

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.01.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No. 33768 of 2016
and
W.M.P.No. 29138 of 2016

Ellammal

...Petitioner

Versus

1. The District Collector,
Krishnagiri,
Krishnagiri District.
2. The Tahsildar,
Krishnagiri Taluk,
Krishnagiri District.
3. The Special Tahsildar (LA),
SIPCOT, (Phase - III, Unit - I) (I/C),
Shoolagiri Town,
Krishnagiri District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings conducting by the third respondent in R.O.C..../2016/B2 dated 23.08.2016 and quash the same.

For Petitioner : Mr. P. Nethaji

For Respondents : Mr. E. Neelakandan,
Government Advocate

O R D E R

The case of the petitioner as disclosed in the affidavit filed in support of the petition reads that the petitioner has purchased a piece of property Vide a registered sale deed dated 20.11.2002 in Survey No.223/1, Guruparapalli village,

Krishnagiri Taluk, Krishnagiri District. After the purchase, the property was sub divided and the petitioner's property fell within the Survey No.223/2B1. Necessary mutation was also effected in the revenue records and the petitioner was assigned Patta in Patta No.202. Be that as it may, the third respondent had issued a Notice under Section 3(2) of the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997, dated 23.08.2016, wherein, the survey number of the petitioner's property is given wrongly as Survey No.223/2A instead of 223/2B1. The present Writ Petition is filed to quash the said notice for the error in quote in Survey Number.

2. Mr.E.Neelakandan, the learned Government Advocate submitted that pursuant to Notice under Section 3(2) issued, the petitioner has filed her objection and the merit of the objection raised is yet to be ascertained and assured that that this will be done before issuing Notification under Section 3 (1) of the aforesaid Act. The statement of the learned Government Advocate is recorded.

3. The learned counsel for the petitioner however submitted that in view of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) came into force on 01.01.2014, the Tamil Nadu Act 10 of 1999 is no longer hold the territory and acquisition proceedings must be initiated only under the Central Act 30 of 2013. He also added that even Section 105-A inserted by the Tamil Nadu Amendment Act to the Central Act 30 of 2013 have served the Tamil Nadu Act 10 of 1999 only upto 31.12.2014 and as in 2016 only the Central Act alone is available.

4. The anxiety of the petitioner is apparent: That in the eventuality of the Government acquiring the lands under the Industrial Purposes Act, they must be paid compensation in terms of the Central Act 30/2013.

5. The issue is, if the principles or the manner by which compensation is to be paid under the Right to Fair Compensation Act and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, should be telescoped into the Industrial Purposes Act. Here Section 105-A becomes relevant and it reads :

" 105-A. Provisions of this Act not to apply to certain Tamil 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 Fifth 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, 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.

7. Accordingly, this petition is allowed and the Land Acquisition Authority is required 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. 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. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Krishnagiri,
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Shoolagiri Town,
Krishnagiri District.

+1cc to Mr.P.Nethaji, Advocate, S.R.No.6047

+1cc to the Government Pleader, S.R.No.6239

W.P.No. 33768 of 2016

PVS (CO)
GSP (15/10/2018)

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