

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.37138 of 2016

Mrs.A.Ranganayagi

... Petitioner

Vs

1. The Secretary to Government,
Industries Department,
Fort St.George, Chennai-600 009.

2. The Chairman & Managing Director,
SIPCOT,
19-A, Rukmani Lakshmipathy Salai,
Egmore, Chennai-600 008.

3. The District Collector,
Kancheepuram District,
Kancheepuram.

4. The Special Tahsildar,
Land Acquisition,
Sriperumbudur Expansion Scheme-II,
Division-5, Sriperumbudur,
Kancheepuram District.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondent authorities to act upon the representations dated 21.12.2015 and 16.09.2016 submitted by the petitioner and direct the respondents either to pay the compensation as per the First Schedule of Central Act 30 of 2013 for the petitioner's land in Survey No.275/2, measuring Ac.01-55 cents, Vallam-B Village, Sriperumbudur Taluk, Kancheepuram District within a time limit to be fixed by this Court or to issue necessary orders dropping the acquisition proceedings and grant NOC to the petitioner to enable her to sell her land in the open market within such time limit as may be fixed by this Court.

For Petitioners

:Mr.R.Bharanidharan

For Respondents

:Mr.Akhil Akbar Ali

Government Advocate[for R1,R3 &R4]

Mrs.Sudharshana Sundar [for R2]

ORDER

The petitioner in this case seeks a direction by way of writ of mandamus for considering the representation dated 21.12.2015, for payment of compensation to the petitioner in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013) in a matter where the petitioner's lands are being acquired under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997.

2. In this case counter has not been filed. Heard Mr.Akhil Akbar Ali, learned Government Advocate appears for the respondents 1, 3 and 4 and Mrs.Sudharshana Sundar, learned counsel appears for the 2nd respondent.

3. The learned Government Advocate, on instruction made a fair statement to this Court that compensation and other benefits would be given to the petitioner only in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013). Since there is a consensus as to the law under which the compensation worked out, there is no dispute available now to resolve in this matter by this Court.

4. The 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.

5. 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, can 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 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. It is not in dispute that the award in this case has not been passed. Accordingly, this petition is allowed and the Land Acquisition Authority is required to quantify the compensation either through private negotiations or by an enquiry but in all cases 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. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Industries Department,
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Land Acquisition,
Sriperumbudur Expansion Scheme-II,
Division-5, Sriperumbudur,
Kancheepuram District.

+lcc to M/s.K.Karthikeyan, Advocate Sr.No.11952

+lcc to Ms.Sudharshanasundar, Advocate Sr.No.11711

RSK(CO)

sm:29.5.2018

W.P.No.37138 of 2016

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