

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos. 4516 & 4517 & 4830 of 2008

M.Sivakumar

..Petitioner in
WP.No.4516 of 2008

S.Usha

..Petitioner in
WP.No.4517 of 2008

K. Rajendran
K.Radha
K.Arumugam
K.Elumalai
K.Desinguraja
A.Inbanila
S.Anjalidevi
G.Saroja

..Petitioners in
WP.No.4830 of 2008

Vs.

1. The Special District Revenue Officer and
Competent Authority (Land Acquisition)
National Highway - 45
Villupuram
Villupuram District.

2. The Special Tahsildhar (Land Acquisition)
National Highway - 45
Ulundurpet
Villupuram District

3. The Executive Officer
Ulundurpet Town Pandhayat
Ulundurpet
Villupuram District.

.. Respondents in all Writ petitions

4. The Project Director
National Highway Authority of India,
(Project Implementing Unit)
(Ministry of shipping Road, Transport and Highways)
New No. 6, Old No.44, 1st floor, 3rd Main Road,
Ponnagar, Tiruchirappalli

[R4- Impleaded in W.P.Nos. 4517 of 2008 & 4830 of 2008 by an order dated 03.06.2013 & 24.11.2010 respectively in M.P.3/2008 in W.P.Nos.4830/08 and 4517/08]

Prayer in W.P.No. 4516 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ Certiorarified Mandamus, calling for the records on the file of the 1st Respondent comprised in his award proceedings Na.Ka.No. A 23/2003 dated 31.01.2007 and quash the award in so far as determining that the 3rd Respondent is entitled to receive the amount of compensation to the tune of Rs.7,83,436/- for the area measuring 855 sq.mts left out for public purpose in 'Parvathy Nagar' layout situated at U.Keeranur Village, Uludurpet Taluk, Villupuram District and consequently directing the 1st Respondent herein to pay the amount of compensation to the tune of Rs.7,83,436/- for the area 855 sq.mts., left out for public purpose in the 'Parvathy Nagar' layout to the Petitioner forthwith.

Prayer in W.P.No. 4517 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ Certiorarified Mandamus, calling for the records on the file of the 1st Respondent comprised in his proceedings Na.Ka.No. A 22/2003 dated 00.01.2007 and quash the said award in so far as determining that the 3rd Respondent is entitled to receive the amount of compensation to the tune of Rs.2,77,202/- for an extent of measuring 0780 sq.mts left out for public purpose in 'Parvathy Nagar' Layout situated at 63 Ulundur Village, Ulundurpet Taluk, Villupuram District and consequently directing the 1st Respondent herein to pay the amount of compensation to the tune of Rs.2,77,202/- for the said area of 0780 sq.mts., left out for public purpose in the said 'Parvathy Nagar' Layout to the Petitioner forthwith.

Prayer in W.P.No. 4830 of 2008: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ Certiorarified Mandamus, calling for the records on the file of the 1st Respondent comprised in his award proceedings Na.Ka.No. A 23/2003 dated 31.01.2007 and quash the said award in so far as determining that the 3rd Respondent is entitled to receive the amount of compensation to the tune of Rs.23,62,019/- for the area measuring 02575 sq.mts left out for public purpose in 'Ganesh Nagar' Layout situated at U.Keeranur Village, Uludurpet Taluk, Villupuram District and consequently directing the 1st Respondent herein to pay the amount of compensation to the tune of Rs.23,62,019/- for the said area of 02575 sq.mts., left out for public purpose in the said 'Parvathy Nagar' Layout to the Petitioners forthwith.

For Petitioners in all WP.Nos. : Mr.T.Selvarajan

For Respondents in all WP.Nos. : Mr.M.Elumalai,
Government Advocate
for R1 & R2

Mr.P.Rajavel for R3

M/s.Wilson & Associates
for R4

C O M M O N O R D E R

Since the prayer in the above Writ Petitions are one and the same, they are clubbed together and a common order is passed.

2. The case of the first petitioner is that he is the owner of the property in Survey Nos. 452/3 measuring a total extent of 44,650 sq.ft., and 26,160 sq.ft., and in Survey 452/2 measuring a total extent of 1800 sq.ft., situated at U.Keeranur Village, Ulundur pet Taluk. The lands in S.Nos.452/2 and 452/3 were acquired and a sum of Rs.13,92,572/- was paid to the first petitioner as compensation. However, the first respondent failed to pay compensation for the area left out as common areas like street and park to the tune of Rs.7,83,436/-.

3. The second petitioner is the owner of the property in Survey No. 109/2A measuring a total extent of 3170 sq.mts., situated at 63 Uludur Village, Ulundurpet Taluk. The Government of India in order to implement the project of laying four lane National High Way, starter acquiring lands and for the same, the first respondent passed an award to the tune of Rs.10,24,160/-. However, the first respondent failed to pay the compensation for the area left out as common areas like street and park to the tune of Rs.2,77,202/-.

4. The third petitioner is the owner of the property in Survey No. 456/1 measuring a total extent of 1.98 acres and in Survey 457/4 measuring a total extent of 1.32 acres situated at U.Keeranur Village, Ulundurpet Taluk. The third petitioner's land was also acquired and the first respondent awarded a sum of Rs.6,56,799/-. However, the first respondent failed to pay the compensation for the area left out as common areas like street and park to the tune of Rs.23,62,019/-.

5. Not satisfied with the amount paid by the first respondent, the petitioners have filed the present Writ Petitions.

6. The learned counsel appearing for the 1st respondent denied all the contentions raised in the the petitioner's affidavit except those that are specifically admitted by them. The learned Government Advocate relied upon the decision of this Court in the case of The State of Tamil Nadu and another Vs. P.Kanagamani and others reported in 1975 AIR (Madras) 303 and the relevant paragraphs are extracted hereunder:

"11. The Supreme Court had to consider the nature of the functions performed by the Collector as well as the nature of the award made by him under the provisions of the Act in Raja Harish Chandra Raj Singh V. The Deputy Land Acquisition Officer, AIR 1961 Supreme Court 1500. The Supreme Court referred to with approval principles laid down by the Calcutta High Court in (1903) ILR 30 Cal 36, as well as the decision of the Privy Council in (1905) ILR 32 Cal 605 and the decision of the Punjab Chief Court in (1909) 4 Ind Cas 914 referred to already. The Supreme Court pointed out:

" In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under Section 12. In a sense it is a decision of the Collector reached by him after holding an enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceeding is required to be taken; the amount is paid and compensation proceedings are concluded. If however, the owner does not accept the offer, Section 18 gives him the statutory right of having the question determined by Court, and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on

behalf of the Government to the owner of the property for his acceptance"

That question arose in the context of the construction of the proviso to Section 18 of the Act, dealing with the period of limitation for claiming a reference to the Court by a person interested in the land. The question that had to be considered by the Supreme Court was whether the expression, "the date of the award" occurring in the proviso to Section 18 meant literally the date on which the award was made or it meant date on which the award was communicated to the persons concerned or the date on which the person concerned came to acquire knowledge of the award. It is only in that context the Supreme Court made the above observations. As a person concerned came to acquire knowledge of the award. It is only in that context the Supreme Court made the above observations. As a matter of fact, the Supreme Court went to the extent of pointing out that if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property, then the making of the award, as properly understood, must involve the communication of the offer to the party concerned; that is the normal requirement under the contract law and that its applicability to cases of award made under the Act cannot be reasonably excluded. Therefore, the above decisions make it quite clear that the making of an award by the Collector, under the provisions of the Act does not constitute a decision or determination on the part of the Collector and that it merely constitutes an ascertainment of the market value of the property by the Collector administratively as an agent of the Government to enable the Government to offer that amount by way of compensation to the person concerned. If so, it follows that an award made by a Collector under the provisions of the Act cannot be said to be a decision or determination by a judicial or quasi-judicial officer so as to bring it within the certiorari jurisdiction of this Court under Article 226 of the Constitution of India.

... 18. Apart from the above considerations, the decision of the Supreme Court in AIR 1961 Supreme Court 1500 referred to already clearly and categorically lays down the proposition that an award made by a Collector under Section 11 of the Act is not a decision and that it is only an offer made by him on behalf of the Government to the owner of the land. That decision will

clearly lead to the inevitable conclusion that the award of the Collector made under Section 11 of the Act cannot be questioned by way of a petition for the issue of a writ of certiorari under Article 226 of the Constitution of India."

7. In view of the above decision, the award passed by the Collector under Section 11 of the Act cannot be questioned by way of a petition for issuance of writ of certiorari under Article 226 of the Constitution of India. Therefore, the petitioners are at liberty to file a claim petition before the Arbitrator or before the competent Civil Court. Section 3-H of Manual of Highways Laws in Tamil Nadu, reads as follows:

" 3-H. Deposit and payment of amount-

(1) The amount determined under Section 3-G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal Civil Court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under Section 3-G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine percent per annum on such excess amount from the date of taking possession

under Section 3-D till the date of the actual deposit thereof.

6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

8. Without approaching the competent authorities i.e., neither the arbitrator/District Collector nor the competent Civil Court, the petitioners approaching this Court by way of Writ Petition is unsustainable. Hence, this Court is not inclined to interfere with the award passed by the authority.

9. Accordingly, the writ petition stands dismissed and the petitioners are at liberty to workout the necessary remedy before the appropriate forum. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Special District Revenue Officer and Competent Authority (Land Acquisition)
National Highway - 45
Villupuram
Villupuram District.
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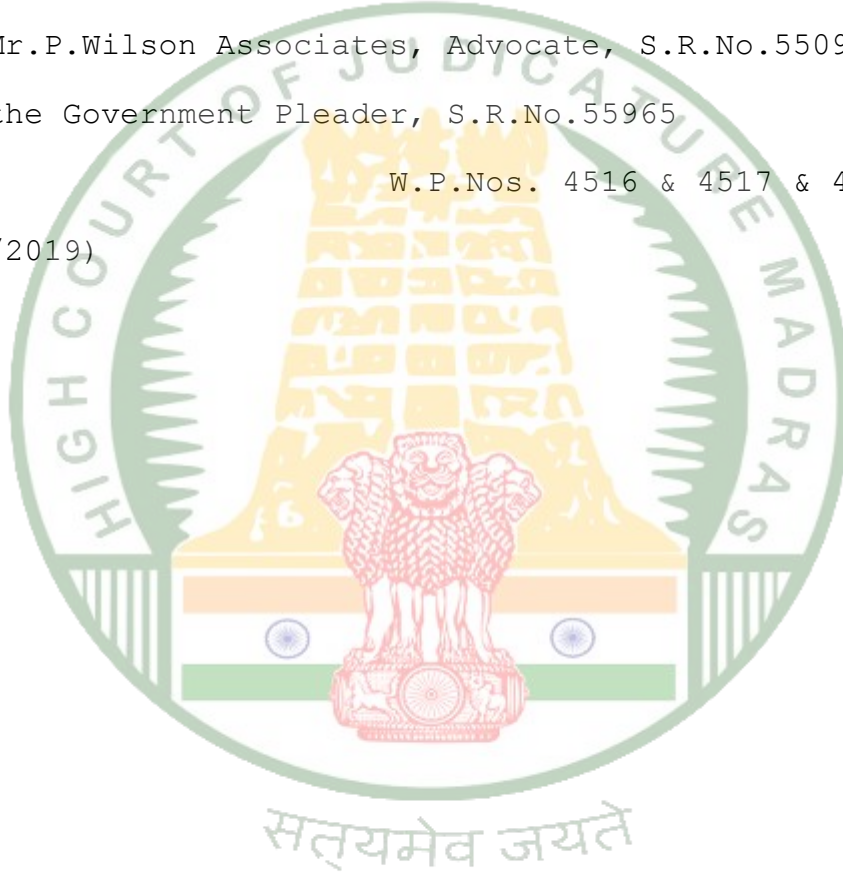
4. The Project Director
National Highway Authority of India,
(Project Implementing Unit)
(Ministry of shipping Road, Transport and Highways)
New No. 6, Old No.44, 1st floor, 3rd Main Road,
Ponnagar, Tiruchirappalli

+1 cc to Mr.P.Wilson Associates, Advocate, S.R.No.55099

+1 cc to the Government Pleader, S.R.No.55965

W.P.Nos. 4516 & 4517 & 4830 of 2008

VG-II(CO)
SSM(09/09/2019)



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