

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.33736 of 2016

- 1.Athikesavan
- 2.Pathammal
- 3.Chandra
- 4.Muniyammal
- 5.Pappammal
- 6.Archanadevi
- 7.Kasturi
- 8.Sengammal
- 9.Anandammal

.... Petitioners

-Vs-

- 1.State of Tamil Nadu  
Rep by its Secretary to Government  
Public Works Department  
Secretariat, Fort St.George  
Chennai - 600 009.
- 2.The Commissioner of Land Administration  
Ezhilagam, Chepauk  
Chennai - 600 005.
- 3.The District Collector  
Thiruvallur  
Thiruvallur District.
- 4.The District Revenue Officer  
Thiruvallur  
Thiruvallur District.
- 5.The Unit Special Tahsildar (LA2)  
Kannankottai  
Gummidipoondi Taluk  
Thiruvallur District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.006 of 2016 dated 27.06.2016 on the file of the fifth respondent and quash the same as illegal, arbitrary and discriminatory and direct the fifth respondent to disburse the award to the petitioners.

For Petitioners : Mr.N.Nithiyananthan

For Respondents : Mr.Akhil Akbar Ali  
Government Advocate

ORDER

This petition is filed to quash the proceedings of the fifth respondent in Na.Ka.No.006 of 2016 dated 27.05.2016 and to disburse the award amount to the petitioners.

2. Heard Mr.N.Nithiyanandan, learned counsel appearing for the petitioners and Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents.

3. The case of the petitioner is that the Government has acquired a vast track of lands ad-measuring 1,252.47 acres for formation of a certain reservoir and it was challenged by various persons who were interested in a portion of the said lands, but was without any success. While so, the petitioners and several others jointly filed a common representation dated 24.12.2014, to furnish a copy of the award. As that was not forthcoming, W.P.No.16240 of 2016 was jointly filed by all the nine petitioners herein. Vide order dated 28.04.2016, this petition was disposed of with a direction to the petitioners to file separate representations. Accordingly, each of the petitioners have filed separate representations dated 13.05.2016. Pursuant to the order of this Court dated 28.04.2016 in W.P.No.16240 of 2016 and the individual representations submitted by the petitioners herein, the fifth respondent Vide its impugned order dated 27.06.2016 has rejected their representations and these are impugned in this writ petition.

4. The fifth respondent has filed an elaborate counter and relied heavily on Revenue Standing Order No.15 and alleged that the lands were originally Government poromboke lands, that they were assigned to the petitioners by the government. It is submitted that based on the judgment of the Hon'ble Supreme Court in S.V.M.Mohammed Jamaludeen Brothers & Co., Vs. Government of Tamil Nadu reported in [(1997) 3 SCC 466], no rights vest permanently in the assignees, and that the terms of

the assignment contain a clause that the Government has right to resume the lands without payment of compensation and consequently, the petitioners would not be entitled to any compensation. Therefore, even though the award has been passed sometime in the year 2014, so far as the petitioners are concerned, no compensation was awarded to them, inasmuch as they are not entitled for any compensation.

5. The learned counsel for the petitioners argued that the lands belonging to the petitioners were assigned to them by the Government and while it is also true that the terms of assignment had a resumption clause for resuming the lands without payment of compensation, in a situation where the lands are required by the Government for the purposes indicated, it has an option either to resume the lands in terms of the order of the assignment, or, to treat the assignees of the lands as its owners and acquire the lands in terms of the Land Acquisition Act. When once the authority chose to invoke the provisions of the Land Acquisition Act for acquiring the lands, it cannot subsequently revive its power to resume the lands without payment of compensation. Having chosen to treat the petitioners as owners of lands, it is impermissible for the land acquisition authorities to take recourse to the resumption clause in the order of assignment. Reliance was placed on the authorities in *The Special Land Acquisition Officer, Hosanagar Vs. K.S.Ramachandra Rao and others* [AIR 1972 SC 2224] and *R.Abdul Jabbar and 5 Others Vs. The State of Tamil Nadu and 4 others* [1996(II) CTC 719].

6. Per contra, Mr.Akhil Akbar Ali, learned Government Advocate appearing for the respondents submitted that a wrong decision to invoke Land Acquisition Act would not take away the right of the Government to resume the lands in terms of the order of assignment.

7. The point in dispute here is no more res integra. In the land acquisition case in *The Special Land Acquisition Officer, Hosanagar Vs. K.S.Ramachandra Rao and others* [AIR 1972 SC 2224], the Hon'ble Supreme Court has held that it is not given to the respondents to retract from the position they have chosen to invoke the Land Acquisition Act and ignore their option to resume the lands. This was followed by this Court in *R.Abdul Jabbar and 5 Others Vs. The State of Tamil Nadu and 4 others* [1996(II) CTC 719] as well as in *P.Mallaiah Vs. Government of A.P., Rep. by its Secretary, Irrigation & Command Area Development Department, Hyderabad & another* in W.P.No.3306 of 2003. Therefore, the contention of the fifth respondent taken in paragraph No.5 of its counter, that even though the compensation amount has been determined for the petitioners, the same cannot be disbursed to the petitioners in view of the condition pertaining to resumption provided to in the Order of

assignment in their favour cannot stand to scrutiny.

8. In the said circumstances, the separate Orders dated 27.06.2016 passed by the fifth respondent in favour of each of the petitioners is hereby quashed and the fifth respondent is further directed to disburse the compensation amount as has been determined by him fifth respondent within twelve weeks from the date of receipt of a copy of this order. This petition is disposed of accordingly. No costs.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ds

To:

- 1.The Secretary to Government  
Public Works Department  
Secretariat, Fort St.George  
Chennai - 600 009.
  - 2.The Commissioner of Land Administration  
Ezhilagam, Chepauk  
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  - 3.The District Collector  
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Thiruvallur  
Thiruvallur District.
  - 5.The Special Tahsildar (Land Acquisition) Unit-II  
Kannankottai - Thervoykandigai  
Reservoir Scheme  
Gummidipoondi Taluk @ Kavarapettai  
Tiruvallur.
- +1 cc to M/s.N.Nithianandam Advocate sr 1907  
+1 cc to Govt Pleader sr 3659

W.P.No.33736 of 2016

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