BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.03.2018
CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)No.95 of 2018
and
W.M.P(MD)No.103 of 2018

A.Radhakrishnan ... Petitioner

Vs.

1.The Secretary to Government,
Revenue Department,
Secretariat, Chennai - 9.

2.The Secretary to the Government,
Hindu Religious and Charitable Endowment Department,
Secretariat, Chennai.

3.The Secretary to the Government,
Public Works Department,
Secretariat, Chennai.

4.The Commissioner of Land Administration,
Chepauk, Chennai - 600 005.

5.The Commissioner,
Hindu Religious and Charitable Endowment Department,
119, Noongampackam High Road,
Chennai - 600 034.

6.The District Collector,
Karur, Karur District.

7.The District Revenue Officer,
Karur, Karur District.

8.The Assistant Commissioner/Executive Officer,
Arulmighu Kalyana Vengataramana Swamy Temple,
Karur.

9.The Commissioner of Revenue Administration,
Chepauk, Chennai - 5. ... Respondents

(R - 9 is suo motu impleaded vide order,
dated 11.01.2018 in W.P(MD)No.95 of 2018)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the sixth respondent to remove the encroachment made in the Temple lands in Survey Nos.748, 779, 783, 784, 790, 793 and 797 having extent of 16.36.0 hectare land in Thanthoni Village, Karur Taluk and District by the third respondent.

For Petitioner	: Mr.A.Radhakrishnan (Party-in-person)
For RR 1 to 7 & 9	: Mr.VR.Shanmuganathan, Special Government Pleader.
For R - 8	: Mr.P.Athimoola Pandian

ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J.)

Heard Mr.A.Radhakrishan, the petitioner, party appearing in person, Mr.VR.Shanmuganathan, learned Special Government Pleader appearing for the respondents 1 to 7 and 9 and Mr.P.Athimoola Pandian, learned counsel appearing for the eighth respondent-Temple.

2.The petitioner, by way of this writ petition, has sought for issuance of a direction to the District Collector, Karur, Karur District, to remove the encroachments made in the Temple lands in Survey Nos.748, 779, 783, 784, 790, 793 and 797 having an extent of 16.36.0 hectare land in Thanthoni Village, Karur Taluk and District.

3.The petitioner's contention was that the lands which were owned by the Temple was taken by the Government for the purpose of constructing the office of the District Collector and other offices, without payment of compensation. Due to the certain objections being raised, pursuant to the orders passed by this Court, it appears that a Committee was constituted to examine as to what would be the reasonable compensation, which can be paid to the Temple for having taken over the land to be utilised for public purpose. The Committee recommended that a sum of Rs.56,000/- per acre can be paid as compensation. Since this amount was found to be very low, the petitioner pursued this writ petition and stated that all the constructions which have been put in the said property have to be removed and the lands are vest with the Temple. The Executive Officer of the Temple filed an affidavit giving details of the amount of compensation which was paid to the private persons, the value of the land as per the guideline maintained in the office of the Sub-Registrar, Karur and the present market value.

4.When the matter came up for hearing on 15.02.2018, we elaborately heard the parties and passed the following order and issued certain directions:-

> "Heard Mr.A.Radhakrishnan, the petitioner appearing as party-in-person, Mr.V.R.Shanmuganathan, learned Special

Government Pleader accepts notice for respondents 1 to 7 & 9 and Mr.Aathimoolapandian, learned counsel for the eighth respondent.

2.The petitioner seeks for a direction upon the sixth respondent namely, District Collector, Karur, to remove the encroachments made in the lands belonging to the eighth respondent temple in Survey Nos.748, 779, 783, 784, 790, 793, 797 having extent of 16.36.0 Hectare land in Thanthoni Village, Karur Taluk and District.

3.It appears that the District Collectorate and other Government Offices have been constructed on the said property. The Land Acquisition proceedings were initiated in the year 1998 under the provisions of the Land Acquisition Act, 1984. However, at present the said proceedings are pending before the Hon'ble Supreme Court, wherein the private parties have challenged the acquisition proceedings, including the lands owned by the temple. It is to be noted that the land acquisition proceedings were quashed by this Court. Therefore, if the respondents had to enter upon the lands, then they had to hold private negotiations and with the consent of the owner of the property, the lands can be utilised. However, it appears that since the temple property in question was coming under the control of Hindu Religious and Charitable Endowment Department, the Government is not successful in the acquisition proceedings and the Government had obtained permission from the Commissioner, Hindu Religious and Charitable Endowment Department to enter upon the land in question. Though such permission was granted, that would not mean that the land acquired are taken over by the Government. The character of the land should continue to remin as temple lands. In such position, it has to be seen as to what relief can be granted to the temple.

4.Earlier, when the case came up for hearing, the Division Bench of this Court by an order dated 11.01.2018, directed the Commissioner of Land Administration, the Commissioner of Hindu Religious and Charitable Endowment Department and the Commissioner of Revenue Administration, to sit together and to decide about the quantum of compensation to be paid and also to decide about the rate of interest to be applied in this case. It appears that the joint meeting was conducted and a report has been filed by the District Collector from which it is seen that the total compensation which they are agreeable to pay including interest is Rs.1,31,61,942/- (Rupees One Crore Thirty One Lakhs Sixty One Thousand Nine Hundred and Forty Two only).

5.On primafacie perusal of the report, it appears that the compensation is meagre and is grossly inadequate. The Assistant Commissioner/Executive Officer of the eighth respondent temple has addressed the Commissioner of Hindu Religious and Charitable Endowment Department on 22.01.2018, wherein he has given the guidelines value of the properties during the year 1998, that is when the acquisition proceedings were initiated and the probable compensation payable if the provision of Act 13 of 2013 are applied. For better appreciation, the details are extracted herein below:

Karur sub Register guideline value	As per 1998 land valure for acre 40.40 cent	The present land value for the acre 40.40 cent	As per the Rights to fair compensation and transparency in Land acquisition Rehabilitation and Resettlement Act 2013
As per compensation fixed by the Hon'ble High Court for private persons	For Acre 1 Rs.4,50,000 (Rs.4500 per cent)X40.40 =Rs.1,81,80,000	Now, the SLP is pending before the Hon'ble supreme court for the enhancement of compensation amount	Rs.7,27,20,000
As per karur sub registrar guideline value	For acre 1 Rs.42700 X 40.40 =Rs.17,25,080	For acre 1 (2015) Rs.5,90,000X40.40 =Rs.2,38,36,000	Rs.9,53,44,000
As per present market value	For acre 1 Rs.10,90,000 X 40.40 =Rs.4,40,36,000	For acre 1 (2017) Rs.1,31,67,200 (Rs.302 per sq.feet)X 40.40 =Rs.53,19,54,880	Rs.212,78,19,520

6.Considering the reports submitted by the District Collector, which is subsequent to the joint meeting conducted by the third respondent/Commissioner, we are of the opinion that the compensation offered to be paid is too low. Merely because the eight respondent Temple is under the control of Hindu Religious and Charitable Endowment Act does not alter the character of owner of the property. The temple being the owner and if its land are acquired, is entitled to fair and reasonable compensation as mentioned above. The Government was not successful in substantiating the acquisition proceedings. Therefore, if the acquired land has to be retained to them, they are required to initiate fresh acquisition proceedings under Act 13 of 2013.

Though the petitioner in this Public Interest Litigation seeks for a direction on the respondent to remove the encroachments, in our primafacie view, such direction would be un-workable and against the public interest as substantial sum of the public amount has been invested in constructing the Collectorate and other Government Offices from the public funds for public utility and therefore, to that extent we may not accept the prayer sought for by the writ petitioner and we would endeavor to protect the interest of the temple namely, eighth respondent. In the light of the above, the respondents are directed to file counter affidavit on merits of the matter as to why the respondents should not be directed to initiate fresh land acquisition proceeding under Act 13 of 2013 and determine the compensation under the said Act on the date of notification.

List the matter on 26.03.2018. Issue copy of order on application.”

5.Pursuant to the above direction, the District Collector, Karur, has filed a counter-affidavit. In the counter-affidavit, it was stated that the lands owned by the Temple were taken over by the Government for putting up construction for using the office of the District Collector and other public offices and it is for the public good and therefore, the Government was justified in proceeding with the matter, that too, after obtaining 'No Objection Certificate' from the Commissioner of HR & CE Department, who agreed to hand over the Temple land for the construction of master plan complex. Though it appears that the land cost was to be paid, it is not clear as to whether any amount was paid to the Temple and the stand taken by the District Collector is that the land value and compensation cannot be re-fixed as per the provisions of the Right to Fair Compensation, Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, since the land value was fixed as per the provisions of Section 34 of the Hindu Religious and Charitable Endowment Act. Thus, the District Collector, who take a stand that the Joint Committee has recommended payment of compensation at Rs.56,000/- per acre and interest is fixed at 9% for one year and 15% for the subsequent years and it would be beneficial to the Temple.

6.In our considered view, the stand taken by the District Collector in his counter-affidavit is not wholly correct. Though the District Collector may be justified in stating that 'No Objection Certificate' was obtained from the Commissioner of HR & CE Department and enter upon permission was granted as no objection was raised by HR & CE Department. Be it note that HR & CE Department is a limb of the Government and when the Government decides to put up a master plan complex to house, public offices, even if the Commissioner, HR & CE desires to take an independent view, he would be prevented from doing so, because, he would be pitted against public interest and interest of the Temple. Therefore, even assuming that permission was granted to enter upon the land and 'No Objection

Certificate' was granted, that will not divest the rights of the Temple, which is a deity and deemed to be a minor, who would be entitled to due protection and in the instant case, by way of adequate compensation for the lands which have been taken over. The Court can take a judicial notice of the fact that in several Temples in the State of Tamil Nadu, which are under the control of HR & CE Department, the Temple authorities are unable even to perform one 'Kala Pooja' due to lack of funds and invariably depending upon the local people and the donors to carry on the day-to-day activities of the Temple. Equally, it is a pitiable state of affairs where the Temple servants "உள்துறை servants" do not get their salary on time, because the salary has to be paid from and out of 40% of the earnings of the Temple as the remaining 60% has to be remitted by the Temple to the consolidated fund of the HR & CE Department. Therefore, the only life line of the Temple is the immovable properties owned by the Temple, which necessarily in most cases have vested with the Temple by philanthropic persons of the yester years. In respect of these immovable properties, there are encroachers, who were squatting in those properties for several decades resisting lawful eviction proceedings by filing frivolous cases before the Courts and Tribunals. The HR & CE Department, when they seek for recovery of fair rent, apart from non-payment, even the meagre rent was fixed by the Temple there are several interferences. Inspite of efficient action initiated by the Executive Officers of the Temple persons, unfortunately all the eviction orders are dragged into litigation and pending in various stages and thereby rendering the eviction proceedings futile.

7.Therefore, considering that the deity of the Temple is a minor, who needs to be protected, this Court is of the view that we should act as a guardian of the minor to protect the interest of the minor in the manner best served, as in all such cases, the interest of the minor deity is of paramount consideration. The master complex office of the Collectorate and other offices would definitely serve the interest of the public of the District. Simultaneously, the interest of the Temple has to be protected as they have been divested of valuable property. The value of one acre of the land in the said area, as stated by the Executive Officer, is Rs.10,90,000/- and the total extent of the Temple which has been taken over is acre 40.40 cent and if the market value of the land as on date is taken into consideration and the total value of acre 40.40 cent, as per the present market value, ie., 2017, is Rs.53,19,54,880/-.

8.As noticed above, since the land has not been utilised for a commercial purpose, we deem it appropriate that the Temple should be given a fair compensation and compensation has to be arrived at on the date on which the acquisition proceedings were initiated and this value has been adopted in respect of the private parties whose lands were taken over under the provisions of the Land Acquisition Act, 1894. The value of the land as confirmed by the Division Bench of this Court in A.S.No.384 of 2005, dated 06.12.2012 is Rs.4,500/- per cent. In our considered view, if this value is adopted for the total extent of acre 40.40 cent of the land taken over by the Temple, it would be a fair compensation so that the Temple as well as the sub-Temples under its control need not suffer under financial crisis. Apart from the amount of compensation payable at Rs.4,500/- per cent, interest at 9% has to be paid as has been paid to the private land owners. The District Collector is directed to make a compute in this regard and send a proposal to the ninth respondent as well as the respondents 1 and 2.

9.The respondents 1 and 2 and ninth respondent shall take note of the proposal and pay the amount so arrived at, to the eighth respondent Temple within a period of three months from the date of receipt of a copy of such proposal. On receipt of the compensation amount paid to the eighth respondent-Temple, the same shall be retained in a fixed deposit, namely an interest bearing account, and the eighth respondent shall get the concurrence of the Commissioner, HR & CE Department as how to spend the interest which will accrue on the compensation paid by the Government. The compensation amount shall be retrained as a corpus for a minimum period of three years and renewed periodically and thereafter, it is for the Commissioner, HR & CE Department to take a decision in consultation with the Secretary to the Government, HR & CE Department, as to how the accrued interest is to be utilised.

10.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To

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Revenue Department,
Secretariat, Chennai - 9.

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3.The Secretary to the Government,
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Karur.

9.The Commissioner of Revenue Administration,
Chepauk, Chennai - 5.

+2cc to M/S.A.Radhakrishnan, Party-in-Person SR.No. 57875

W.P(MD)No.95 of 2018
26.03.2018

ps
JM/SKN RSK/SAR 3/12.04.2018/8P/12C