

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.27519 of 2016

K.Chinnadurai

... Petitioner

-Vs-

1.The Government of Tamil Nadu
Rep by Secretary to Government
Energy Department
Fort St.George, Secretariat
Chennai - 600 009.

2.The District Collector
Kancheepuram District.

3.The Special Tahsildar
Land Acquisition Unit IV
Ultra Mega Power Project
Cheyyur, Kancheepuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the Award No.38 of 2015 dated 23.10.2015 of the respondents 2 and 3 herein and quash the same in so far as it relates to the petitioner's land of an extent of 2.02.5 hectares comprised in Survey No.5/2 of Vedal Village, Cheyyur Taluk, Kancheepuram District.

For Petitioner : Mr.A.R.L.Sundaresan
Senior Counsel

Assisted by Mr.Karthick Lakshmanan

For Respondents : Mr.Zakir Hussain
Government Advocate

ORDER

The petitioner owns a piece of land measuring an extent of 2.02.5 hectares comprised in Survey No.5/2 of Vedal Village, Cheyyur Taluk, Kancheepuram District 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 as "Industrial Purposes Act" in brevity). The petitioner contends that he was invited for fixing the

compensation under Section 7(2) of the said Act based on a negotiated agreement, and was offered Rs.6,500/- per cent, but the petitioner was not agreeable to this offer. Ideally, Collector should have determined the compensation under Sec.7(3) of the Act. Instead, the Land Acquisition Authorities has imposed its own value that it offered to the petitioner under Section 7(2) of the Act, as the compensation amount payable and the third respondent passed the impugned Award No.38 of 2015 dated 23.10.2015. Hence, the petitioner has come forward with this petition to quash the same. It is also alleged that the petitioner has challenged the Constitutionality of Sect.105-A brought in by the Tamil Nadu amendment to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter would be referred to as Right to Fair Compensation Act) and has filed W.P.No.29798 of 2013.

2. In the counter affidavit, it is inter alia indicated that where the compensation amount is not agreed to, resort would be made under Section 7(3) of the Act.

3. Heard Mr.A.R.L.Sundaresan, learned Senior Counsel, instructed by Mr.Karthick Lakshmanan, 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 Compensation Act 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.

4. 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 in certain cases or to apply in certain Tami 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 Fourth 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)

5. 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.

6. It is to be noted now that impugned Award in this case have been passed on 23.10.2015, which is well after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013). This has to go for two reasons : (a) For ignoring the need to pass an award under Sec.7(3) of the Industrial Purposes Act, in the face of petitioner's unwillingness to accept an award under Sec.7(2) of the Act; (b) For ignoring the need to read in the provisions pertaining to payment of compensation etc., in the Right to Fair Compensation Act while passing the said award.

7. Accordingly, this petition is allowed and the Award No.38 of 2015 dated 23.10.2015 in so far as the petitioner's property is concerned 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 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, and at any rate, the respondents would not commit the same mistake that it has committed in this proceedings in converting its offer price for the lands into the compensation payable on an enquiry. 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(Ccc)

//True Copy//

Sub Assistant Registrar

ds
To:

1.The Secretary to Government
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Chennai - 600 009.

2.The District Collector
Kancheepuram District.

3.The Special Tahsildar
Land Acquisition Unit IV
Ultra Mega Power Project
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Kancheepuram District.

+lcc to Mr.A.C. GANTHIMATHI, Advocate, S.R.No. 7229
+lcc to the Government Pleader, S.R.No. 12890

W.P.No.27519 of 2016

KAN(CO)
TR(26/03/2018)