

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.Nos.1654, 1655, 2922,2923,2924,2925 & 2926 of 2018

1.N.Selvaraj	... Petitioner in W.P.No.1654/18
2.P.Rathinam	... Petitioner in W.P.No.1655/18
3.P.Ganesan	... Petitioner in W.P.No.2922/18
4.S.Muthusamy	... Petitioner in W.P.No.2923/18
5.M.Pachamuthu	... Petitioner in W.P.No.2924/18
6.R.Palaniappan	... Petitioner in W.P.No.2925/18
7.K.Palanisamy	... Petitioner in W.P.No.2926/18

Vs

1. Union of India
Rep. by Secretary to Government
Ministry of Shipping, Road Transport and Highways,
Transport Bhavan, 1.Parliamentary Street,
New Delhi-110 001.
2. The Competent Authority and
Special District Revenue Officer, (LA) (NH. 7, 46&47)
Salem-Krishnagiri Districts
Krishnagiri.
3. The Project Director, N.H.A.I. NH. 7, 47 & 68
221-Sri Nagar Colony
Narasothipatty, Salem.
4. The Regional Officer, N.H.A.I, Shri Tower,
IIIrd Floor, D.P.34(SP), Industrial Estate,
Guindy,
Chennai - 600 032. ... Respondents in all Wps.

Common Prayer: Writ petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records/proceedings of the 2nd respondent culminating in his Memo-ROC 645/2017(B1) dated 20-09-2017 and quash the same and to direct the 2nd respondent to pay the additional market value under Sec.23(1)(a), Solatium under Sec.23(2) and interest under Sec.28 of the Land Acquisition Act, 1894 to the petitioner herein (about Rs.20,99,058/-) in W.P.No.1654, (about Rs.46,67,704/-) in W.P.No.1655, (about Rs.15,49,426/-) in W.P.No.2922 of 2018, and (about Rs.7,66,616/-) in W.P.No.2923 of 2018, (about Rs.18,17,764/-) in

W.P.No.2924 of 2018, (about Rs.8,28,824/-) in W.P.No.2925, (about Rs.38,08,852/-) in W.P.No.2926 together with accrued interest, etc., within a reasonable period that may be stipulated.

For Petitioners : Mr.V.Raghupathi in all W.Ps.

For Respondents : Mr.K.S. Jeyaganeshan CGSC.
in W.P.No.1654&1655 of 2018.
[For R1]

: Mr.J.Madhanagopal Rao CGSC.
in W.P.No.2922,2923,2924,2925
and 2926 of 2018. [For R1]

: Mr.M.Karthikeyan
Additional Government Pleader.
[For R2] in all W.Ps

: Ms.S.R.Sumathy. [For R3 and R4]
in all W.Ps

ORDER

By consent of the parties, the writ petitions are taken up for final disposal.

2.1. The seven petitioners herein possessed separate parcels of land in different survey numbers in different villages, and these properties were acquired under the provisions of the National Highways Act, 1956, and separate awards were passed quantifying the compensation payable. The details are as follows :

Sl. No.	Name of the petitioner / W.P.No.	Survey Nos.of the property	Extent of the property	Award Amount (Rs.)
1.	N.Selvaraj (1654/2018)	11/1(part)in Aiveli Village, Sankari Taluk, Salem	15150 Sq.ft.,	20,99,058 /-
2.	P.Rathinam (1655/2018)	196/1A1, 196/1B1, 196/2, 196/3A, 209/2B, 209/4B	0.72.5 Hectare of dry land, 1.25.0 Hectare, 0.56.0 Hectare, 0.30.0 Hectare, 0.60.5 Hectare, 0.18.5 Hectare, totally 3.62.5 Hectares	46,67,704 /-

Sl. No.	Name of the petitioner / W.P.No.	Survey Nos.of the property	Extent of the property	Award Amount (Rs.)
3.	P.Ganesan (2922/2018)	208/2, 208/3	0.40.5 Hectares & 1.20.0 Hectares	15,49,426 /-
4.	S.Muthusamy (2923/2018)	195/2 of Manjakkalpatti Village	1.65.0 Hectares	7,66,616/-
5.	M.Pachamuthu (2924/2018)	23/1A in Aiveili Village	1.52.0 Hectares	18,17,764 /-
6.	R.Palaniappan (2925/2018)	195/2E2 (part) of Manjakkalpatti Village	3836 Sq.metre	8,28,824/-
7.	K.Palanisamy (2926/2018)	19/12 of Aiveli Village	1.83.0 Hectares	38,08,852 /-

2.2. The aforesaid award included 10% amount quantified as the compensation amount payable for the loss of right of user or any right in nature of easement which the owners of the property acquired, had suffered as provided under Section 3-G(2) of the said Act. However, no solatium or additional market value at 12%, nor any interest @15% was granted in the manner provided in the land Acquisition Act, 1894. The reason for this was not far to seek since Section 3J of the National Highways Act, 1956, excluded the operation of the Land Acquisition Act, 1894, and solatium and other allied benefits to which land owners would be entitled under the land Acquisition Act, 1894 was declined.

2.3. As this provision created irrational and arbitrary disparity in the matter of compensating the owners whose lands were acquired under the National Highways Act, 1956 on the one hand and those whose lands were acquired under the Land Acquisition Act, 1894, on the other, a certain Chakrapani and few others moved this Court in W.P.No.15699 of 2008 and challenged the Constitutional validity of Section 3-J of the National Highways Act, 1956. This Court Vide its order dated 04.03.2011 has allowed the said writ petition and its connected batch of cases [Chakrapani & others Vs. Union of India and others, (2011 Writ L.R.193)] and declared in paragraph No.36 of its order:

"36. Consequently, all the writ petitions are allowed, while upholding other provisions of the Act, Section 3-J of the Highways Act is held to be unconstitutional, being bit by Article 14 of the

Constitution of India, being in excess of legislative competence. The petitioners, therefore, are held entitled to the compensation of additional market value under Section 23(1)(a), a solatium under Section 23(2) and interest as provided under the Land Acquisition Act."

Ultimately, this issue reached the Supreme Court when Union of India challenged the Order of this court declaring Sec.3J unconstitutional in Civil Appeal Nos.129-159 of 2014. The Supreme Court, however confirmed the Order of this Court holding that Section 3-J is unconstitutional and directed that the "respondents - writ petitioners be paid solatium as due in terms of the impugned order(s) along with interest thereon". Consequently, the petitioners became entitled to be treated in par with those owners who fall within the ambit of Land Acquisition Act, 1894, and also entitled to solatium and interest payable in terms of the said Act.

3. Thereafter, the petitioners herein moved the authorities concerned, to secure their right, consequent to the order of this Court in W.P.No.15699 of 2008 & etc., batch and confirmed by the Supreme Court as stated above, Vide their representations, but the second respondent Vide separate proceedings, all dated 20-09-2017, addressed to all the petitioners herein, rejected the claim of solatium and additional interest etc., contending that the same would be available only to those, namely Chakrapani and others who had approached the Court. These orders are now in challenge.

4. Heard Mr.V.Raghupathi learned counsel for the petitioner in all the Writ Petitions and Mr.K.S.Jeyaganeshan, the learned Central Government Standing Counsel appearing for the first respondent in W.P.Nos.1654 and 1655 of 2018 and Mr.J.Madhanagopal Rao, the learned Central Government Standing Counsel appearing for the first respondent in W.P.Nos.2922,2923,2924,2925 and 2926 of 2018 and Mr.M.Karthikeyan, the learned Additional Government Pleader appearing for the second respondent in all the Writ Petitions and Mrs.S.R.Sumathy, the learned counsel enters appearance for the third and fourth respondent in all the Writ Petitions.

5. The narrative above is explanatory of the situation that the petitioners herein were forced to encounter. A provision in a statute has been declared unconstitutional, but the first respondent believes that the benefit to flow out of it would be available only to those who had approached the Court to have the said provision declared Unconstitutional.

6. How many times should a Court declare the same provision Unconstitutional? It is therefore evident that the authority concerned is inadequately informed on how the legal system

operates, and this gets reflected in the reasons he had given for rejecting petitioners' claim for payment of solatium and interest etc., This foundational reasoning for rejecting the petitioners' claim Vide the orders now impugned before this Court is erroneous and this alone needs correction. It necessarily follows that the petitioners herein are entitled to the same benefit as the land owners before the Hon'ble Supreme Court in Civil Appeal Nos:129-159 of 2014.

7. In the result, the petitions are allowed and following proceedings are set aside:

W.P.No:	Name of the Petitioner	Impugned Proceeding No.
1654/2018	N.Selvaraj	ROC-645/2017(B1)/20.09.2017
1655/2018	P.Rathinam	ROC-645/2017(B1)/20.09.2017
2922/2018	P.Ganesan	ROC-645/2017(B1)/20.09.2017
2923/2018	S.Muthusamy	ROC-645/2017(B1)/20.09.2017
2924/2018	M.Pachamuthu	ROC-645/2017(B1)/20.09.2017
2925/2018	R.Palaniappan	ROC-645/2017(B1)/20.09.2017
2926/2018	K.Palanisamy	ROC-645/2017(B1)/20.09.2017

And all the matters are remanded back to the first respondents who would now pass such appropriate proceedings for payment of solatium and other interest payable consequent to the judgement of the Hon'ble Supreme Court in C.A.129-159 of 2014 within a period of eight weeks from the date of receipt of copy of this Order. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

ssn

To

1.The Secretary to Government
Ministry of Shipping, Road Transport and Highways,
Transport Bhavan, 1, Parliamentary Street,
New Delhi-110 001.

2. The Competent Authority and
Special District Revenue Officer, (LA) (NH. 7, 46&47)
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3. The Project Director, N.H.A.I. NH. 7, 47 & 68
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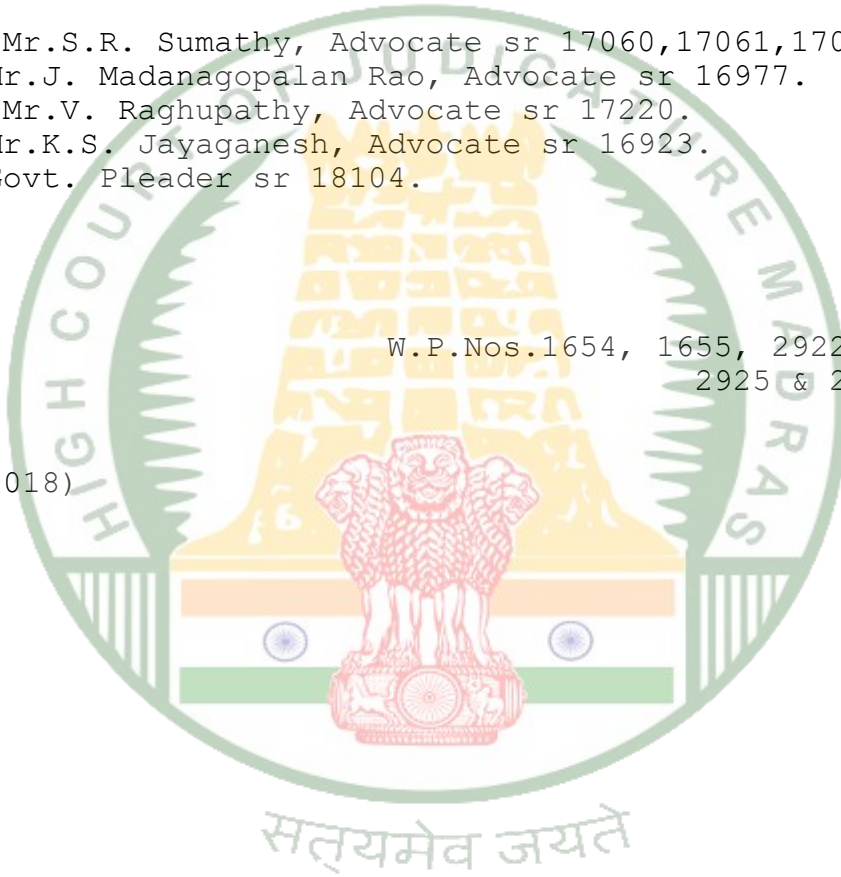
4. The Regional Officer, N.H.A.I, Shri Tower,
IIIrd Floor, D.P.34(SP), Industrial Estate,
Guindy, Chennai - 600 032.

Copy to
The Section officer
VR Section, High Court, Madras

+3 Ccs to Mr.S.R. Sumathy, Advocate sr 17060,17061,17062.
+1 CC to Mr.J. Madanagopalan Rao, Advocate sr 16977.
+7 Ccs to Mr.V. Raghupathy, Advocate sr 17220.
+1 CC to Mr.K.S. Jayaganesh, Advocate sr 16923.
+1 CC to Govt. Pleader sr 18104.

W.P.Nos.1654, 1655, 2922,2923,2924,
2925 & 2926 of 2018

RK(CO)
SP(30/05/2018)



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