

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.Nos.43597 and 43598 of 2006

V.Kumaresan : Petitioner in W.P.43597/2006
V.Santhavalli : Petitioner in W.P.43598/2006

Vs

- 1.The Special Commissioner & Commissioner
of Land Administration, Chepauk, Chennai-3
- 2.The District Collector
Kancheepuram District, Kancheepuram
- 3.The Special Tahsildar, (Land Acquisition)
National Highways, 5/1, South Mada Street,
Srinagar Colony, Saidapet, Chennai-600 015
- 4.The Chief Engineer, NH 45, No.8, 29th Cross Street
Indira Nagar, Chennai-20
- 5.The Asst.Divisional Engineer, NH 45, Division
Maraimalainagar Sub-Division,
Urappakkam .. Respondents
in both writ petitions.

Common Prayer:- These Writ Petition are filed, under Article 226 of Constitution of India, to issue a writ of Mandamus directing the first respondent to disburse the compensation amount for the omission found in the original estimate relating to the omitted structures as mentioned in the letter of the 5th respondent dated 13.12.1994 with a direction to furnish Award copy to the petitioners.

For Petitioners

in both Wps. : Mr.J.Ram

For Respondents

in both Wps. : Mr.M.Elumalai, Govt.Advocate

COMMON ORDER

The prayer in the writ petitions is to issue a writ of Mandamus directing the first respondent to disburse the compensation amount for the omission found in the original estimate relating to the omitted structures as mentioned in the letter of the 5th respondent dated 13.12.1994 with a direction to furnish Award copy to the petitioners.

2. It is averred in the petitions that in furtherance of Section 4(1) notification issued in G.O.Ms.No.1507, Public Works Department H.S.2 dated 28.10.1992 and Section 6 Declaration issued in G.O.Ms.No.1723 HS2, PWD dated 15.12.1992, as per Special powers as contemplated under Section 17 of the Land Acquisition Act, invoked for National Highways NH-45 for widening of the existing roads, the writ petitioners' lands were acquired and possession was taken over on 19.11.1992. But on the basis of the tentative estimate, as provided under Section 17(3) (a) of the Land Acquisition Act, 80% of the compensation amount has been paid to the petitioners towards the value of constructed structure on 25.11.1992 and compensation towards land value on 19.03.1993.

3. However, even after inspecting the property for re-estimating the value for arriving the total compensation amount payable to the petitioners, there was no response. Hence, the petitioners filed W.P.No.2804 of 1999 (WP.No.43597/2006) and W.P.No.2796 of 1999 (W.P.No.43598/2006) for disbursement of the balance compensation payable to the petitioners.

4. This court, by order dated 31.03.1999, directed the respondents to pay the unpaid compensation amount due to the petitioners along with solatium and interest, strictly within three months.

5. Since the respondents had disobeyed the order of this court, contempt petitions have been filed by the petitioners, for which, this court granted six months time to the respondents to comply with the directions issued by this court on 31.03.1999.

6. According to the petitioners, even after three years, payments were not made, hence, again contempt petitions have been filed, wherein, this court ordered notice to the respondents and thereafter, respondents disbursed the balance compensation amount on 01.04.2002 after 10 years.

7. It is further averred in the writ petitions that inspite of 12 long years, for the omissions found in the original estimate relating to omitted structures, no payment towards compensation has been disbursed to the petitioners. Hence for the inordinate delay caused by the respondents in settling the compensation for the omitted structures found in the Original Estimate as per the letter of 5th respondent dated 13.12.1994, the petitioners have filed the above writ petitions.

8. The second respondent filed a counter affidavit before this court. In paragraph 12 of the counter in W.P.No.43597/2006,

it is stated that the Government, considering the critical situation in the matter, allotted necessary funds in G.O.Ms.No.101, Highways (HW1) Department, dated 26.05.2001. Thereafter, 20% of compensation along with solatium and interest Rs.1,53,592/- was paid to the writ petitioner viz., V.Kumaresan, on 01.04.2002. As regards the present prayer, in respect of claiming the omitted structure value along with a copy of award, it is stated that copy of the Project Director NH 45 Le.NHAI/18011/42/02 PIO-Chennai 2044 18.10.2010 that an amount of Rs.92,733/- vide cheque No.003025/18.10.2010 has been paid to the writ petitioner towards the omitted structure value. As regards the claim for a copy of award, it is averred in the counter affidavit that no award was passed since the lands were classified as Government Poramboke lands and therefore, serving copy of award does not arise. It is therefore stated that the request of the petitioner has been fulfilled.

9. Likewise, 2nd respondent also filed a separate counter affidavit in WP.No.43598/2006 taking similar stand as taken in W.P.43597/2006 and it is stated that omitted structure value as estimated by the authorities to the extent of Rs.72,450/- was paid to the writ petitioner viz., V.Santhavalli by the Project Director National Highways, Guindy vide Cheque No.003026/18.10.2010 and therefore, the request of the writ petitioner has been fulfilled.

10. In view of the above statements in the counter affidavits filed in the above writ petitions, it is apparent that subsequent to the filing of the present writ petitions, the claim of the petitioners have been fulfilled. However, it is the submission of the learned counsel for the petitioners that the respondents had not settled the solatium and its interest portion, as provided in the Land Acquisition Act (Act 1 of 1894). In the considered opinion of this court, payment of solatium and interest is a statutory right as per the Act and therefore, if the petitioners are entitled for such amounts, it is for the petitioners to seek for their claim in accordance with law before the authority concerned.

11. The learned Government Advocate appearing for the respondents would submit that the writ petitioners can make their request with regard to solatium and interest before the 5th respondent under the provisions of the act.

12. In view of the above said statement, the writ petitions are disposed of with liberty to the petitioners to approach the authority concerned seeking for payment of solatium on the compensation amount paid by the respondent-department, within a period of two weeks from the date of receipt of a copy of this order. If any such representation is made, the authority

concerned shall consider the same and pass appropriate orders in accordance with law, as expeditiously as possible.

13. The Writ Petitions are disposed of with the above direction. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

nvsri

To

- 1.The Special Commissioner & Commissioner
of Land Administration, Chepauk, Chennai-3
 - 2.The District Collector
Kancheepuram District, Kancheepuram
 - 3.The Special Tahsildar, (Land Acquisition)
National Highways, 5/1, South Mada Street,
Srinagar Colony, Saidapet, Chennai-600 015
 - 4.The Chief Engineer, NH 45, No.8, 29th Cross Street
Indira Nagar, Chennai-20
 - 5.The Asst.Divisional Engineer, NH 45, Division
Maraimalainagar Sub-Division, Urappakkam.
- +1cc to Mr.P.Gopalan, Advocate, SR.No.88425.
+1cc to Government Pleader, SR.No.88698.

WP.43597 and 43598 of 2006

WEB COPY

SJ (CO)
CSR(30/12/2019)