

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA
W.P.No.16460 of 2018

K.Natarajan

.. Petitioner

Vs

1.The District Collector,
Dharmapuri District,
Dharmapuri.

2.Powergrid NM Transmission Limited,
Rep. By General Manager,
No.62, 3rd cross,
MEI Road, Industrial Suburb,
Yeshwantpur, Bengalur - 560 022.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus to call for the records of the first respondent District Collector, Dharmapuri, relating to the letters in Ref.Na.Ka.15461/2015/P2, dated 05.12.2017 and 10.04.2018, quash the same, direct the first respondent District Collector, Dharmapuri, to determine the compensation for the land and building of the petitioner pursuant to the claim statement dated 06.06.2016 as per Paragraphs 2(i) and (ii) of the guidelines of the Government of India, Ministry of Power, dated 15.10.2015, direct the second respondent to pay the compensation amount to the petitioner.

For Petitioner : Mr.V.Sanjeevi

For R2 : Mr.R.Thiagarajan, SC
for M/s.Aiyar & Dolia

For R1 : Mr.N.Srinivas, AGP

ORDER

The petitioner, claiming to be the owner of the land bearing S.F.No.8/3B, admeasuring 0.20.0 hectare (50 cents) in Pappireddipatti Village, Dharmapuri District, has filed this writ petition challenging the impugned order passed by the first respondent/ the District Collector, Dharmapuri, dated 05.12.2017, in and by which, the request of the petitioner to apply G.O.Ms.No.63, Energy (A)

Department, dated 22.11.2017, was refused.

2. Learned counsel for the petitioner submitted that the petitioner is the owner of the subject land on the basis of the sale deed dated 11.06.2004 purchased by Mrs.Jaya, wife of Late Ponnusamy and two others. Likewise, the petitioner's son, namely, Mr.N.Sezhiyan, had purchased 80 cents of land in S.F.No.8/3 (present Sruvey No.8/3A) in the same survey field from the above said persons by way of a registered sale deed dated 10.11.2005. It is further submitted that in order to put up construction, the petitioner had applied for building permission to the Executive Officer of Pappireddipatti Town Panchayat (Selection Grade) and thereafter, considering his application, the said Authority, vide proceedings dated 03.03.2015, granted building permission. It is also stated that spending Rs.15,00,000/-, the petitioner had also constructed the building in the subject land.

3. Whiles, the second respondent / the General Manager, Power Grid NM Transmission Limited, Yeshwantpur, Bengalur, issued a notice dated 18.03.2015 informing the petitioner that they were entrusted with the construction of Nagapattinam-New Salem (Dharmapuri), by the Transmission Line of India, vide its letter No.11/2/2011-PG (PFC), dated 22.09.2011; that the said Transmission Line will pass through his property bearing Survey No.8/3B in Pappireddipatti Village; and that the petitioner would be given a reasonable compensation for the damages. But, the petitioner, vide his representation dated 10.08.2015, objected to the same and requested the first respondent for change of transmission line and tower to some other suitable place. However, even after his repeated request, the same was overruled and the construction put up by the petitioner spending a sum of Rs.15,00,000/- was demolished, for which also, they have paid a mere compensation of Rs.7,17,907/-, however, with regard to right of way and tower base, the compensation was not paid to the petitioner.

4. Aggrieved against the same, when the petitioner has filed a writ petition No.7685 of 2016, this Court, vide order dated 29.03.2016, by referring to the Guidelines notified by the Government of India dated 15.10.2015, which deals with the payment of compensation towards damages with regard to Right of Way for Transmission Lines, directed the petitioner to submit his claim statement before the District Collector, Dharmapuri, in accordance Guidelines framed by the Government of India dated 15.10.2015 along with a copy of the order setting out as to what is the basis of his claim.

5. Learned counsel for the petitioner further submitted that in paragraph Nos.6 to 8 of the order, the crux of the issue has been dealt with stating that the second respondent therein / Powergrid NM Transmission Limited, Bengalur, having taken a stand with regard to the fact of Guidelines issued by the Government of India dated 15.10.2015 that they would pay the compensation in terms of the Guidelines on determination of the same by the District Magistrate/District Collector, cannot restrict their claim and by holding so, a direction was issued to consider the claim of the petitioner for payment of compensation towards Right of Way for transmission line and Tower Base. Therefore, it is contended, in view of such stand taken by the second respondent in the earlier writ petition, they cannot now go back and equally they cannot now refuse to pay the compensation, for, even before the District Collector, Dharmapuri, the second respondent has accepted the case of the petitioner that the Guidelines issued on 15.10.2015 would be applicable to the case of the petitioner for determining the compensation for Right of Way and Tower Base.

6. It is, at this juncture, Mr.R.Thiagarajan, learned Senior counsel for the second respondent submitted that G.O.(Ms.).No.63, Energy (A1) Department, dated 22.11.2017, issued by the State Government specifically says that the said G.O. will be applicable only to the new projects with prospective effect, therefore, the compensation at 85% of land value, as determined by the District Magistrate or any other authority based on Circle rate/Guidelines value/Stamp Act for Tower Base area, cannot be extended to the petitioner. I do not agree with this submission for the following reasons.

7. Given the context of the case, it is relevant to see what was argued by the second respondent herein/Powergrid NM Transaction Limited, Yeshwantpur, Bengaluru, before this court in the earlier writ petition No.7685 of 2016. Paragraph Nos.6 to 9 of the order dated 29.03.2016 passed in the above said writ petition are extracted below:

"6. Thus, in terms of the above guidelines, compensation at 85% of land value, has to be determined by the District Collector or District Magistrate, based on Circle rate/Guideline Value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation

of tower/pylone structure. Further, the compensation towards diminution of land value in the width of right of way (ROW) corridor due to laying of transmission lines and imposing certain restriction, would be decided by the States, as per categorization/type of land in different places of States, subject to a maximum of 15% of land value, as determined based on circle rate/guidelines value/stamp Act rates.

7. Therefore, the submission of the learned counsel appearing for the petitioner is that, compensation ought to have been determined in terms of the aforesaid guidelines notified by the Government of India, dated 15.10.2015.

8. The second respondent has filed a counter affidavit, justifying their action, which need not be gone into at this stage, since already the work towards the erection of transmission tower is in progress. All that has to be seen is as to the stand taken by the second respondent is with regard to the effect of the guidelines issued by the Government of India, dated 15.10.2015. To find this aspect, it would suffice to refer to para Nos.14 and 15 of the counter affidavit, wherein, the second respondent has accepted that they would pay the compensation in terms of the guidelines on determination of the same by the District Magistrate/District Collector, however, they seek to restrict only to para 2 (i) of the said guidelines. While the second respondent accepts that they are bound by the abovesaid guidelines, they cannot restrict it by stating that the claim should be made by the petitioner only in terms of para 2 (i) of the guidelines. The petitioner, being the land owner, it is well open to him to invoke all provisions, which according to him, are applicable to the land in question and make a claim for compensation before the District Collector/first

respondent.

9. Further, it has to be pointed out that, so far as the award of compensation mentioned in the impugned order, the District Collector in the penultimate para, has made vague observation, stating that the petitioner is entitled to proper compensation. Therefore, to that extent, the order passed by the District Collector is held to be not tenable, as it is inconsistent with regard to the manner in which the compensation has to be determined as per the guidelines framed by the Government of India. Accordingly, while upholding the order passed by the District Collector to the aforesaid extent, there will be a direction to the petitioner to submit his claim statement before the first respondent/District Collector, in accordance with the guidelines framed by the Government of India, dated 15.10.2015, along with a copy of this order, clearly setting out as to what is the basis of his claim, and the petitioner is entitled to invoke all the clauses under the guidelines. On receipt of such claim statement, the first respondent shall issue notice to the second respondent, and after affording an opportunity to file their reply/counter, and thereafter, shall issue notice to the petitioner and the second respondent, fixing a date for hearing the parties in person, direct the second respondent to produce all documents, including the building valuation report, and after perusing all the documents, hear the parties in full, and pass a reasoned order, by strictly adhering to the guidelines prescribed by the Government of India. The first respondent is directed to give the second respondent, three weeks' time to file reply/counter, and after receipt of the claim statement from the petitioner and after reply/counter affidavit is received

from the second respondent, after serving a copy of the same to the petitioner in advance, the first respondent shall fix a date of hearing within a period of 10 days thereafter, and after hearing all the parties in full, shall pass appropriate orders within two months from the date on which hearing is concluded."

A perusal of paragraph No.8 of the order clearly says that the second respondent/Powergrid NM Transmission Limited, Yeshwantpur, Bengalur, has already accepted that they would pay the compensation to the petitioner for the Right of Way and Tower Base in terms of the Guidelines notified by the Government of India dated 15.10.2015. At this stage, learned Senior Counsel for the second respondent requested this Court to restrict the benefit only to the petitioner and not to be treated as a precedent for all other cases.

8. Learned counsel for the petitioner submitted that along with the petitioner, his son's representation is also pending with the first respondent, therefore, a direction may be given to the first respondent to consider the same as well in terms of the Guidelines notified by the Government of India dated 15.10.2015.

9. In view of the aforesaid facts and circumstances of the case, this Court, without going into the applicability of G.O.(Ms.).No.63, Energy (A1) Department, dated 22.11.2017, directs first respondent to consider the claim of the petitioner on the basis of the Guidelines notified by the Government of India dated 15.10.2015 and pay the compensation with regard to Right of Way for Transmission Lines and Tower Base area, within a period of eight weeks from the date of receipt of a copy of this order.

10. With the above directions, the writ petition is disposed of. No Costs. WMP.No.19670 of 2018 is closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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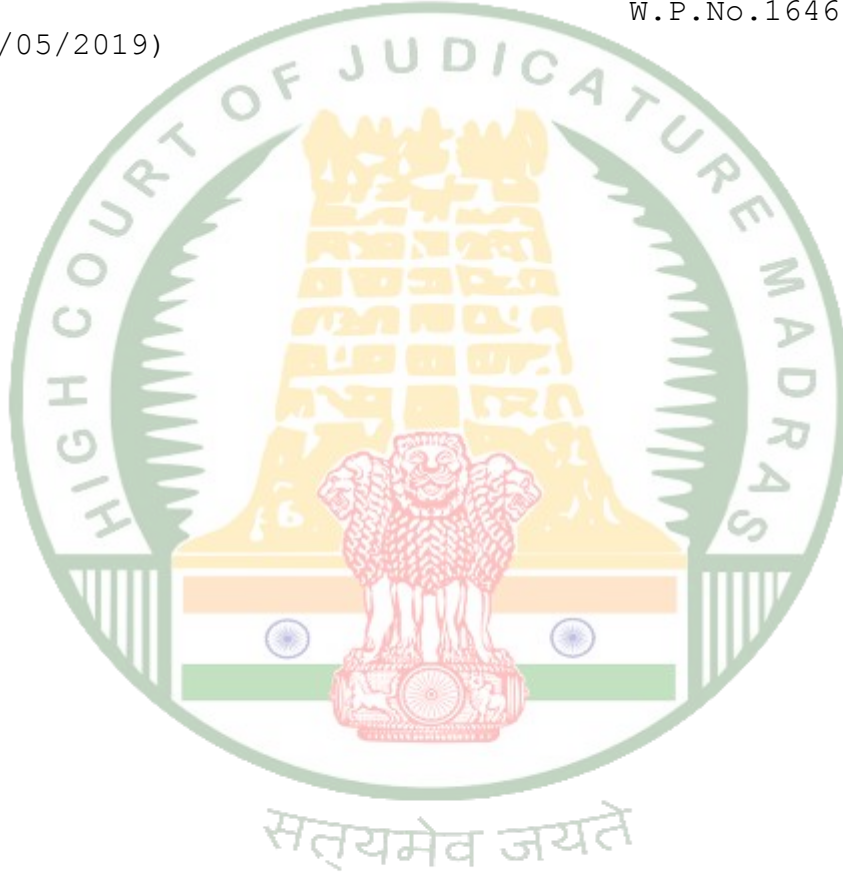
To

1.The District Collector,
Dharmapuri District,
Dharmapuri.

+1cc to Mr.V.Sanjeevi , Advocate SR.No. 36717
+1cc to M/s.Aiyar & Dolia, Advocate SR.No. 36952
+1 cc to Government Pleader Sr.No. 37672

W.P.No.16460 of 2018

A.SK(20/05/2019)



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