verification, it was found that the petitioner is the owner of the notified land. During the award enquiry, a sum of Rs.14,32,236/- was determined as compensation for the lands acquired, and after deducting income tax payable as TDS, the balance amount has been paid to the petitioner. Subsequently, on verification, it was brought to notice that the value of the buildings on the land belongs to the petitioner was wrongly entered as Rs.9,91,937/-, and a sum of Rs.8,92,319/- was paid as excess than the amount payable to the petitioner. In the said circumstances, the petitioner was served on with the notice to refund the amount on the ground that the above said amount has been mistakenly paid to the

petitioner.

5. Today, when the matter has been taken up for hearing, the 1st respondent has filed an additional affidavit stating that the building of the acquired land owned by the petitioner was only valued at Rs.99,618/-, but the building value of Rs.9,91,937/- payable to Mr.Vivekanandan and Mr. Kesavan has been mistakenly paid to the petitioner. Further, it is submitted that it is only an interim award and the amount which has been paid to the petitioner in excess will be adjusted with the final award, which is going to be passed under the Act 30 of 2013.

6. The learned counsel appearing for the respondents, on instructions, submitted that since the excess amount paid to the petitioner, it will be adjusted in the final award, which is going to be passed under the new Act, viz., Act 30 of 2013, now, the 1st respondent is not interested to recover the amount from the petitioner. The learned counsel appearing for the petitioner has also accepted for the above submission.

7. Considering the above submission that the amount in excess paid to the petitioner will be adjusted in the final award going to be passed by the 1st respondent, and it is also assured that no recovery will be made against the petitioner. Therefore, I am of the view that no further adjudication is required in the present Writ Petition. Hence, the Writ Petition in W.P. 6138 of 2016 stands closed.

8. So far as the Writ Petition in W.P. 1374 of 2018 challenging the order of taking possession of the land is concerned, the respondents are directed to take possession of the land after paying the final award amount, and till then, the respondents are directed not to disturb the possession of the petitioner.

9. In the result, the Writ Petitions are disposed of with the above direction. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

rpp
To

1. The Competent Authority cum
Special District Revenue Officer (L.A.),
National Highways-5,
Kancheepuram and Tiruvallur District,
Poonamallee, Tiruvallur District.

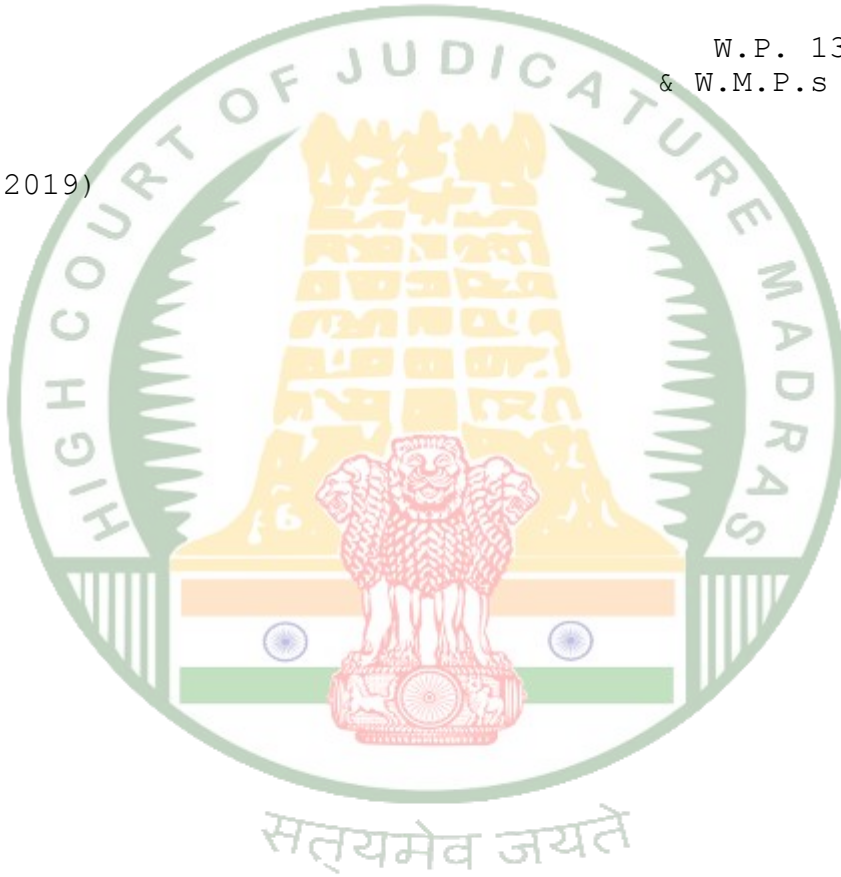
2. The Chairman,
National Highways Authority of India,
G-5, Sector-10, Dwaraka,
New Delhi-110 007.

+1cc to Mr.R.Munuswamy, Advocate, S.R.No.87889 & 87890

+1cc to the Government Pleader, S.R.No.81365

W.P. 6138 of 2016 &
W.M.P. 5478 of 2016
and
W.P. 1374 of 2018
& W.M.P.s 1744 & 1745
of 2018

AD(CO)
GSP(28/01/2019)



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