

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :15.07.2019
CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos. 26617,26618, 26619 and 26620 of 2009
and
M.P.Nos. 1 and 2 of 2009

Indian Oil Corporation Ltd.,
Rep. by its Chief LPG Manager(Engg),
Mr.K.Mani,
Indian Oil Bhavan,
No.139, 4th Level,
Nungambakkam High Road,
Chennai-600 034.

..Petitioner in all W.Ps

vs

1. The Collector,
Collectorate Office,
Thiruvallur District.

2. Revenue Divisional Officer,
Ponneri Thiruvallur District.

3. Special Tasildhar,
Land Acquisition,
Ponneri Thiruvallur District. ..Respondents in all W.Ps.

4.M.Munuswamy. ..4th Respondent in W.P.No.26617 of 2009

5.Vasudevan ..4th Respondent in W.P.No.26618 of 2009

6.Govindharaj ..4th Respondent in W.P.No.26619 of 2009

7.Durairaj ..4th Respondent in W.P.No.26620 of 2009

Prayer in W.P.No.26617 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the second respondent and to quash the impugned order of enhanced compensation U/s.28A of the Land Acquisition Act as Amended Act 68/84 passed by the second respondent vide impugned order in N.K.No.3586 of 2009/A3 dated 07.08.2009 pertaining to the property situated at Athipattu Village, Thiruvallur district in Survey No.97/1B3 measuring an extent of 0.49.5 hectares of enhanced compensation of a sum of Rs.14,36,582/- (Rupees Fourteen Lakhs Thirty Six Thousand Five Hundred & Eighty Two only).

Prayer in W.P.No.26618 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the second respondent and to quash the impugned order of enhanced compensation U/s.28A of the Land Acquisition Act as Amended Act 68/84 passed by the second respondent vide impugned order in N.K.No.3586 of 2009/A3 dated 09.07.2009 in pertaining to the property situated at Athipattu Village, Thiruvallur district in Survey No.221/2 measuring an extent of 0.73.0 hectares of enhanced compensation of a sum of Rs.10,61,194/- (Rupees Ten Lakhs Sixty One Thousand one Hundred and Ninety Four only).

Prayer in W.P.Nos.26619 and 26620 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the second respondent and to quash the impugned order of enhanced compensation U/s.28A of the Land Acquisition Act as Amended Act 68/84 passed by the second respondent vide impugned order in N.K.No.3586 of 2009/A3 dated 07.08.2009 in pertaining to the property situated at Athipattu Village, Thiruvallur district in Survey No.221/2 measuring an extent of 0.73.0 hectares of enhanced compensation of a sum of Rs.5,30,600/- (Rupees Five Lakhs Thirty Thousand Six Hundred only).

For Petitioner : Mr.David Tyagaraj
(In all W.Ps)

For Respondents : Mr.J.Ramesh, AGP for R1 and R2
(In all W.Ps) Mr.M.Elumalai, GA for R3
Ms.R.Lavanya for R4 to R7

O R D E R

According to the petitioner/Indian Oil Corporation Ltd, the land in Survey No. 97/1B3, at Athipattu Village measuring an extent of 0.49.5 hectares was acquired by them for implementing Athipattu Bottling Plant for which compensation has been passed by the third respondent under Section 11 of the Land Acquisition Act, under Award No.4/96 dated 20.08.1996, at the rate of Rs.740/- per cent to the private respondents. Further usual interest were awarded under sections 23(1-A2) and 28(1-A) of the said Act to the private respondent, as per Section 11 of the Land Acquisition Act. The Private respondents had failed to request for a reference in writing before the third respondent, under Section 18 of the Land Acquisition Act 1894. Hence there was no reference made under Section 18 of the Land Acquisition Act 1894 with regard to the private respondents. The private respondents have not prayed for reference under section 18 of the Land Acquisition Act before the third respondent for a reference. Accordingly, the second respondent had rightly

rejected the application made by the private respondents praying for enhancement of compensation under Section 28A of the Land Acquisition Act 1894. The Private respondents have complied with this court order dated 08.12.2003, by reference letter of the second respondent dated 08.08.2007. The private respondents had not requested for a reference while accepting the award passed by the third respondent, after receiving the compensation awarded under section 18 of the Land Acquisition Act within a stipulated period i.e., 90 days or within six months from the date of award. Further, this Court order dated 08.12.2003, will not legally sustain and hence the second respondent had rejected the application on the ground that the case will not be applicable to the private respondents. Thereafter, the private respondents requested the Legal Service Authority at Ponnery to pay the compensation at the rate of Rs.3,700/- per cent by deducting Rs.740/- per cent. The petitioner refused to pay the enhanced compensation, as the private respondents were not legally entitled under the said Act, and therefore, the Adalath closed the issue on 17.11.2009.

2.The second respondent had passed an order dated 30.08.2009, calling the petitioner to pay compensation to the private respondents. Aggrieved, against the said order, the present writ petitions are filed.

3.The learned counsel for the petitioner submitted that the second respondent had passed an order after rejecting the earlier application and therefore, the order is barred as the earlier request was rejected under Section 28 A of the Land Acquisition Act, to enhance the compensation as requested by the private respondents. Therefore, he prays this court to dispense with the enhanced compensation order passed by the second respondent.

4. Heard both sides and perused the documents placed on record.

5. Considering the facts and circumstances of the case, the Land Acquisition Officer fixed the compensation amount at Rs.740/- per cent and aggrieved by the said order one of the land owner namely Devaraja has filed an LAOP under Section 80 of the Land Acquisition Act. After hearing the arguments, the Trial Court enhanced the compensation. The second respondent had rejected the application filed by the private respondents for enhancement compensation, under Section 28 A of the Land Acquisition Act, subsequently, the second respondent passed an order in favour of the private respondent under Section 28 A of the Land Acquisition Act.

6.Considering the facts and circumstances of the case and records reveals that lands were acquired for further establishment of petitioner Oil Corporation. Initially, the land Acquisition Officer fixed compensation amount of Rs.740/- percent and aggrieved by the same, the private respondents sought for reference under section 28 A of the Land Acquisition Act based on the judgment and decree pertaining to one land owner namely, Devaraja before the Revenue Divisional Officer and the same was rejected by the Revenue Divisional Officer. Thereafter, the private respondents requested the Legal Services Authority at Ponneri for enhancement of compensation from Rs.740/- to Rs.3,700/- per cent and the Adalath closed the issue on 17.10.2009, 17.11.2008 and 17.11.2008 respectively. Thereafter, the private respondents made application on 24.11.2003 under Section 28A of the Land Acquisition Act. Thereafter, the impugned order was passed by the Revenue Divisional Officer. Aggrieved by the order, the petitioner had filed these writ petitions mainly on the ground that initially the very same application filed by the private respondents were rejected by the then District Revenue Officer by order dated 08.08.2007.

7.This Court perused the earlier rejection order. The applications were filed on 24.11.2003 and the impugned orders were passed during the year 2007. Further, the petitioner is only requisition body.

8.Perusal of Section 28A of the Land Acquisition Act makes it clear that wherein an award under this part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Section 11, the persons interested in all the other land covered by the same notification under Section 4, sub-Section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under Section 18 by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court.

9.The said provision is beneficial provision and as per the said provision, the land losers who parted the land during acquisition is entitled to receive higher compensation along with either land owner who obtained enhanced compensation thereby Competent Court.

10.In the present case, reference Court referred the case of the private respondents for enhancement of compensation and the same was refused by the then District Revenue Officer. Thereafter, the private respondents made applications on

24.11.2003 and the competent authority under Section 28 A arrived at a conclusion that the private respondents are entitled to receive enhance compensation on par with other land owners and the land covered in acquisition, in which, requisition body namely, petitioner is not aggrieved person. Hence filing writ petitions challenging the enhancement of award in favour of the private respondents is un-sustainable. The writ petitions are accordingly dismissed. Consequently, the connected miscellaneous petitions are also closed. No Costs.

-s/d-

Assistant Registrar (CS-I)

True Copy

Sub-Assistant Registrar

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To

- 1.The Collector,
Collectorate Office,
Thiruvallur District.
- 2.Revenue Divisional Officer,
Ponneri Thiruvallur District.
- 3.Special Tasildhar,
Land Acquisition,
Ponneri Thiruvallur District.

+5 CCS to Mr.David Tyagaraj, Advocate sr 60059
+1 CC to Govt. Pleader sr 60212, 60238.
+4 CCS to Mr.R. Munusamy, Advocate sr 61152 (04/12/2019)

सत्यमेव जयते

W.P.Nos. 26617, 26618, 26619 and 26620 of 2009

NR(CO)
SP(03/12/2019)