IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.5715 of 2019
&
W.M.P.No.6510 of 2019

N.R.Rajadasappan ... Petitioner

vs.

1.The Principal Secretary to Government,
Highways Department,
Fort St. George,
Chennai – 600 009.

2.The Chief Engineer,
State Highways,
Chepauk,
Chennai – 600 005.

3.The District Collector,
Salem District,
Salem.

4.The General Manager,
Southern Railway,
Chennai.

5.The Chief Administrative Officer Southern Railway,
Works/Constructions/MS,
Egmore, Opp. To Daily Thanthi office,
Chennai.

6.The Commissioner of Land Administration,
Ezhilagam,
Chennai.

7.The Land Acquisition Officer/
District Revenue Officer,
Collectorate,
Salem – 636 001.

8.The Assistant Divisional Engineer (Highway),
Planning, Sub-Division, Salem. ... Respondents

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PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Ceriorari to call for the records of the 8th respondent made in his proceedings Ka.No.01/L.C.187/Land Acquisition/2019/EVaAa dated 15.02.2019 and quash the same.

For Petitioner : Mr.Silambanan, Senior Counsel for R.Kameshkumar

For R1 to R3 & R6 to R8: Mr.D.Raja Additional Government Pleader

For R4 & R5 : No appearance

O R D E R

The writ petition has been filed by the petitioner seeking to quash the proceedings of the eight respondent in Ka.No.01/L.C.187/Land Acquisition/2019/EVaAa dated 15.02.2019.

2. It is the case of the petitioner that the respondent acquired his land for the purpose of constructing over bridge across the railway gate No.187 Leigh Bazaar, Suramangalam Main Road to Sandhaipettai Main Road and the notification was issued under Section 15(2) and 15(3) of the Tamil Nadu Highways Act, for acquiring shops and buildings. According to him, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2012 hereinafter referred to as 'Act 30 of 2013' came into force in order to ensure a humane participative, transparent process in land acquisition proceedings. However, fair compensation had not been paid to him. Hence, the petitioner along with other affected parties, seeking fair compensation, have filed Writ Petitions in W.P.Nos.17571 & 18453 to 18457 of 2017 before this Court, and this Court, by a common order dated 25.01.2018 has allowed those writ petitions. The relevant portion of the said order is extracted hereunder:

> "8.In conclusion, this petition is allowed with a modification that the land acquisition authority shall issue appropriate notices to the petitioners for holding enquiry for determining the compensation payable within a period of four weeks from the date of receipt of a copy of this order, and pass an award within four months in accordance with spirit behind Section 105-A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013), which make relevant the application of provisions

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intended for payment of compensation and providing rehabilitation or resettlement under Sections 26 to 30 of the said Act. The respondent shall not take possession of the property, or disturb their possession unless at least 50% of the award amount is paid. No costs. Consequently, connected Miscellaneous Petitions are closed."

3. Despite the specific direction, the respondents failed to comply with the order of this Court and hence, the petitioners in the above said petitions, filed contempt petition No.810 of 2018 before this Court. This Court, while dealing with the Contempt Petition by order dated 28.04.2018 has observed as follows:

> "9.The learned counsel for the petitioner further submitted that the petitioner would be appearing before the District Revenue Officer on 07.05.2018 at 11.00 a.m in the Office of the District Revenue Officer, Collectorate, Salem. In the matter of fixation of market value of the property, the Authority shall receive such evidence as are made available by the petitioner and quantify the compensation strictly in accordance with law."

4. As per the above referred order, the petitioner appeared for the enquiry and an award has also been passed. However, the petitioner was shocked to receive the impugned notice from the eighth respondent stating that the petitioner has to vacate the premises immediately after the receipt of notice or the respondent will evict the petitioner at his cost, if any objection, the same should be given within seven days. Challenging the said order, the petitioner has come out with the present writ petition.

5. Mr.Silambanan, learned Senior Counsel appearing for the petitioner drew the attention of this Court to Section 38 of the Act 30 of 2013, which is usefully extracted hereunder:

> "38. Power to take possession of land to be acquired-(1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30.
>
> Provided that the components of the Rehabilitation and Resettlement Package in the

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Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award.

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families."

By relying upon the said provisions, the learned Senior Counsel submitted that, the respondent has not paid compensation, but passed the impugned order for eviction. Hence, the impugned proceeding is unsustainable.

6. On the last hearing i.e., on 28.02.2019, the learned Government Pleader appearing for the respondents 1 to 3 and 6 to 8 would submit that steps have been taken to deposit the compensation amount before the Civil Court under Section 21 of the Tamil Nadu Highways Act, but the same were returned due to certain defects.

7. When the matter came before this Court today, the learned Additional Government Pleader has placed a communication in ROC.No.9015/2013/B3 dated 16.03.2019 of the Land Acquisition Officer/District Revenue Officer, Salem to the Government Pleader (Land Acquisition) and the relevant portion of the said communication is extracted hereunder:

" I also wish to inform that there are 46 survey field, comprising an extent of 970.0 sq.mtr has been acquired in the said award. Out of 46 survey fields land owners of 29 survey fields objected the land acquisition and not produced their documents bearing their rights on the acquired land during award enquiry. So, we could not finalise their portion of land/building acquired in the proceedings. So, the total compensation for those 29 survey fields (Rs.65877729/-) has been deposited in the court of 1st additional subordinate judge, salem under section 22(3) and 23 of Tamil Nadu Highways Act 2001 (Tamil Nadu Act 34/2002). The Payment of Compensation for the remaining 17 survey fields has been deposited in the land owners bank account through ECS on 29.01.2019. The copy of the ECS statement and confirmation letter given by the District Treasury Officer is enclosed herewith for your perusal."

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8. The leaned Additional Government Pleader would submit that the seventh respondent has rectified the above said defects and deposited the compensation amount before the First Additional Subordinate Court, Salem in LAOP.No.15 of 2019. The relevant portion of the above cited ROC.No.9015/2013/B3 dated 16.03.2019 is extracted hereunder:

> " In the reference 6th cited the 29 cheques which were deposited on 06.03.2019 in the court of 1st Additional Subordinate Judge, Salem were returned by the Hon'ble Judge on 07.03.2019 and received by this office on 14.03.2019. The Hon'ble 1st Additional Subordinate Judge returned those 29 cheques on a presumption that appellate authority for the land acquisition under Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 is the Principle District Court, Salem. Subsequently, it is clarified and resubmitted to the 1st Additional Subordinate Judge, Salem that land acquisition proceedings in the said award has been initiated and passed under Tamil Nadu Highways Act 2001 (Tamil Nadu Act 34/2002). Moreover, it is also submitted that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 is not applicable in the question of land acquisition under Tamil Nadu Highways Act 2001 (Tamil Nadu Act 34/2002)[Era, Soundarapandian Vs.State of Tamilnadu, 2016(2) MLJ 357].
>
> The resubmitted cheques (29 cheques) with award copy is accepted by the 1st Additional Subordinate Court and acknowledged and assigned LAOP No.15/2019 for the same on 14.03.2019."

9. The learned senior counsel for the petitioner had objected that the civil court has wrongly assigned single LAOP No.15 of 2019 instead of assigning individual LAOPs as the claimants are the different land owners and for different survey numbers.

10. Insofar as the claim made by the petitioner for non-payment of compensation is concerned, since the seventh respondent has deposited before the civil court as stated by the leaned Additional Government Pleader, this court is of the view that no further order is required to be passed in this matter.

11. However, it is open for the petitioner to work out her remedy, if any, before the concerned civil court. Further, the petitioner is directed to vacate the premises within 30 days from today, failing which, the respondents shall take action in accordance with law.

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12. In the light of the above observations, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary to Government,
Highways Department,
Fort St. George,Chennai - 600 009.

2.The Chief Engineer,
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7.The Land Acquisition Officer/
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Collectorate,Salem - 636 001.

8.The Assistant Divisional Engineer (Highway),
Planning, Sub-Division, Salem.

+1cc to Mr.P.T.Ramkumar, Advocate, S.R.No.27665
+1cc to the Government Pleader, S.R.No.27486

W.P.No.5715 of 2019

CA(CO)

RRS(09/05/2019)

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