

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.40163 of 2016  
and  
W.M.P.Nos.34204 & 34205 of 2016

Kaluva Konar

...Petitioner

Versus

1. The Arbitrator cum District Collector,  
Villupuram District, Villupuram.
2. The Competent Authority and  
Special District Revenue Officer,  
(Land Acquisition),  
National Highways - 68,  
Salem - 4.
3. The Project Director,  
National Highways Authority of India,  
Narsothipatti, Salem.

(R3 is suo motu impleaded  
as per order dated 15.02.2018 by  
NSSJ in W.P.No.40163 of 2016)

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned order passed by the first respondent in her proceedings Na.Ka. (Arbit)B2/14824/2013, dated 25.07.2015 and quash the same and consequently directing the first respondent to fix the enhanced compensation for the petitioner's land situated in S.Nos.30/3A2, 30/3B1B to the extent of 492 Sq.Meters at Valavanthan Kuppan Village, Thimmalai Post, Kallakurichi Taluk, Villupuram District by taking note of the order passed by the first respondent in Na.Ka.(Arbit)B2/14809/2013 etc., dated 17.06.2016 and disburse the same to the petitioner by applying under the Provisions of under Section 26 and 30 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

|                       |   |                                          |
|-----------------------|---|------------------------------------------|
| For Petitioner        | : | Mr.C.Prakasam                            |
| For Respondent -1 & 2 | : | Mr.E.Neelakandan,<br>Government Advocate |
| Respondent -3         | : | Mrs.S.R.Sumathy                          |

## O R D E R

1.1. The case of the petitioner is that his property comprised in Survey Nos.30/3A2 and 30/3B1B Valavanthan Kuppam Village, Kallakurichi Taluk, Villupuram District, measuring an extent of 492 Sq.mtrs was acquired for widening National Highway NH-68 under the provisions of National Highways Act, 1956. An award too was passed on 24.11.2009 by the Competent Authority. Aggrieved by the perceived inadequacy of the compensation awarded, the petitioner approached the Statutory Arbitrator/the first respondent, and raised an arbitral dispute, but the same was dismissed by the first respondent, the Arbitrator-cum-District Collector dated 25.07.2015. It is further averred that the property acquired appear as a strip of land that belong to several owners who have independent plots within specified boundaries and petitioner's plot is one. As regards the adjacent plots, the same first respondent had enhanced the compensation whereas parity was not extended to the petitioner which has prompted the petitioner to approach this Court impugning the award of the first respondent dated 25.07.2015.

1.2. The Government has filed its counter affidavit as well as its additional counter affidavit and it primarily contends that on the date fixed for arbitral enquiry, the petitioner and few others did not appear. This apart, petitioner has not produced any materials to justify his case for enhancing the seek compensation.

2. Heard Mr.C.Prakasam, the learned counsel for the petitioner and Mr.Akhil Akbar Ali, the learned Government Advocate for the respondents 1 & 2 and Mrs. S.R.Sumathy, the learned counsel for the third respondent.

3. In the course of the argument, it was broadly conceded by the counsel for the respondents that for few of the plots that lie adjacent to petitioner's, their owners were paid enhanced compensation since they had produced necessary materials justifying a case for enhancement of compensation. Another point canvassed was that the dispute that the petitioner raised was decided ahead of those who were granted enhancement of compensation, and that might have been a reason for the first respondent not to apply the same yardstick for granting compensation.

4. The learned counsel for the petitioner also agreed that petitioner was guided by the market rate that he believed as the prevailing price, but he was not granted an opportunity to produce necessary materials to substantiate it. However, inasmuch as the immediate adjacent plot owners are paid higher compensation, that itself would be material enough for him to

seek enhancement of compensation.

5.1. There lies a strip of land on either side of the road and this admittedly was acquired for widening of the said road. It is also an indisputable fact now that some of the land owners have been paid higher compensation than the rest by the first respondent. It may be that some may possess the materials necessary to justify a case for enhancement of compensation and the petitioners may not have, but the fact remains since these lands lie adjacent to petitioner's property sharing identical or substantially similar features in the same locality, the market price can hardly be different between different plots of lands, unless it is shown that the properties are dissimilar in character. Hence, it is not always necessary that every owner of every plot of land that lie contiguously to each other should produce material for establishing their case for enhancement of compensation independently.

5.2. Admittedly, in this case that all the lands for which compensation is enhanced and the other lands where compensation was not so enhanced lie on the same plane and enjoy the same characteristic feature. Petitioner therefore cannot be discriminated against in the matter of payment of compensation. Here an explanation is given that case of others were decided after the decision in petitioner's case. This at the best can absolve any possible allegations of malafide, but, not the need for eliminating differential payment of compensation.

6. This Court therefore allows the petition and quashes the award of the statutory arbitrator/first respondent dated 25.07.2015 and remand the matter back to the Statutory Arbitrator for a fresh consideration of the dispute.

7. The Arbitrator shall issue a fresh notice on the petitioner for enquiry within four weeks from the date of receipt of a copy of this order and shall afford effective opportunity to the petitioner to produce all materials which may include even the award of the first respondent as concerning adjacent lands, whereinafter, the first respondent is directed to dispose of the Arbitral Dispute raised by the petitioner within three months.

8. With the above direction, this Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar (CS II)

//True copy//

Sub Assistant Registrar

mrr

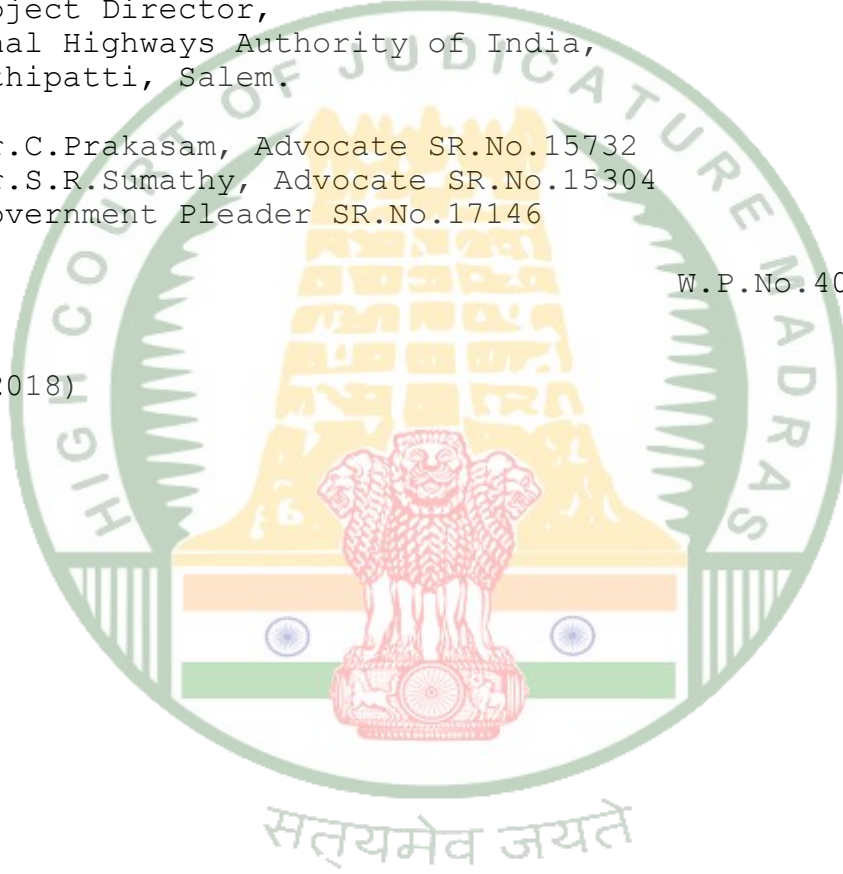
To

1. The Arbitrator cum District Collector,  
Villupuram District, Villupuram.
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Special District Revenue Officer,  
(Land Acquisition),  
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3. The Project Director,  
National Highways Authority of India,  
Narsothipatti, Salem.

+1cc to Mr.C.Prakasam, Advocate SR.No.15732  
+1cc to Mr.S.R.Sumathy, Advocate SR.No.15304  
+1cc to Government Pleader SR.No.17146

W.P.No.40163 of 2016

GN(05/04/2018)



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