

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.29874 of 2016

and

W.M.P.Nos.25867 and 25868 of 2016

N. Sampath

... Petitioner

Vs

1. The Principal Secretary,  
Government of Tamil Nadu,  
Department of Industries,  
Secretariat, Chennai-9.
2. The District Collector,  
Kancheepuram District,  
Kancheepuram.
3. The Special Tahsildar (LA)  
Unit-3, SIPCOT,  
Sriperumpudur Extension Project-2,  
Sriperumpudur,  
Kancheepuram.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records in pursuant to G.O. Ms. No.45 Industries (SIPCOT-LA) date 21.02.2012 and the consequential rejection order issued by the 2<sup>nd</sup> respondent vide Rc.No.04/2010/Unit-3 dated 03.11.2015 and quash both of them.

For Petitioner : Mr.T.P.Prabakaran

For Respondents: Mr.M.Karthikeyan  
Additional Government Pleader

ORDER

1.1. The case of the petitioner is that the property comprised in Survey No. 267/11 of Vadakal Village, Vallam Panchayat, Sriperumbadur Taluk, Kancheepuram District, measuring 1.44 cents originally belonged to a certain Jayalakshmi, wife of R.Munusamy Naidu and others, and it was purchased by the petitioner under a

sale deed dated 23.12.2010. The said Jayalakshmi, wife of the aforesaid Munusamy Naidu, died on 18.11.1985. While so, the Government has issued a notification under Section 3(1) of the Tamil Nadu Acquisition of Land for Industrial Proposes Act 1997 (Tamil Nadu Act 10 of 1999) ('Act' for brevity) dated 21.02.2012.

1.2. The petitioner has come forward with this petition, challenging the same, on the ground that the notice under Section 3(2) of the said Act dated 09.01.2010 was issued in the name of the original land owner Jayalakshmi, who had died even in the year 1985. Since obtaining a sale, the petitioner had effected mutation in the revenue records. In spite of that, when notification under Section 3 (1) of the Act was issued, it continued to be issued in the name of the wrong person.

2. The counter in this case is filed and wherein it is alleged that the petitioner had purchased the property after issuance of notice under Section 3(2) and before the notification issued under Section 3(1) of the Act.

3. Heard Mr.T.Prabakaran, the learned counsel for the petitioner and Mr.M.K.Karthikeyan, the learned Additional Government Pleader, appearing for the respondents. Mr.Rama Sundaram, the Special Tahsildar (Land Acquisition), Vallam, Vadakal Scheme, Unit-II, Sriperumbudur is present and assisted the Court. The learned Additional Government Pleader instructed by the Special Tahsildar, submitted that the award has not passed and the proceedings are under way and it would be passed in terms of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013) (would be referred to as Right to Fair Compensation Act).

4. The learned Counsel for the petitioner would submit that it is adequate if award is passed in terms of the Right to Fair Compensation Act, and in favour of the petitioner.

5. There is a broad consensus that award should be passed and compensation would 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) .....  
.....

6. This Court has to presume the Constitutionality of Sec.105-A, and challenge to it notwithstanding, now pending consideration before a Division Bench of this Court, if Sec.105-A(2), if closely read, it 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. In the context of the submissions made by the rival side, this Court chooses to modify the prayer, directing the Land Acquisition Authority / 3<sup>rd</sup> respondent to issue notice before passing the award on the petitioner, within a period of four weeks from the date of receipt of a copy of this order, at the address given above, invite him for enquiry for passing the

award and thereafter, to pass an award as per the principles statutorily declared under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

8. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary,  
Government of Tamil Nadu,  
Department of Industries,  
Secretariat, Chennai-9.
2. The District Collector,  
Kancheepuram District,  
Kancheepuram.
3. The Special Tahsildar (LA)  
Unit-3, SIPCOT,  
Sriperumpudur Extension Project-2,  
Sriperumpudur,  
Kancheepuram.

+1cc to Mr.T.P.Prabakaran, Advocate SR.No.21289  
+1cc to Government Pleader SR.No.22362

BR(CO)  
sm:20.4.2018

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