

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.13164 of 2019

R.Mythili

... Petitioner

Versus

1.The Deputy Collector(Revenue)-North-cum
Land Acquisition Officer,
Department of Revenue and Disaster Management,
Puducherry.

2.The Chief Engineer,
Public Works Department,
Puducherry.

3.The Superintending Engineer,
Circle-II, Public Engineering Works,
Puducherry.

4.The Executive Engineer,
Irrigation Division (Estate Officer),
Public Works Department,
Puducherry.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of Writ of Mandamus directing the respondents to pay compensation to the petitioner as per Section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 within a time frame.

For Petitioner

: Mr.S.Raveekumar

For Respondents

: Mr.D.Ravichandran

Addl.Government Pleader(Pondy)

O R D E R

The petitioner herein is the wife of Mr.Rathinavelu, who is the Power holder of the property situated in R.S.No. 222/6 with corresponding Cadastre Nos.1052, 1053/1, 1054/B and 1054/1&2 at Ozhukarai Revenue village, Puducherry.

2. The second respondent herein has encroached upon her land for constructing side drain and road. It is a project taken up by the Government of Puducherry through its Public Works Department. According to the petitioner, nearly 15,552 sq. feet was taken away by the second respondent for the said project. While doing so, the second respondent has not followed any of the procedure contemplated under law, but arbitrarily taken away the land even without notice or paying the compensation. Her representation since 26.10.2005 to various authorities to pay the compensation after verifying her title for the land, evoked is no response.

3. Under such circumstances, the present writ petition is filed. The petitioner contention is that after the enactments of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, any acquisition proceedings commenced under old Act, but the compensation not paid or deposited, by virtue of Section 19, 24(1)(a) and 24(2) of the new Act the land re-vest with the landlord. Therefore, the petitioner is either entitled to get back the land or for the fair compensation as per the new Act. when this was brought to the notice of the respondent vide dated 17.09.2014, there was no response as usual by the respondent. Hence, the petitioner was forced to approach this Court by filing the writ petition seeking mandamus to direct the respondents to take due steps granting compensation based on her representation dated 17.9.2014.

4. This Court vide order dated 21.03.2016 in W.P.No.10330 of 2016, directed the Deputy Collector, Department of Revenue and Disaster Management, Pondicherry/ the first respondent to consider the petitioner's representation dated 17.09.2014 and pass appropriate orders on merits and in accordance with law, within a period of 10 weeks.

5. The first respondent pursuant to the Court direction has communicated to the petitioner the minutes of the meeting held in connection with the acquisition of her land and informed that the meeting was concluded with the resolution that the petition should be considered with relevant provisions of the said Act, 2013, after receipt of a detailed Land Acquisition proposal from the Public Works Department after adopting all official procedures as laid down under the new Act. The officials of Public Works Department were also directed to send the acquisition proposal in full shape so as to proceed further. This communication proceedings of the first respondent dated 30.06.2016, though gave some hope of the petitioner that the authorities will consider her request and pass orders in due course, it was only a hope in vain. The respondent after replying with the minutes of the meeting had not acted upon any

further to complete the administrative procedure and pay compensation. This has forced the writ petitioner to approach this Court again.

6. After notice, the Executive Engineer of Public Works Department, who is the fourth respondent herein, has filed a counter, wherein, it is stated that the competent authority/the first respondent has submitted the proposal on 18.06.2019 and pursuant to that, the Public Works Department has communicated to the first respondent. The proceedings initiated by the respondent as explained in the counter, is extracted below:-

"6.I respectfully submit that as required by the Competent Authority i.e. 1st respondent for Land Acquisition process in the above said land, this department submitted the proposal on 18.06.2019 to the existing Competent Authority, i.e. the District Collector for the Area in Puducherry District which was notified vide G.O.Ms.No.8, Puducherry dated 13th April, 2017 of Special Secretary to Government (Revenue), Department of Revenue and Disaster Management, Government of Puducherry designates the District Collector, Puducherry and Karaikal under clause (g) of Section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 to perform the functions under the said Act and rules framed there under for the areas specified therein for Land Acquisition after adopting all official procedure as laid down and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 including the provision of fund for the same.

7.I respectfully submit that in response to the proposal of this Department dated 18.06.2019, the Department of Revenue and Disaster Management, i.e. Competent Authority vide their letter No.11272/Rev/B1/2018-19, dated 24.06.2019 returned the Public Works Department's proposal dated 18.06.2019 and resubmitted that:

a) The tentative cost for acquisition of land at R.S.No.222/6B of Oulgaret Revenue village, measuring to an extent of 0-10-30 (H.A.Ca) has been worked out as Rs.92,87,407/- (Rupees Ninety Two Eight Seven thousand four Hundred and Seven only) based on the GLR value pertaining to the year 2018-19, as per the provisions of "Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013."

b) This tentative cost does not include the value of structures/Trees, Rehabilitation & Resettlement cost and Cost of Social Impact Study, if any. The tentative cost is calculated including the Additional Market Value for 2 years, assuming a minimum period required for passing of Award from the date of Notification for Social Impact Assessment Study. This amount is tentative only and likely to change at the time of valuation process, which ascertains the correct market value of the land, as per the provisions of RFCTLARR Act, 2013.

c) It is to inform that if a proposal, for acquisition, as per the provisions of the Puducherry RFCTLARR Rules, 2016 has received from the requisition Department, it requires minimum of 3 years time to complete the land acquisition process by following the due procedures stipulated in the RFCTLARR Act, 2013 and Rules, 2016. The procedures / activities prescribed in the RFCTLARR Act, 2013.

d) Further, it is learnt that the land proposed for acquisition had already been taken possession by the Public Works Department and the construction of drain / channel course was completed before 16 years itself. Hence, conducting a Social Impact Assessment Study at this stage may not serve the purpose of the Act, acquisition, if the Hon'ble Court permits, Social Impact Assessment Study can be exempted in this case. Thereby, time-delay in issuing Notification can be reduced and subsequently Award can be passed within 12 months time.

e) However, the proposal dated 18.06.2019, submitted by Public Works Department has been returned for want of additional particulars as per Puducherry RFCTLARR Rules 2016."

7. From the counter, this Court finds that the proposal of Public Works Department dated 18.06.2019 was returned for want of additional particulars required under Pondicherry RFCTLARR Rules 2016. It is also stated in the counter that Public Works Department has received letter dated 20.04.2019 from the department of Revenue and Disaster Management along with PWD proposal dated 18.06.2019 and they have initiated the steps to comply and re-submit the proposal to the first respondent after completing due procedure. The communication of the department of Revenue and Disaster Management dated 24.04.2019 addressed to the Chief Engineer, Pondicherry is also

enclosed along with the counter.

8. From the said proceedings, this Court could find that Public Works Department has tentatively fixed the cost of land acquired by the respondent as Rs.92,87,407/- based on the guide line value and has indicated that it will take minimum period of three years to complete the proceedings. From the said communication and the counter of the fourth respondent, the procedural difficulties and formalities to be adopted has been explained. But, the plight of the land owner who lost his land arbitrarily without following the due process of law, has not been taken note by the authorities. The respondents, who show concern to the procedures and formalities now and citing as cause for delay ought to have applied the procedure before entering upon the land of the petitioner.

9. In the said circumstances, without advertting to the other aspects, it is suffice to direct the respondents herein to initially pay Rs.50,00,000/- to the petitioner herein within a period of four months and pay the balance compensation within next six months. If the petitioner herein has any dispute regarding the quantum of compensation, it is always open to agitate the same.

10. With the above directions, this writ petition is disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Deputy Collector(Revenue)-North-cum
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- 2.The Chief Engineer,
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- 3.The Superintending Engineer,
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Irrigation Division (Estate Officer),
Public Works Department,
Puducherry.

+2cc to Mr.S.Ravee Kumar, Advocate, S.R.No. 52410

W.P.No.13164 of 2019

SVI (CO)
GN(24/07/2019)



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