

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.43233 of 2016
and WMP.No.37077 of 2016
and WMP.No.25107 of 2017

R.Vaithiyalingam

... Petitioner

-Vs-

1.The State of Tamil Nadu
Rep by its Secretary to Government
Highways and Minor Ports Department
Fort St.George
Chennai - 600 009.

2.The District Collector
Tiruvarur District
Tiruvarur.

3.The District Revenue Officer
Tiruvarur.

4.The Superintending Engineer, Highways
Trichy - B.B.T. (Nabard Scheme)
Kwats Row Pudhukottai Road
Subramaniyapuram
Trichy.

5.The Divisional Engineer, Highways
Tiruvarur District
Tiruvarur.

6.Mr.Devendran
(Swetha Agency)
No.20, Railway Station Road
Thuvakudi Tiruvarambur
Trichy District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondents 1 to 5 to forbear from proceeding to acquire the petitioner's lands in S.No.426/7B and S.No.428/2A, Vaiyakalathoor Village in Needamangalam Taluk in Tiruvaroor District, by taking recourse to the Tamil Nadu Highways Act 2001 (Act 34 of 2002).

For Petitioner : Mr.R.Srinivas
For Respondents : Mr.Akhil Akbar Ali
Government Advocate[for RR1 to 5]
Mr.Pitty Parathasarathi [for R6]

ORDER

By consent of both sides, this writ petition is taken up for final disposal.

2. The petitioner in his affidavit has averred that he owned a parcel of land in Survey Nos.426/7B and 428/2A, Vaiyakalathoor Village, Needamangalam Taluk in Tiruvaroor District, that the said property was sought to be acquired under the provisions of the Tamil Nadu Highways Act, 2001, and notice under Section 15 (2) of the Act dated 29.04.2013 was also issued. Thereafter, a notification under Section 15(1) of the said Act dated 02.12.2015 was published. Subsequent thereto, the petitioner was invited for an enquiry for the purpose of quantifying the compensation payable to him and the petitioner participated in the enquiry and gave his representation dated 23.08.2016. Since no response was forthcoming, he gave yet another representation dated 24.10.2016. It is also stated that the respondents 4 to 6 are attempting to take possession of the petitioner's property forcibly, and left with no other alternate option than approaching this Court, has come forward with this writ petition.

3. In this petition, the only prayer of the petitioner is that during the pendency of the acquisition proceedings initiated by the authority with regard to his property, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) has come into force on 01.01.2014, and hence compensation shall be paid to him only under the Central Act 30/2013.

4. The learned counsel for the petitioner emphasised that even Section 105-A which was inserted into the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) Vide the Tamil Nadu Amendment Act, 2014 (Tamil Nadu Act No.1 of 2015) too has lost its self-value, when an enquiry for determining the compensation was initiated in the year 2016. Therefore, the learned counsel for the petitioner insisted that if all the respondents are to acquire the petitioner's land as per the original intention, the compensation shall be paid only in terms of the Central Act 30/2013.

5. Mr.Akhil Akbar Ali, learned Government Advocate enters appearance for the respondents 1 to 5 and made a statement on instructions, that an interim award was passed on 18.11.2016, but the petitioner refused to receive the same. The learned Government Advocate however made a further statement that compensation would be determined only in terms of the Central Act 30/2013 and whatever sum determined by the interim award is only interim in nature and whatever sum paid and received based on the interim award will be deducted from the sum to be determined under the Central Act 30/2013. The learned Government Advocate also added that this has been made even in the affidavit filed in WMP.No.25107 of 2017 filed by the respondent for vacating the interim order granted by this Court in WMP.No.37077 of 2016.

6. Sec.105-A(2) of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013 (Central Act 30 of 2013) declares a legislative promise that compensation to be determined under the Special Acts in force in this State and included in the Fifth Schedule, that after the commencement of the Central Act on 01-01-2014, will be non-discriminatory viz a viz those whose lands are acquired under the Central Act 30/2013. This promise under-layers the expressions in the statute where it says that such compensation will not "reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified .." The statement now made by the respondents are not concessions but action in the spirit of this legislative promise.

7. Inasmuch as this Court witnesses a broad consensus as to the enactment that governs the determination of the compensation payable to the petitioner in the ongoing acquisition, there is automatic quietus to the dispute. In particular it allays the apprehension of the petitioner that he would not be justly paid the compensation that he is entitled to receive as per law now in force.

8. In the said circumstances, this Court directs the second and third respondents to issue notice to the petitioner to the address given in the writ petition above, granting him adequate opportunity to effectively represent his case in the matter of passing the award in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30/2013) or consistent with the principles enunciated therein. If the petitioner has received any amount as per the interim award referred to above, the same is liable to be deducted from the final award to be determined as per the direction given above.

9. With the above directions, this petition is allowed in the terms stated above. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To:

- 1.The Principal Secretary to Government
Energy Department
Government of Tamil Nadu
Fort St.George, Chennai - 600 009.
- 2.The Chairman
Tamil Nadu Electricity Board/TANGEDCO
No.800, Anna Salai
Chennai - 600 002.
- 3.The Chief Engineer (Personal)
Tamil Nadu Electricity Board/TANGEDCO
No.800, Anna Salai
Chennai - 600 002.
- 4.The Superintending Engineer/Civil
Mettur Thermal Power Project
Mettur, Mettur Dam - 636 406
Salem District.
- 5.The Revenue Divisional Officer
Mettur Revenue Division
Mettur Dam
Salem District.

+1cc to Mr.R.SRINIVAS, Advocate, S.R.No. 6435

+1cc to the Government Pleader, S.R.No. 9693

W.P.No.43233 of 2016

VG II(CO)
TR(23/02/2018)