

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2019

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.Nos.3698 and 5397 of 2017

1.Valliammal ..... Petitioner in WP.No.3698 of 2017  
2.Navaneethakrishnan ..... Petitioner in WP.No.5397 of 2017

Vs

1.The Chairman cum Managing Director  
Tamil Nadu Electricity Board  
144, Anna Salai  
Chennai - 600 002. .... 1<sup>st</sup> respondent in WP.No.3698 of 2017/  
..... 2<sup>nd</sup> respondent in WP.No.5397 of 2017

2.The Superintending Engineer /Civil  
Hydro Project, TANGEDCO  
No.955, E.V.N. Road, T.N.E.B. Complex  
Erode - 638 009. .... 2<sup>nd</sup> respondent in WP.No.3698  
of 2017  
..... 3<sup>rd</sup> respondent in WP.No.5397 of 2017

3.The District Collector  
Coimbatore District  
Coimbatore. .... 3<sup>rd</sup> respondent in WP.No.3698 of 2017/  
..... 1<sup>st</sup> respondent in WP.No.5397 of 2017

4.The Additional Chief Engineer/Civil  
Hydro Electric Scheme  
No.955,E.V.N.Road  
Erode-9. .... 3<sup>rd</sup> respondent in WP.No.5397 of 2017

5.The Union of India  
Ministry of Finance  
New Delhi. .... 4<sup>th</sup> respondent in both WPs

6.The State Government of Tamil Nadu  
Rep. by the Chief Secretary  
Fort St.George, Chennai. .... 5<sup>th</sup> respondent in both Wps

(4<sup>th</sup> Respondent suo moto impleaded Vide order dated 05.03.2019  
made in WP.Nos.3698 & 5397 of 2017.)

(5<sup>th</sup> Respondent suo moto impleaded Vide order dated 29.04.2019 made in WP.Nos.3698 & 5397 of 2017.)

Prayer in WP.No.3698 of 2017 : Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus, directing the respondents 1 and 2 to pay the compensation at Rs.750/- per sq.ft. to the petitioner as fixed by the third respondent in its proceedings in Ref.No.27472/2012 F1 dated 30.10.2015, for the land belongs to the petitioner to an extent of 0.6250 sq.mtr. in Patta No.716, Town Survey No.C/7/3-1, Chikkadasampalayam Village, Mettupalayam Taluk, Coimbatore District, within a time frame fixed by thus Court.

Prayer in WP.No.5397 of 2017: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus, directing the first respondent to determine the compensation as per Section 93(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, for the damages caused to the petitioner's land measuring an extent of 0.51 Hec. (i.e., 1.27 acres) out of the total extent of 5.45 acres, comprised in Old Survey Nos.469/2 and 471, now in combined New Survey No.4/1, situated at Chikkadasampalayam Village, Mettupalayam Town, Coimbatore District, due to Bhavani Narrage-II Hydro Electric Power Project (2x5 MW) of the respondents 2 and 3, in accordance with law and consequently direct the respondents 2 and 3 to pay the compensation as fixed by the respondent No.1 within a time frame.

In WP.No.3698 of 2017:

For Petitioner : Mr.G.Krishnakumar

For Respondents : Mr.P.H.Arvind Pandian  
Additional Advocate General

Asst. by Mr.S.K.Rameshuwar (RR1 & 2)  
Asst. Mr.Anandamoorthy (R3)  
Ms.Hema Muralikrishnan (R4)

In WP.No.5397 of 2017:

For Petitioner : Mr.R.Gopinath for M/s.McGAN Law Firm

For Respondents : Mr.P.H.Arvind Pandian  
Additional Advocate General  
Asst. by Mr.Anandamoorthy (R1)  
Asst. by Mr.S.K.Rameshuwar(RR2 & 3)  
Ms.Hema Muralikrishnan (R4)

## COMMON ORDER

1. These two petitions are but the face of a relentless pursuit of two set of petitioners, who excelled in testing their power of endurance in withstanding the administrative forces, which otherwise would have wrecked their right to life. These petitioners have separate properties, which the then Tamil Nadu Electricity Board (now TANGEDCO) had utilised for Bhavani Barrage-II Hydro Electric Power Project, without actually acquiring the lands and drove the land owners to negotiate with the Government for compensation. They are the neo-invaders of citizens right in the independent India. For the last one decade or so, both set of petitioners have been constantly communicating with the Government for payment of compensation for their properties.

2. The petitioners in both these petitions substantially share a common grievance, but the invaders of their right gave it a baffling difference. The common aspect is that the properties of the petitioners were converted into reservoir by the then TNEB without acquiring them. The difference is how they chose to deal with that thereafter. The specifics are given below:

- So far as the case of the petitioner in W.P.No.3698 of 2017 is concerned, she owned a piece of land measuring 1.82 acres in Town Survey No.C/7/3-1, Chikkadasampalayam Village, Mettupalayam Taluk. Following force-utilisation of this property by the TNEB, the petitioner began corresponding with the Government, following which the District Collector, the third respondent, Vide his proceedings dated 30.10.2015, fixed the compensation of Rs.750/- per sq.ft. Since the same was not paid, the petitioner had approached this Court to direct the respondents to pay the amount as determined by the District Collector.
- In W.P.No.5397 of 2017, the petitioner owned a piece of land measuring 1.27 acres (total extent 5.45 acres) in Old Survey No.469/2 and 471, which is correlated to New Survey No.4/1 of the same village in Coimbatore District. As in the earlier case, this property was also taken along with the property of the petitioner in W.P.No.3698 of 2017 and it has been converted into a reservoir. He also began corresponding the Government identically for obtaining compensation. However, in his case, after utilising the property and even after retaining the property, the Superintending Engineer, Hydro Project, Erode, Vide communication dated 16.08.2012 addressed to the District Collector to the effect that the property of the

petitioners was not required. However, how this land is proposed to be restored to the petitioner is conveniently ignored by this spirited Engineer.

3. What has happened disturbed this Court the most, for what was on display is shameless insensitivity to the petitioners plight. It is not any charity or other freebies that they seek, but just compensation for their land. A routine Order directing the authorities to address the grievance hardly would be ameliorative, for compliance mostly comes in an action for contempt, as if the latter is a final decree proceedings in a civil litigation. Therefore, this court was particularly keen to see that the Government initiated some proceedings to acquire the lands of the petitioners and pay the compensation that they are entitled to.

4. After several posting spread over about some 15 months, the Government have come forward with G.O.(Ms).No.46, Energy (B1) Department, dated 26.06.2019, initiating the acquisition proceedings. This notification was issued under Section 3(2) of the Tamil Nadu Acquisition of Lands for Industrial Purposes Act, 1997.

5. Be that as it may, a Division Bench of this Court, Vide its judgment dated 03.07.2019 in WP.Nos.22448/2018 & batch etc., [The Caritas India Vs. Union of India & Others], has struck down the Fifth Schedule brought in Vide Sec.155-A by the Tamil Nadu Amendment to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, as necessary Presidential Assent was not obtained before notifying the said amendment. However, in paragraph No.158.8 of its Order, the Division Bench has held :

"158.8. .... all the acquisitions made under the three impugned enactments made on or after 27.09.2013, are held to be illegal and quashed save those lands which have already been put to use and the purpose for which the land was acquired has been accomplished."

6. Even though it may appear that the present notification is new, yet it has to be understood that it is an effort on the part of the Government to acquire the lands which one of its instrumentalities had already taken possession of more than a decade back, and had also utilised the same. Therefore, the G.O.(Ms).No.46, Energy (B1) Department, dated 26.06.2019 is but an ex post facto legitimization of the wrong already done by the Government. In other words, instead of acquiring the lands and utilising it, TNEB (now TANGEDCO) has utilised the lands, and has now come forward with the notification. In the context of the above referred to judgment of the Division Bench, it must be

stated that that this is equivalent to the completion of the project and therefore, this notification is held as one falling in paragraph No.158.8 of the aforesaid judgment of the Division Bench. Even if it is not so, this Court has to hold that it must be construed as a notification under the the relevant provisions of Central Act 30/2013. And, since the project for which the lands of the petitioners were already utilised, there is no way any social impact assessment could be now made, which is a one big difference between the Land Acquisition Act, 1894 and the Central Act No.30/2013 and those special enactments listed in Schedule V.

7.It is also mentioned in the course of the arguments that ignoring the proceedings of the District Collector, the parties themselves have negotiated and arrived at a settlement for a certain amount which appears to be less than the amount already determined by the District Collector. The second respondent (the Superintending Engineer/Civil, Hydro Projects, Erode - 638 009) has filed the counter dated 13.02.2019, and in paragraph No.3.0, it is stated as below :

3.0. I submit that TANGEDCO accepts the following :

i. To make payment to Tmt.Valliammal (W.P.No.3698/2017) to the full extent of 1.54 acres in T.S.No.C/7/3/1 at the rate of Rs.87.12 lakhs per acre for an amount of Rs.1,34,16,480/- (Rupees one crore thirty four lakhs sixteen thousand four hundred and eighty only)

and

ii.To make payment to Thiru.T.Navaneethakrishnan (W.P.No.5397/2017) to full extent of 1.27 acres in T.S.No.C/7/4/1 at the rate of Rs.87.12 lakhs per acre for an amount of Rs.1,10,64,240/- (Rupees one crore ten lakhs sixty four thousand two hundred and forty only).

iii.To make the above compensation payments without effecting income tax deduction at source (TDS) as per Section 96 of RFCTLARR Act of 2013 as opined by the Board's tax consultant.

Both the petitioners have agreed to accept the amount determined by the Beneficiary Authority (TANGEDCO), Vide their letters dated 08.02.2019 and 06.02.2019 respectively.

8. Accordingly, the amount determined by TANGEDCO towards compensation for acquisition of petitioner's land as stated in his affidavit is tabulated below and this Court was informed that the petitioner have consented to receive it.

| Petitioner Name / W.P.No.    | Extent / Survey No. of petitioner's property                                                     | Amount determined by TANGEDCO (Rs.) |
|------------------------------|--------------------------------------------------------------------------------------------------|-------------------------------------|
| Valliammal (WP.No.3698/2017) | 1.54 acres in T.S.No.C/7/3/1 in Chikkadasampalayam Village, Mettupalayam Tk, Coimbatore District | 1,34,16,480/-                       |
| T.Navaneethakrishnan         | 1.27 acres in T.S.No.C/7/4/1 in Chikkadasampalayam Village, Mettupalayam Tk, Coimbatore District | 1,10,64,240/-                       |

9. So, it is necessary this case must be considered as a stand alone case of a special category, and if this Court were to read too much technicalities into this, then the petitioners will suffer perennially and this Court will well become a party to that unjustness.

10. The other aspect canvassed by the counsel for the petitioners are that inasmuch as the compensation has now been agreed to be paid pursuant to the notification referred to above, the petitioners are entitled to exemption from deducting TDS as per Section 96 of the Right to Fair Compensation Act. Ms.Hema Muralikrishnan, the learned counsel appearing for the Income tax Department (fourth respondent in both WPs) has also informed the Court that the petitioners are entitled to the benefit of Section 96 of the Right to Fair Compensation Act.

11. In the result, these writ petitions are disposed of accordingly and the petitioners are entitled to receive the compensation amount mentioned in paragraph 8 above within a period of three weeks from the date of receipt of a copy of this order. No costs.

Sd/-  
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To:

1.The Chairman cum Managing Director  
Tamil Nadu Electricity Board  
144, Anna Salai  
Chennai - 600 002.

2.The Superintending Engineer /Civil  
Hydro Project, TANGEDCO  
No.955, E.V.N. Road, T.N.E.B. Complex  
Erode - 638 009.

3.The District Collector  
Coimbatore District  
Coimbatore.

4.The Union of India  
Ministry of Finance  
New Delhi.

5.The State Government of Tamil Nadu  
Rep. by the Chief Secretary  
Fort St.George, Chennai.

+2cc to Ms.Hema Muralikrishnan, Advocate SR.66636, 66637  
+1cc to Mr.S.K.Rameshuwar, Advocate SR.66226  
+1cc to M/s.McGAN Law Firm, Advocate SR.66468

W.P.Nos.3698 and 5397 of 2017

RGN(CO)  
CB(22/10/2019)