

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.No.42204 of 2016

and

W.M.P.Nos.36109, 36110 of 2016 & 16403 of 2017

- 1.P.Narayanasamy
- 2.Tmt.Kasthuri
- 3.Tmt.Kalavathi
- 4.P.Kumar
- 5.P.Rajendran
- 6.Tmt.Usha
- 7.P.Saravanan

...Petitioners

Versus

- 1.The Government of Tamil Nadu,
Rep. by Secretary to Government,
Energy Department, Fort St.George,
Secretariat, Chennai - 600 009.
- 2.The District Collector,
Kancheepuram District.
- 3.The Special Tahsildar,
Land Acquisition Unit IV,
Ultra Mega Power Project,
Cheyyur, Kancheepuram District.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a issuance of a Writ of Certiorari calling for the records relating to the Award No.42 of 2015 dated 31.10.2015 of the respondents 2 and 3 herein and quash the same in so far as it relates to the petitioner's land of an extent of 0.07.0 Hectares comprised in Survey No.75/1, an extent of 0.08.0 Hectares in Survey No.75/2, an extent of 0.25.5 Hectares in Survey No.75/3, an extent of 0.14.0 Hectares in Survey No.75/4, an extent of 0.14.0 Hectares in Survey No.75/5, an extent of 0.72.5 Hectares in Survey No.75/6 and an extent of 0.09.0 Hectares in Survey No.75/7 of Vedal Village, Cheyyur Taluk, Kancheepuram District.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
assisted by
Mr.AR.Karthick Lakshmanan

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

ORDER

The petitioners are the owners of the agricultural lands of an extent of 0.27.0 Hectares in Survey No.74/3 and an extent of 0.13.5 Hectares in Survey No.74/5 of Vedal Village, Cheyyur Taluk, Kancheepuram District and the said land was acquired under the provisions of the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997 [amended as Act 10 of 1999] (hereinafter referred as "Industrial Purposes Act" in brevity). The petitioners contend that they were invited for fixing the compensation under Section 7(2) of the said Act based on an negotiated agreement, and was offered Rs.6,500/- per cent, but the petitioners were not agreeable to this offer. Ideally, Collector should have determined the compensation under Section 7(3) of the Act. Instead, the Land Acquisition Authorities have imposed its own value that it offered to the petitioners under Section 7(2) of the Act, as the compensation amount payable and the third respondent passed the impugned Award No.42 of 2015 dated 31.10.2015. Hence, the petitioners have come forward with this petition to quash the same. It is also alleged that the petitioners have challenged the Constitutionality of Section 105-A brought in by the Tamil Nadu amendment to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter would be referred to as "Right to Fair Compensation Act") and has filed W.P.No.29796 of 2013.

2. Mr.AR.L.Sundaresan, learned Senior Counsel instructed by Mr.AR.Karthick Lakshmanan, counsel for the petitioners 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 Section 7(3) of the Industrial Purposes Act should not ignore the beneficial provisions of the Right to Fair Compensation Act.

3. There is a broad consensus that award should be passed and compensation should be awarded only under Section 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 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)
 "....."

4. This Court has to presume the Constitutionality of Section 105-A, challenge to it notwithstanding, now pending consideration before a Division Bench of this Court. Section 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.103 (Energy) Department, Govt. of Tamil Nadu dated 11.11.2011 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.

5. It is to be noted now that impugned Award in this case have been passed on 31.10.2015, which is well after the coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013). This has to go for two reasons which are as follows:

- (a) For ignoring the need to pass an award under Section 7(3) of the Industrial Purposes Act, in the face of petitioners' unwillingness to accept an award under Section 7(2) of the Act;
- (b) For ignoring the need to read in the provisions pertaining to payment of compensation etc., in the Right to Fair Compensation Act while passing the said award.

https://hcservices6.ecourts.gov.in/hcservices6, this Writ Petition is disposed of and the Award No.42 of 2015 dated 31.10.2015 in so far as the petitioners' property is concerned is hereby quashed and the matter is

remanded back to the Land Acquisition Officer, who is directed 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 Section 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 petitioners, and at any rate, the respondents would not commit the same mistake that it has committed in this proceedings in converting its offer price for the lands into the compensation payable on an enquiry. 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 Petitions are closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government,
Energy Department, Fort St.George,
Secretariat, Chennai - 600 009.
- 2.The District Collector,
Kancheepuram District.
- 3.The Special Tahsildar,
Land Acquisition Unit IV,
Ultra Mega Power Project,
Cheyyur, Kancheepuram District.

CP(CO)
sm:10.8.2018

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