

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.No.6464 of 2019

1. G.Sekar
2. G.Prabakaran ... Petitioners

Vs.

- 1.The Secretary,
Highways Department,
Government of Tamil Nadu,
Fort St.George, Chennai - 600 009.
- 2.The District Collector,
Kancheepuram District,
Kancheepuram.
- 3.The Deputy Collector,
Chengalpet.
- 4.The Revenue Divisional Officer,
Chengalpattu, Kancheepuram District.
- 5.The Tahsildar,
Thirukazhukundram Taluk Office,
Kancheepuram District.
- 6.The Assistant Director,
Survey and Land Records Department,
Kancheepuram District.
- 7.The Project Officer - ECR,
The Tamil Nadu Road Development
Corporation Limited,
No.171, 2nd Floor, TNMB Buildings,
South Kesavaperumalpuram,
Greenways Road,
Raja Annamalaipuram,
Chennai - 600 028.

... Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Mandamus, directing the respondents to determine the present market vale for one quare meter with regard to the utilised lands of the petitioners situated in Survey Nos.9/15, 9/37, 246/43 and 246/44 at Devaneri Village, Tirukkazhukundram Taluk, Kancheepuram District to the extents as per order of the 2nd respondent, dated 25-11-2016 and pay appropriate compensation to the petitioners as per the present maket vale to the lands of the petitioners utilized for the fomation of the ECR Road, to take the lands unable for the usage of the petitioners on paying the same appropriate compensaton by demarketing the left out lands of the petitioners by proper filed survey by laying corner stones, grant alternate site in Survey No.9/6B2 in Devaneri Village in an extent of 3 cents each to the petitioners, to cancel the wrong sub-division made in Survey Nos.246/47 and 246/48 on restoring the same to the original Survey No.246/44 in the name to the second petitioner, on paying the compensation for the same to the petitioners, pursuant to the order in Na.Ka.No.15225/2011/F3, dated 25.11.2016 passed by the second respondent herein, Proceedings No.Ref.No.124/2016/ECR Road/Ma (L.A.)/325, dated 02.06.2017 of the seventh respondent and Proceedings in Na.Ka.No.8415/2000/Aa, dated 18.09.2017 passed by the third respondent within the time frame fixed by this Court.

For Petitioner : Mr.C.R.Dhasarathan

For Respondents : Mr.M.Elumalai

Government Advocate for R1 to R6

Mr.M.Sivavarthanan for R7

ORDER

When the matter was taken up for hearing on 23.04.2019, this Court has passed the following orders:-

The short facts of the case are as follows:-

The petitioners are the sons of one Gothandan and the first petitioner is the absolute owner of the properties bearing in Survey Nos.9/15B, 9/37B, 246/43B and the second petitioner is the absolute owner of the property bearing in Survey No.246/44B, situated at Devaneri Village, Tirukkazhukundram Taluk, Kancheepuram District and they have been in possession and enjoyment of the properties for several years. The lands of the petitioners were acquired for the purpose of widening the East Coast Road (ECR) from two lane to four lane and the first petitioner had received compensation of Rs.1,54,149/-, while the second petitioner had received the compensation of Rs.55,411/- for acquisition of such land. During construction of retaining wall in the month of August 2015, the foundation of retaining wall in the abovesaid survey numbers was extended beyond the acquired lands and at the time of field enquiry, it was found that the Department had utilized 226 sq.meter over and above the agreed land for such acquisition.

2. The learned counsel for the petitioners would submit that an extent of 226 sq.meter was not acquired under the provisions of the Act and the said lands have been utilized

for construction of retaining the wall as well as used for road. According to the learned counsel for the petitioners, the action of the respondents is highhanded, illegal and arbitrary.

3. The learned Standing Counsel appearing for the seventh respondent had admitted that the aforesaid disputed land of 226 sq.meter has not been acquired by the Department and that, due to the mistake committed by the Department, the said land was utilized for the construction of retaining the wall as well as for usage of road and therefore, such utilization of the un-acquired land was neither willful nor wanton. Further, it is submitted that the seventh respondent assured the petitioners that due compensation will be paid to the landowners for the utilization of such un-acquired lands. The petitioners also made a request for payment of compensation and also filed Writ Petition in W.P.No.1652 of 2016 and this Court, vide its order dated 03.02.2016, disposed the said Writ Petition, by directing the respondents to consider and pass orders on the representation of the petitioners, dated 26.08.2015. Pursuant to the order, the second respondent conducted an enquiry on 11.11.2016, regarding payment of compensation for utilization of such un-acquired land alone and thereafter, accepting the suggestion of the seventh respondent, by proceedings dated 25.11.2016, ordered to pay the compensation to the petitioners to the extent of 226 sq.meter. It is further submitted that the seventh respondent, by his letter dated 02.06.2017, requested the second respondent to fix the rate for the above mentioned extent of 226 sq.meter on square meter basis and further by letter dated 11.07.2018, informed the second respondent that funds allotted for payment of compensation for land acquisition

proceedings in respect of ECR are available with the fourth respondent and thereby, requested to fix the compensation payable to the writ petitioners and then to issue necessary directions to the fourth respondent for payment of compensation from the available funds. Pursuant to the letter of the seventh respondent, the second respondent, by letter dated 12.08.2017, directed the fourth respondent to determine the compensation and then pay compensation to the petitioners. In turn, the fourth respondent has directed the fifth respondent / Thasildar to fix the market value of the lands. Further, the seventh respondent, by letter dated 19.07.2018, reminded the fourth and fifth respondents to pay compensation amount to the landowners. Therefore, the seventh respondent has taken all the kinds of strenuous efforts for payment of compensation to the petitioners. Insofar as other relief of alternative site is concerned, the seventh respondent is not the Competent Authority to provide the Government lands. It is further stated that funds for payment of compensation for the acquisition proceedings in respect of expansion of ECR are now available with the fourth respondent and therefore, the fourth respondent has to be directed for payment of compensation to the petitioners, after determining the value of such un-acquired property.

4. Despite this Court directed the respondents on 29.03.2019 to file a counter affidavit by specifically stating that if no counter is filled on 23.04.2019, heavy costs will be imposed against the respondents, seventh respondent alone has filed the counter affidavit and no counter affidavit is filed on behalf of respondents 1 to 6. According to the learned Government

Advocate, the fourth respondent is the competent Authority to determine the compensation amount for the acquired lands and un-acquired lands.

5. The learned Government Advocate submitted that the fourth respondent is unable to conduct any enquiry due to the Lok Sabha Election, held on 18.04.2019. It is further submitted that an enquiry will be conducted and appropriate orders will be passed by the fourth respondent within a time frame as fixed by this Court.

6. It seen from the counter affidavit filed by the seventh respondent that due to an error, un-acquired lands of the petitioners were taken possession and utilized the same for expansion of the road and the said work was completed in the year 2015 itself.

7. It is further seen from the records, pursuant to the order passed by this Court in W.P.No.1652 of 2016, dated 03.02.2016, the second respondent / District Collector, vide proceedings, dated 25.11.2016, has directed the Authority to pay compensation to the petitioners for the remaining un-acquired land of the petitioners. It is further seen from the records that the petitioners made repeated representations to the respondents from 25.09.2014 for payment of compensation, demarcation and allotment of alternative site and again made various representations on 14.10.2014, 16.03.2015, 26.08.2015, 22.09.2015, 28.03.2016, 13.04.2016, 29.06.2016, 10.11.2016, 27.03.2016, and pursuant to the order passed by the District Collector, dated 25.11.2016, also the petitioners made

representations on 19.06.2017, 05.09.2017, 25.09.2017, 10.05.2018 and 30.06.2018, requesting the same relief, but till date, no action has been taken by the respondents and on the contrary, it is kept under the cold storage of respondent-Department.

8. Today, when the matter was called, neither anyone represented on behalf of the fourth respondent, nor any counter affidavit is filed. It is brought to the notice of this Court by the learned Government Advocate that pursuant to the directions issued by this Court, he sent two letters dated 11.03.2019 and 18.03.2019 to the respondents 1 to 6, requesting to furnish the remarks for the present case. Despite such sincere efforts made by the learned Government Advocate, the fourth respondent has not come forward to give suitable instructions to the learned Government Advocate, so as to enable him to put-forth the relevant facts before this Court to defend the case.

9. Thus, from the above said facts and circumstances of the case, it is a clear case of lethargic attitude of the fourth respondent, as, despite the order of this Court on 29.03.2019 stating that if no counter affidavit is filed on 23.04.2019, heavy costs would be imposed, the fourth respondent has not shown any keen interest for filing of such counter affidavit.

10. It is an unfortunate case of the petitioners that despite making several representations from the year 2014 onwards, they have been made to run from pillar to post to receive the compensation of the land encroached / utilized by the Department due to their own error, that too, without

following any due process of law. The said action of the fourth respondent is highly deprecated.

11. Even, at one stage, when the petitioners filed a Writ Petition in W.P.No.1652 of 2016, this Court, vide order dated 03.02.2016, directed the second respondent to conduct an enquiry. Pursuant to the said direction, although the second respondent conducted an enquiry and the petitioners made repeated representations, the same have not been considered by the fourth respondent, on the other hand, the petitioners have been forced to knock the door of this Court again for getting the compensation of the un-acquired lands.

12. It is also categorically stated by the seventh respondent that the funds sanctioned by the Government are available with the fourth respondent and therefore, only the fourth respondent has to determine the compensation, but, unfortunately, for about five years, the fourth respondent has not taken any efforts to look into the grievance of the petitioners.

13. Therefore, it is clear from the above facts, the writ petitioners had been driven from pillar to post for getting orders from the respondents, by making several representations for the land taken by the Department and fighting for their right for more than 5 years. Even pursuant to the order passed by the District Collector, dated 25.11.2016, the fourth respondent / Revenue Divisional Officer has not passed any orders on the subsequent representation of the petitioners for the payment of compensation. Despite this Court had adjourned on three

occasions for filing counter affidavit, even at one stage, when this Court directed the respondents to file counter affidavit with an observation that if no counter is filed on 23.04.2019, heavy cost would be imposed, the fourth respondent has not chosen to file counter affidavit even today. Therefore, it is appropriate for this Court to impose a cost of Rs.1,00,000/- [Rupees One Lakh only] to the fourth respondent payable to the petitioners within a period of six weeks from the date of receipt of a copy of this order. The second respondent / District Collector is directed to pay the cost of Rs.1,00,000/- [Rupees One Lakh only] to the petitioners and recover the said amount from the individual, i.e, concerned Revenue Divisional Officer, who was responsible for the delay in disposing the claim of the petitioners during the aforesaid period.

14. In my considered view, the attitude of the fourth respondent is highly condemnable and so far as this case is concerned, the second respondent / District Collector is directed to treat this as a special case and conduct an enquiry and pass appropriate orders determining the compensation for the un-acquired land of 226 square meter of the petitioners and pay compensation to them under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, as expeditiously as possible, preferably within a period of eight weeks from the date of receipt of a copy of this order. Insofar as the alternative site is concerned, it is for the petitioners to approach the District Collector by making a fresh representation.

15. With the above direction, the Writ Petition is

disposed of. There is no order as to costs.

2. After the above order was dictated on 23.04.2019, it was requested by the learned Government Advocate that orders would be passed by the fourth respondent pertains to the compensation and report before this Court on 29.04.2019 itself. Hence, on his request, the matter was posted on 29.04.2019 at 2.15 p.m. " for clarification". Accordingly, the matter is listed today i.e. on 29.04.2019 under the said caption.

3. Mr.M.Elumalai, learned Government Advocate appearing for the respondents R1 to R6 has placed the order passed by the District Collector vide Na.Ka.No.15225/2001/F3 dated 27.04.2019, wherein, it is seen that the compensation amount has been determined by the District Collector as per the direction of this Court.

4. The Revenue Divisional Officer, the fourth respondent, has filed a counter affidavit by agreeing to pay the compensation amount of Rs.18,35,685/- as fixed by the District Collector by his proceedings in Na.Ka.No.15225/2001/F3 dated 27.04.2019.

5. The learned counsel appearing for the petitioner seeks that the respondent has to pay interest at the rate of 18% to the petitioner from the date of taking possession of the property.

6. The learned Government Advocate, on instructions, would submit that reasonable interest would be paid to the petitioner from the date of taking possession of the property.

7. In view of the above submissions, the respondent is directed to settle the compensation of Rs.18,35,685/- as per the order dated 27.04.2019 passed by the District Collector, within a period of one week from the date of receipt of a copy of this order, by calculating the interest at the rate of 15% from the month of August 2015 till the payment of the amount.

8. Both the parties agreed for the aforesaid terms, therefore, the earlier order dated 23.04.2019 passed by this Court has been clarified to the aforesaid extent.

9. It is requested by the learned Government Advocate to modify the cost of Rs.1,00,000/- imposed to the fourth respondent. The learned counsel for the petitioner has raised no objection for the same.

10. In view of both the parties agreed for the aforesaid terms, this Court is inclined to modify the cost as Rs.20,000/- instead of

Rs.1,00,000/- to be paid to the petitioner. Accordingly, the cost is modified as Rs.20,000/- and the fourth respondent is directed to pay the same within a period of one week from the date of receipt of a copy of this order.

11. Except the aforesaid terms, there is no alteration in the earlier order dated 23.04.2019 passed by this Court.

12. Taking note of the above facts of the case and in many cases, the landowner compensation amount has not been paid by the Department for several years, despite the award passed.

13. In view of above submissions of the learned counsel for the petitioner, this Court directs the Additional Chief Secretary and Revenue Department, to give necessary instructions to all the District Collectors, immediately, to settle the award amount within a period of six months from passing of the award, and failing which, necessary instructions to be issued for initiating action against the concerned officers.

14. With these observations, this Writ Petition is disposed of.

29.04.2019

Index:Yes/No

Speaking / Non-Speaking order

Note : Issue order copy on 30.04.2019

To

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Highways Department,
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D.KRISHNAKUMAR, J.

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