

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE Mr. JUSTICE T.RAJA

W.P.No.4114 of 2013 and
M.P.Nos.1 and 2 of 2013

A.Periyasamy

... Petitioner

Versus

1. The District Collector,
Villupuram District,
Villupuram.
2. The Competent Authority-and-
Special District Revenue Officer (L.A.),
National Highways-68, Salem.
3. The Special Tahsildar (LA)
N.H.68 Unit II, Kallakurichi.
4. The Secretary,
Vijayapuram Co-operative House Building
Society, Chinna Salem,
Villupuram District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 3rd respondent in his Proceedings Roc.No.285/2009(NH-68), dated 13.05.2010 and quash the same and consequently, directing the 3rd respondent to recover the compensation amount from the 4th respondent and the same may be handed over to the petitioner.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.M.Elumalai,
1 to 3 Government Advocate

For 4th respondent : Mr.P.Tamilavel

O R D E R

This Writ Petition has been filed by A.Periyasamy, claiming to be the owner of the land bearing Survey No.46/2B to an extent of 80 sq. meter, challenging the impugned order passed by the Special Tahsildar, (LA), N.H.68 Unit II, Kallakurichi, the 3rd respondent herein in his Proceedings Roc.No.285/2009(NH-68), dated 13.05.2010, quash the same with consequential direction, directing the 3rd respondent to recover the compensation amount from the 4th respondent and also to hand over the same to the petitioner.

2. Learned Counsel for the petitioner would submit that the petitioner is the owner of the land bearing Survey No.46/2B to an extent of 80 sq. meter. While so, the respondents 1 to 3 acquired the land to an extent of 160 sq. meter, when the remaining 80 sq. meter belongs to the petitioner's brother. Thereafter, an award has been passed by the respondents 1 to 3 by fixing the land value at the rate of Rs.269/- per sq. meter thereby arriving the compensation at Rs.3,56,413/-. When the respondents 1 to 3 acquired the petitioner's land and consequently, the 2nd respondent passed an Award in Spl.DRO.Roc.285/2009 (NH-68) dated 09.12.2009, surprisingly, instead of disbursing the compensation amount to the petitioner, the Special Tahsildar, (L.A.) N.H.68 Unit II, Kallakurichi, the 3rd respondent herein sent the quantum of compensation to the Secretary, Vijayapuram Co-operative House Building Society, Chinna Salem, Villupuram District, the 4th respondent herein on the ground that the petitioner having obtained a loan from the 4th respondent by mortgaging the said land and building only for Rs.75,000/-, an amount of Rs.3,69,191/- has become due for the society as on the date of the passing of the impugned order dated 13.05.2010.

3. The learned Counsel for the petitioner would further submit that when the petitioner is admittedly the owner of the land in question, the respondents 1 to 3 having acquired the land, the 3rd respondent Special Tahsildar has also determined the compensation at Rs.3,69,191/-, and the Special Tahsildar instead of paying the same to the petitioner paid the same to the 4th respondent on the ground that the petitioner is liable to pay a sum of Rs.3,84,863/- to the 4th respondent Society for the reason that he having borrowed a sum of Rs.75,000/- by mortgaging the land-in-question, defaulted in not paying the money within the time limit, the 3rd respondent does not have any power to hand over the compensation to the 4th respondent, therefore, the

impugned order is liable to be set aside. Although the petitioner has mortgaged his property the land-in-question with the 4th respondent Society by awarding a sum of Rs.75,000/- which has now become Rs.3,84,863/-, the petitioner is liable to pay the said amount. Therefore, the Special Tahsildar, Land Acquisition, the 3rd respondent herein has no right or authority to pay the amount of compensation to the 4th respondent Society as it is a matter between the petitioner and the 4th respondent for claiming debt with interest.

4. A detailed counter affidavit has been filed by the respondents 1 to 3 and another counter affidavit has been filed by the 4th respondent.

5. Learned Government Advocate appearing for the respondents 1 to 3 would submit that the total extent of land in Survey No. 46/2 is 150 Sq.mts as per revenue records. Only an extent of 136 Sq.mts is covered under acquisition as per the initial Notification issued under Section 3D(1) of the National Highways Act dated 13.03.2009 and the remaining 3 sq.mts. were acquired as per the subsequent additional Notification under Section 3D(1) of the NH Act dated 27.04.2010. After the acquisition, the competent authority and the Special District Revenue Officer, Land Acquisition, NH-68, Salem, fixed the land value at Rs.269/- per sq.meter based on the prevailing market value and also on the guideline value. The Writ Petitioner is having only one structure i.e. One RCC Building and the entire structure value as estimated by the Executive Engineer, Public Works Department, Villupuram has been included in the award. When the Notification under Section 3G(3) of the NH Act was published in two dailies, namely, Dinathanthi (Tamil) and The New Indian Express (English) on 12.04.2009, the Special Officer, Vijayapuram Co-operative House Building Society, Chinnaasalem has attended the 3G(3) enquiry on 27.04.2009 and submitted a letter of information stating that the writ petitioner A.Periyasamy has availed house building loan from the society by mortgaging the property under acquisition and that the land due may be recovered from the compensation payable to the land owner and credited to the society.

6. The learned Government Advocate appearing for the respondents 1 to 3 would further submit that since the Secretary, Vijayapuram House Building Society, Chinnaasalem has submitted a letter of information during the enquiry under Section 3G(3) conducted by the Competent Authority and the Special District Revenue Officer (LA), National Highways-68 reporting that the land under acquisition has been mortgaged with the 4th

respondent society and the writ petitioner has availed the house building loan from the society, taking note of the pendency of the loan amount from the writ petitioner and also taking note of the fact that the writ petitioner has not denied anything regarding the loan amount, simultaneously perusing the encumbrance details reflecting that the land was mortgaged with the society by the writ petitioner and his daughters as per Document No.1939/1994 dated 24.10.1994, the Competent Authority and the Special District Revenue Officer (LA), NH-68, Salem in his Proceedings dated 09.12.2009 has ordered that the amount of compensation of Rs.3,69,191/- has to be credited to the above said 4th respondent Society. Therefore, the 3rd respondent, in obedience to the order of the 2nd respondent in his Letter No.285/2009 dated 13.5.2010 has forwarded a cheque received from the 2nd respondent Competent Authority and Special District Revenue Officer (LA), NH-68, Salem to the Secretary, Vijayapuram Co-operative House Building Society, Chinna Salem with proper intimation to the writ petitioner. Hence, when it is the admitted fact that the petitioner has mortgaged the land-in-question with the 4th respondent and the land has been acquired by the Government and a sum of Rs.3,84,863/- is due and payable by the writ petitioner to the 4th respondent, the competent Authority and Special District Revenue Officer, has rightly ordered that the amount of compensation of Rs.3,69,191/- to be credited in the name of the 4th respondent and this has been promptly complied with by the 3rd respondent. Therefore, no prejudice or infirmity in the order passed by the 3rd respondent.

7. Learned Counsel appearing for the 4th respondent submitted that when an enquiry was held as per Section 3G (5) and 3C of National Highways Act, any person interested in the land can take part in the enquiry. Accordingly, the 4th respondent Society which is also interested in the acquisition also took part in the enquiry and requested the 2nd respondent to pass an award as per law and credit the award of compensation in the name of the 4th respondent. Therefore, according to the 4th respondent, when it is an admitted case of both sides that the writ petitioner borrowed a sum of Rs.75,000/- by mortgaging the title deeds for the land-in-question with Vijayapuram Co-operative Housing Building Society, Chinna Salem, Villupuram and a sum of Rs.3,84,863/- has become due to the society as on the date of passing of the impugned order dated 13.05.2010, crediting a sum of Rs.3,69,191/-, the amount of compensation in the name of the 4th respondent Society cannot be found fault with.

8. This Court fully agrees with the arguments advanced by the learned Government Advocate appearing for the respondents 1 to 3 and the learned Counsel for the 4th respondent. The reason being that as on the date of passing of the award by the 2nd respondent in respect of the petitioner's land, it appears that the said land was mortgaged with the 4th respondent and a sum of Rs.3,84,863/- has become due to the society. Therefore, when the land was mortgaged with the 4th respondent and the petitioner has to pay a sum of Rs.3,84,863/- to clear the debt of the 4th respondent Society, the amount has to be paid only to the 4th respondent. Rightly, the respondents 2 and 3 have determined the compensation at Rs.3,69,191/- and at the request made by the Secretary, Vijayapuram Co-operative Housing Building Society, Chinna Salem, Villupuram, the 4th respondent herein to credit the said amount in their name, the 3rd respondent has rightly credited the compensation amount in the name of the 4th respondent. Therefore, this Court finds no infirmity or error in the impugned order of the 3rd respondent dated 13.05.2010.

9. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

tsi

To

1.The District Collector,
Villupuram District,Villupuram.

2. The Competent Authority-and-
Special District Revenue Officer (L.A.),
National Highways-68, Salem.

3. The Special Tahsildar (LA)
N.H.68 Unit II, Kallakurichi.

4. The Secretary,
Vijayapuram Co-operative House Building
Society, Chinna Salem,
Villupuram District.

+1cc to Mr.P.Tamilavel , Advocate SR.No. 85684

+1cc to Mr.C.Prakasam , Advocate SR.No. 85710

+1 cc to Government Pleader Sr.No. 86488

W.P.No.4114/2013

A.SK(14/11/2019)