

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.03.2019

Pronounced on : 12.06.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEEReview appln. (Writ) Nos.7 to 11 of 2019
andW.M.P.Nos.3524, 3526, 3527, 3529, 3531, 3534,
3537, 3535, 3536 of 2019

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|-----------------------|--|
| 1.S.Venkateshwaran | Sole Petitioner in Rev.Appln.No.7 of 2019 |
| 2.G.Srinivasan | 1 st Petitioner in Rev.Appln.No.8 of 2019 |
| 3.N.S.Surendran | 2 nd Petitioner in Rev.Appln.No.8 of 2019 |
| 4.B.Viswanathan | 3 rd Petitioner in Rev.Appln.No.8 of 2019 |
| 5.Nilakant.Narayan | 4 th Petitioner in Rev.Appln.No.8 of 2019 |
| 6.C.S.Rangavittalan | Sole Petitioner in Rev.Appln.No.9 of 2019 |
| 7.S.Ekambaram | 1 st Petitioner in Rev.Appln.No.10 of 2019 |
| 8.E.Sengutuvan | 2 nd Petitioner in Rev.Appln.No.10 of 2019 |
| 9.Pramila Hari | 3 rd Petitioner in Rev.Appln.No.10 of 2019 |
| 10.Sankar | 4 th Petitioner in Rev.Appln.No.10 of 2019 |
| 11.A.Leena Immaculate | Sole Petitioner in Rev.Appln.No.11 of 2019 |

Vs

1. The Secretary to Government,
Housing and Urban Development Department,
Fort St.George,
Chennai-600 009.

2. The District Collector,
Kancheepuram District,
Kanchipuram.

3. The Special Tahsildar (Land Acquisition)
Mass Rapid Transit System,
Phase II Extension
Thirumayilai Railway Station,
Mylapore,
Chennai-600 004.

4. The Deputy Chief Engineer-I,
Metropolitan Transport Project (Railway 1),
Southern Railway,
Chennai-4.

... Respondents 1 to 4 in all petitions

Common Prayer :- Review Applications filed under Article 226 of the Constitution of India r/w Order 47 Rule 1 and Section 114 of CPC, to review the order dated 21.12.2018 made in W.P.Nos.37501, 37498, 37499, 37500 of 2016 and W.P.No.1730 of 2017 respectively.

For Petitioners : Mr. T.R.Rajagopalan
Senior Counsel

For Respondents : Mr. P.H.Arvind Pandian
Additional Advocate General
Assisted by Mr.Akhil Akbar Ali
Government Advocate, [R1 to R3]
Mr.P.T.Ramkumar [for R4]

COMMON ORDER

These petitions are preferred to review the Order passed by this Court dated 21.12.2018 in W.P.Nos. 37498 to 37501 of 2016 and W.P.No.1730 of 2017. It may be stated at the outset that the aforesaid writ petitions form part of a batch of sixteen writ petitions that include W.P. 43809 to 43813 of 2016, W.P.Nos.1661 to 1665 of 2017 and W.P.No.6223 of 2017.

2. The subject matter of all these writ petitions involved a challenge to the awards passed pertaining to acquisition of land covering about 0.5 km for MRTS Phase-II Extension Project from Velacherry to St.Thomas Mount. In all the 16 cases involved in this batch, awards have been passed and when the

same was challenged in the writ petitions, this Court merely directed the petitioners to move the appellate authority under Sec.64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30/2013) (henceforth will be referred to as "Right to Fair Compensation Act").

3. The learned counsel appearing for the review petitioners would argue that some of the aspects raised in the Writ Petitions have not been considered by the Court. According to him, if these arguments were to be considered, then it will negate the purported legality of the awards to which these cases relate. They are bullet-pointed as below:

- Rules were framed for fixation of compensation Vide G.O.Ms.No.298, Revenue & Disaster Management (LA-I(I)), dated 20.09.2017, and in relation to the same, this Court however has recorded the statement of the learned Additional Advocate General that when the impugned awards were passed on 20.09.2016, these Rules were not framed and that the compensation would be paid in terms of the said Rules. In fitness of things, this Court ought to have acted on the said statement, set aside the impugned awards and directed the authorities to re-work the compensation in terms of the said G.O.Ms.No.298, Revenue & Disaster Management (LA-I(I)), dated 20.09.2017.
- The notice under Section 21 of the New Act which may be equated to Sec. 9 & 10 of the Old Act, was signed by the Collector and the said

notices were forwarded by the Tahsildar (Land Acquisition-II). However, the awards were passed only by the Special Tahsildar. In other words, the awards were passed by the one who does not have the competency to do that. Reliance was placed on the authority in ***Tamil Nadu Housing Board, rep. by its Chairman, Madras and Others Vs. A.P.Damodarasamy (died) and Others*** [(2007) MLJ 189] which relies on an earlier authority in ***A.Vijayarangam and another Vs. State of Tamil Nadu*** [1992 (2) LW.275].

- The notices under Sec.21 are dated 10.08.2016 and were served on the petitioners on 16.08.2016. The said notices required the land owners/petitioners to prefer their written-claim by 30.08.2016. In other words, only fifteen days notice is given for filing written statement, whereas, Sec.21(2) of the Right to Fair Compensation Act mandates that 30 days notice should be given. This apart, notice ought to have been issued to the petitioners under Sec.23 of the Right to Fair Compensation Act for enquiry. Even if the notices were considered valid, still as stated earlier, enquiry cannot be held by the Special Tahsildar as he is not competent.
- It may be added here that the notification under Sec.4(1) of the Land Acquisition Act 1894, constituted only the Special Tahsildar and not the Collector. But the notices inviting the petitioners for enquiry under Sec.23 was given by the Collector.

- In these cases, two awards have been passed. The first one was passed on 15.09.2014 in which compensation was worked out by reckoning the market value of the property at Rs.2,273/- per sq.ft. As that award came to be set aside and fresh awards were passed on 20.09.2016, the market value was reckoned at Rs.1,912/- per sq.ft. While this apparent arbitrariness in choice of the value is noted in the Order, its effect has not been taken into consideration by this Court.

4. In response, the learned Additional Advocate General submitted that :

- The notification for acquisition of land was issued on 11.02.2011, prior to the advent of Right to Fair Compensation Act. It specifically states that the Governor of Tamil Nadu in exercise of his powers under Sec.3(c) of the Old Act, had appointed the Special Tahsildar (LA) MRTS Phase-II Extension to perform the functions of the Collector under the said Act. When the Right to Fair Compensation Act came into force, it kept alive all those proceedings of Land Acquisition where awards were not passed. In other words, the present Act that replaced the Old Act did not contemplate issuing a fresh notification in terms of it to constitute a Land Acquisition Authority. Under Sec.24 of Right to Fair Compensation Act, the Land Acquisition Authority who was constituted under the notification is required to pass awards in the manner provided by the Right to Fair compensation Act, but it does not take away the authority already vested by him in the notification. The

factual setting thus showing a variance to the authority reported in **[(2007) MLJ 189]**, the ratio therein would not apply here. On the other hand the ratio in ***Nasik Municipal Corporation Vs. Harbanslal Laikwant Rajpal and others*** [(1997) 4 SCC 199] and ***State of Tamil Nadu Vs. Mahalakshmi Ammal*** [(1996) 7 SCC 269], will have a bearing.

- While the notices inviting the petitioners for an enquiry was served individually, the reply was given by their Residents' Welfare Association. The cause was not independently contested by the owners and they chose to let the Association defend their individual rights. The purpose behind issuing notice is to grant a right of hearing to those whose civil rights involved in fixing the compensation are not affected. Inasmuch as the petitioners' have chosen to appear through their Association, it cannot be now contended that they are aggrieved by the want of due notice granting them a full 30 days time to respond.

- So far as the argument that this Court has overlooked the consequence of arbitrariness in the choice of the market value of the property when the same is compared with the value fixed in the earlier award is concerned, this Court indeed had attempted to reconcile the same when it proposed a settlement process by negotiation. The Government too appreciated the same and have constituted a committee for the same, but the petitioners chose not to participate.

5. While the arguments raised by the counsel for the petitioners does require an answer, this Court is informed that two other sets of writ petitioners have challenged the order of this Court passed on 21.12.2018. The details are as below:

	<i>Petitioner</i>	<i>W.P. No.</i>	<i>W.A. No.</i>
I	G.Krishnaraj	43813 / 2016	347 / 2019
	Lalitha	43809 / 2016	349 / 2019
	K.Velusamy	43810 / 2016	350 / 2019
	K.Ethirajan	43811 / 2016	351 / 2019
	K.Ramasundaram	43812 / 2016	352 / 2019
II	G.Ezhilarasan	1661 / 2017	756 / 2019
	P.Durairaj	1664 / 2017	757 / 2019
	A.Madhivannan	1665 / 2017	758 / 2019
	C.Kasthuri	1662 / 2017	759 / 2019

These writ appeals were disposed of by the Division Bench of this Court Vide separate orders dated 05.03.2019 and 08.3.2019, in the manner as below :

"31. In the light of the above, while confirming the order passed in the writ petitions, on the grounds raised by the appellants before us and dismissing the appeals, we issue the following directions :-

(i) The 3rd respondent, viz., the Special Tahsildar (Land Acquisition) MRTS, shall issue individual notices to the appellants in terms of Section 21(2) of Act 30 of 2013, to attend the award enquiry for passing the final award within a period of four weeks from the date of receipt of a copy of this judgment;

(ii) In the enquiry to be conducted by the Special Tahsildar (Land Acquisition), MRTS, on the date fixed, the appellants should be permitted to be represented by their Authorized Representatives as done earlier and after considering all

the materials that may be placed before, by the appellants, the Special Tahsildar shall pass final awards within a period of four weeks from the date on which the personal enquiry is concluded;

(iii) The Special Tahsildar shall communicate the copy of the award so passed to the appellants within a period of two weeks' from the date on which the award is passed and the communication should be either personally handed over or sent by Registered Post with Acknowledgement Due;

(iv) The appellants are granted six weeks' time from the date of receipt of the award to file a representation before the Collector, Chennai, requesting for reference to the competent Court under Section 64 of Act 30 of 2013;

(v) The District Collector, Chennai, on receipt of such representation, shall refer the matter to the competent Court, viz., the Principal District Judge, City Civil Court, Chennai, within a period of two weeks' from the date of submission of the representation by the appellants;

(vi) The issue to be decided by the Reference Court being narrow, it would be advisable for the appellants to reduce the number of witnesses so that the trial of the proceedings can be concluded at the earliest.

(vii) It goes without saying that the Special Tahsildar (Land Acquisition), MRTS, and the respondents should extend the fullest cooperation to the Reference Court for an early disposal of the claim for enhanced compensation.

(viii) If the parties cooperate and the oral and documentary evidence are marked on time, the Reference Court is requested to conclude the proceedings and pass orders as expeditiously as possible preferably within a period of eight weeks' from the date on which the trial is concluded."

6. It is indicated that even at the outset the entire acquisition of a land covering 0.5kms alone is halting the entire project of completing the MRTS Phase-II, and this stretch of land belong to 23 petitioners (involved in 16 writ petitions). Of them, barring the review petitioners herein, most others have moved Writ Appeals before a Division Bench of this Court and invited the orders of Division Bench, which has now provided a window for passing a final award in terms of the principles/provisions enunciated in the Right to Fair Compensation Act. This Court cannot ignore the effects of the Orders of Division Bench while disposing these review petitions.

7. What options has this Court now? Assuming if all the grounds of the writ petitioners were accepted, it will only lead to setting aside the impugned awards passed in favour of the review petitioners, and fresh awards need to be passed by following the procedures laid under the New Act. That at any rate will not have the effect of setting aside the very Land Acquisition proceedings itself. In other words, if the petitioners suffers any monetary disadvantage under the impugned awards, the same may be rectified if a fresh set of final awards were passed. But a window has now been provided by the Order of Division Bench in the aforesaid writ appeals, and that would,

and should, take care of any of the grievances of the land owners. Necessarily the petitioners who are similarly placed cannot be discriminated against and they too should receive an identical opportunity to obtain enhanced compensation as per the mechanism provided by the Division Bench of this Court. After all, the only right they now have is to obtain fair and just compensation for their lands as provided in the Right to Fair Compensation Act, and the Rules framed Vide G.O.Ms.No.298, Revenue & Disaster Management (LA-I(I)), dated 20.09.2017.

8. Therefore, considering the arguments of the learned Senior Counsel appearing for the petitioners herein, would chiefly remain an intellectual exercise which at any rate cannot alter the ultimate consequence. However, having raised, this court proceeds to consider them briefly.

9.1 Principally three points were raised. First, that the Awards were incompetent as the Special Tahsildar did not have the authority to pass the award. This is based on an alleged discrepancy in issuing notice by the District Collector and not by the Special Tahsildar. On this aspect this Court finds the submissions of the learned Additional Advocate General far more convincing. It is an admitted fact that the notification issued under Sec.4(1) of the Old Act, under which the land acquisition proceedings have commenced, did mention that the Special Tahsildar has been constituted as the Land Acquisition Authority and has been vested with the powers of the Collector under the Act. It is during the pendency of the acquisition proceedings, the Right to Fair Compensation Act came into force. The only

provision in the New Act that provides continuity to the acquisition proceedings initiated under the Old Act is Sec.24 of the New Act. Sec.24(1)(a) only provides that where awards have not been passed under the Old Act, the same shall be passed in terms of the New Act. The Right to Fair Compensation Act nowhere has stipulated that a new Land Acquisition Authority must be newly constituted under it.

9.2 Turning to the second point, is the alleged discrepancy in issuing the notice by the Collector, even if it were true, fatal to the enquiry proceedings that followed it? First, the object behind issuing notice is all about fairness associated with hearing the party whose civil rights are affected. What is even more significant is to understand if the petitioners were granted an opportunity to participate in the enquiry? They have been given one. The ancillary point is whether granting 15 days time instead of 30 days has rendered the notice illegal? But the larger question is how have the petitioners been aggrieved? It is not demonstrated before this Court for it to come to the conclusion that statutory notices were issued flouting the time-norm of 30 days and that the right of hearing granted to the petitioners was reduced to a farce, and hence ineffective to protect their civil/statutory right.

9.3 On the point of arbitrariness alleged in the choice of the market value for the acquired properties, the same is now taken care of by the directions given by the Division Bench, extracted in paragraph No.5 above.

are given by the Division Bench of this Court in its Orders in W.A.Nos.347, 349, 350 to 350 of 2019 and W.A. Nos.756 to 759 of 2019 and extracted in

paragraph No.5 above. The time-line for complying with the directions will be four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

12.06.2019

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Index : Yes / No

Internet : Yes / No

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