

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 2693 of 2018

&

C.M.P.No.21952 of 2018

The Project Director,
National Highways Authority of India (NH 68),
212.3/D-3.1, Srinagar, Colony,
Narasothipatty, Salem - 636 004.

...Appellant

-vs-

1. K.Raju
2. K.Ayyavu
3. Rani
4. Ramaswamy
5. Ponmalai
6. Venkatachalam
7. Rasappan
8. Palanivel
9. Venkatachalam
10. Elangovan
11. Subramanian
12. Kalimuthu
13. Sengodagounder
14. Nallaiyagounder
15. Jayaraman
16. Sri Ranganathan
17. Periyasamy
18. Perumayee
19. Ponnupaiyan @ Sengoda Gounder
20. Ravichandran
21. Sekar
22. Kumar
23. Manimuthu
24. K.Manickam and K.Raju
25. A.Sengottaiyan
26. S.Thenmozhi
27. S.Ramamoorthy
28. R.Selvam
29. S.Santhi

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- 30.Selvam
- 31.Saravanan
- 32.Chitra
- 33.T.Chandira
- 34.Chandira
- 35.Kavitha
- 36.Janaki
- 37.President, Society Congregation
Sister's St.Joseh Cluny Fatima Convent
- 38.Thangarajan
- 39.D.Venkatesan
- 40.Jayamani Kamaraj
- 41.K.Raju
- 42.Valarmathi
- 43.Sri Muruganandha Sathu Sabai Mandalayam
Sri Dakshinamoorthy Thirukoil,
Iraipanimandra Committee, Salem-636 201
- 44.K.Raju (HUF)
- 45.The Competent Authority and Special
District Revenue Officer (LA) (NH 68)
3-B/8, Ram Nagar, 2nd Gate, Swarnapuri,
Salem.
- 46.The Competent Authority and Special
District Revenue Officer (LA) (NH 7 & NH 47)
Krishnagiri District.

....Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order of this Court in W.P.No.34153 of 2017 dated 09.02.2018.

W.P.No.34153 of 2017:-

Writ Petition filed under section 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus Calling for the records of the first respondent pertaining to the impugned proceedings under Ref.Na.Ka. No.239 of 2009 dated 26.09.2009 and that of the second respondent pertaining to the proceedings under Ref.NHAI/PIU-SLM/NH-68/2017/837 dated 05.09.2017 and quash the same directing the respondents herein to pay Solatium compensation at additional market value and interest as per the Land Acquisition Act on par with the writ petitioners/Appellants covered by the orders of Honourable Supreme Court of India dated 21.07.2016 in Civil Appeal Nos.129-159 of 2014.

For appellant : Mr.Su Srinivasan

For Respondents : Dr.P.B.Sampath Kumar (for R.1 to 44)
Mr.C.Thiruraman, Spl G.P
(for R.45 & 46)

JUDGMENT

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal has been filed by the National Highways Authority of India is directed against the order in W.P.No.34153 of 2017 dated 09.02.2018 filed by 44 petitioners.

2. We have heard Mr.Su Srinivasan, learned Counsel for the appellant and Mr.P.B.Sampath Kumar, learned counsel for the respondents 1 to 44 and Mr.C.Thiruraman, learned Special Government Pleader for respondent Nos.45 and 46.

3. An identical issue was considered by us in a batch of cases in W.A.Nos.62, 65, 75, 76, 78, 80 & 81 of 2019 and these appeals were disposed of by common judgment dated 26.03.2019. For better appreciation, we quote the entire order.

"These writ appeals have been filed by the National Highways Authority of India (herein after referred to as 'NHAI') challenging the common order dated 06.03.2018 in W.P.Nos.1654, 1655, 2922, 2923, 2924, 2925 & 2926 of 2018 filed by the respondents herein.

2. The respondent herein sought for issuance of writ of certiorarified mandamus to quash the proceedings of the second respondent dated 20.09.2017 and to direct the second respondent to pay additional market value under Section 23(1) (a) of the Land Acquisition Act, 1894, (for brevity 'the Act') Solatium under Section 23(2) of the Act and interest under Section 28 of the Act.

3. The writ petitions were allowed and the matter was remanded to the Union of India represented by the Secretary to Government to pass appropriate orders for payment of solatium and interest payable consequent to the judgment of the Hon'ble Supreme Court in the case of Union of India & another Vs. T.Chakrapani & others in C.A.Nos.129 to 159 of 2014 dated 21.07.2016. The Union of India and NHAI being aggrieved by the

direction have filed these appeals.

4. We have heard Mr.Su Srinivasan, learned counsel for the appellants and Mr.V.Raghupathy for Mr. P.Shanmugasundaram for the first respondent and Mr.V.Ananda Moorthy, learned Additional Government Pleader for the second respondent.

5. The lands owned by the writ petitioners were acquired for implementation of a project conceived by the NHAI for widening of the existing National Highway i.e., NH 47. Apart from the lands owned by the respondent/writ petitioners, the lands owned by other persons were also acquired. The acquisition proceedings commenced during the year 2007 and culminated in awards being passed at different points of time. The last of which is stated to have been passed in the year 2009. A few of the land owners, whom we will call as Chakrapani Group had approached this Court and filed writ petitions challenging Section 3J of the National Highways Act which states that nothing in the said Act shall apply to the acquisition under the National Highways Act, 1956.

6. These writ petitions were filed by Chakrapani Group somewhere during 2008 and was pending before this Court. Ultimately by judgment dated 04.03.2011, the writ petitions filed by Chakrapani Group in W.P.Nos.15699 of 2010 etc., batch were allowed by common order dated 04.03.2011. The operative portion of the order reads as follows:

"34. It is only in cases where in order to achieve the directive principles under the Constitution, that the laws are made for benefit of class of people like Ceiling Act etc., that the Courts have upheld the laws because of their inclusion under Schedule - 9 of the Constitution, therefore, it cannot be said that the Act is not open to challenge merely because of Article 31-A of the Constitution of India, when it is not open to same Legislature to frame different laws dealing with same subject.

35. As already observed above that Section 3-J of the National Highways Act does not satisfy

the test of reasonable classification permission for the purpose of legislation to acquire land under the Acquisition Act and under the Act, for public purpose, specifically when the Act is also framed by the same Legislature, therefore, it is not permissible to discriminate between persons with regard to payment of compensation.

36. Consequently, all the writ petitions are allowed, while upholding other provisions of the Act, Section 3-J of the Highways Act is held to be unconstitutional, being hit by Article 14 of the Constitution of India, being in excess of legislative competence. The petitioners, therefore, are held entitled to the compensation of additional market value under Section 23(1) (a), solatium under Section 23(2) and interest as provided under the Land Acquisition Act."

7. The NHAI had preferred writ appeals before the Division Bench of this Court in W.A.Nos.2359 to 2388 of 2011 and an order of interim stay was granted by the Division Bench by order dated 23.02.2011. It is submitted that the writ appeals are yet to be disposed of. However, the Registry is not able to locate the papers. This is not a material fact because of certain other developments, which we shall elaborate a little later, the writ appeals themselves have become infructuous. It appears that the High Court of Punjab and Haryana had also struck down Section 3-J of the National Highways Act and the Union of India and NHAI filed appeals against the order passed by the High Court Punjab and Haryana and also appeals were filed against the order passed by the Single Bench in W.P.No.15699 of 2008 etc., batch dated 04.03.2011. The appeals filed by the Union of India and NHAI against the order of the Single Bench in case relating to Chakrapani Group was numbered as Civil Appeal Nos.129 to 159 of 2014. These Civil Appeals were tagged along with Special Leave Petition(Civil) No. 15104 of 2014. The Hon'ble Supreme Court disposed of the Special Leave Petition by directing the Union of India and NHAI to pay the respondents/writ petitioners (therein) solatium as due in terms of the orders impugned (Order of the High Court) along with interest therein. The order passed by the Hon'ble Supreme Court reads as follows:

"In view of the statement made by Shri Ranjit Kumar, learned Solicitor General of India on an earlier dated of the hearing that solatium in terms of the impugned order of the High Court would be granted for the instant acquisitions made under the provisions of the National Highways Act, 1956, no subsisting issue remains in the present appeals as also in the special leave petition. The appeals as also the Special Leave Petition are accordingly closed. The respondent/writ petitioners be paid solatium as due in terms of the impugned order (s) along with interest thereon.

NEW DELHI

JULY 21, 2016."

8. The order passed by the Hon'ble Supreme Court is in the process of being implemented as could be seen from the various communications of NHAI dated 02.05.2017, 02.05.2017 and 18.07.2017. The respondents/writ petitioners taking queue from the decision of the Hon'ble Supreme Court in the case relating to Chakrapani Group submitted representation to the second appellant and the second respondent herein requesting them to pay additional market value at 12%, solatium at 30% and interest at 15% to market value from the date of taking possession of their land for widening of NH 47.

9. The second respondent before us by communication dated 20.09.2017 reflected the opinion of the second appellant namely Project Director, NHAI stating that the respondent/writ petitioners are not entitled to additional market value, solatium or interest as the benefit of these payments will accrue only to land owners who were before the Hon'ble Supreme Court. There is a factual mistake committed by the second appellant stating as if the appeals were filed by the land owners before the Hon'ble Supreme Court in Chakrapani Group case where as the appeals before the Hon'ble Supreme Court were by Union of India and NHAI.

10. The learned Single Bench on considering the submissions had allowed the writ petitions and remanded the matter to the first respondent to pass appropriate orders. In our considered view, the communication dated 20.09.2017 cannot

be treated as impugned order by the writ petitioners since, the Special District Revenue Officer's role come to an end after the acquisition proceedings had been completed. In other words, he has become functus officio. Nevertheless, the writ Court has now directed the matter to be sent back to the first appellant for passing appropriate orders. In our view, the proper Authority to consider claim of respondent/writ petitioner is the District Collector of the concerned District who has been vested with powers to deal with claim for enhanced compensation in terms of Section 3 G(5) of the National Highways Act which reads as follows:

"3G.Determination of amount payable as compensation:

1...

2...

3...

4...

5.If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government"

11. Thus, in our considered view, the direction issued by the writ Court cannot be implemented by the First Appellate Authority. Therefore, we need to issue appropriate directions so that the interest of land owners is taken note of by the Competent Authority.

12. The learned counsel appearing for the appellant may not have serious objection for the matter to be considered by the District Collector in terms of Section 3G(5) of the National Highways Act the land owners have already submitted representation to the District Collector but the learned counsel would submit that the decision of the Hon'ble Supreme Court in the case of the Chakrapani Group cannot be made applicable to the respondent/writ petitioners as the order passed by the Hon'ble Supreme Court was confined to the acquisition which was subject matter before the Hon'ble Supreme Court. Further it is contended that the Chakrapani Group

approached this Court as early as in the year 2008 for appropriate relief and the present respondent/writ petitioner filed the writ petition only in 2017 i.e., much after the order passed by the Hon'ble Supreme Court dated 21.07.2016 in Chakrapani Group case.

13. Further it is submitted that if any positive direction is issued for payment of additional market value, Solatium and interest, it will be a severe drain on the finances of the appellants and the projected expenses is more than Rs.2,000 Crores. In our considered view, the writ Court cannot at this stage issue any positive direction to pay additional market value, solatium or interest, but however, this Court is well within its jurisdiction to issue directions to consider the claim of the respondent/writ petitioners in terms of Section 3G(5) of the National Highways Act.

14. Before we issue appropriate directions, we need to clarify the following:
The understanding of NHA as could be seen from the memo dated 20.09.2017, impugned in the writ petition, is that the claim for solatium is applicable only to the case concerning Chakrapani Group. The claim for solatium would not arise in an acquisition under the National Highway Act, in the light of Section 3J of the said Act which states that none of the provisions of the Land Acquisition Act, 1894 would apply to an acquisition under the National Highways Act. However, Section 3J was struck down by this Court. Though the appeals were preferred by the appellants in W.A.Nos.2359 to 2388 of 2011 and there is an order of interim stay, nothing further survives in these appeals since the order passed by the learned Single Bench was subject matter of Civil Appeal Nos.129 to 159 of 2014 and in the light of the orders passed by the Hon'ble Supreme Court dated 21.07.2016 in those Civil Appeals, the appellants cannot now independently proceed with the writ appeals in W.A.Nos.2359 to 2388 of 2011. On account of the decision rendered striking down Section 3J of the National Highways Act, the said provision is no longer in the statute book. Therefore, as on date, the claim for solatium is maintainable. The question would be what would be the position in respect of the

cases where compensation was paid pursuant to awards prior to the decision dated 04.03.2011 striking down Section 3J of the National Highway Act. This issue has to be necessarily adjudicated by the appropriate authority namely the District Collector while exercising his powers as an Arbitrator appointed by the Central Government for dealing with the claim for enhanced compensation.

15. The first respondent/writ petitioners specific case is that they have accepted the award amount during 2008-09 without prejudice to their rights. This aspect needs to be raised before the District Collector/Arbitrator.

16. Thus, for all the above reasons, the writ appeal is partly allowed and the order and direction issued by the learned Single Bench to the first respondent is set aside and the following directions are issued:

(i) The respondent/writ petitioners are directed to submit appropriate petition in the proper form before the District Collector, Salem on or before 15.05.2019 from the date of receipt of copy of this order along with copies of the earlier representation claiming whatever reliefs they want as claimed in the writ petition i.e., additional market value, solatium and interest.

(ii) On receipt of the petition, the District Collector, Salem, shall afford an opportunity of personal hearing to the respondent/writ petitioners or their representative within a period of 30 days from the date of presentation of the petition in terms of the direction in the above para (i).

(iii) After hearing the respondent/writ petitioners in person, the District Collector/Arbitrator shall take note of the documents that will be placed before him as well as the legal submissions made by them and pass a reasoned order on merits and in accordance with law.

17. It is well open to the respondent/writ petitioners to place all materials including the decisions of this Court and the Hon'ble Supreme Court before the District Collector/Arbitrator.

The final orders in terms of this directions be passed by the District Collector/Arbitrator within a period of 40 days from the date of which the personal hearing is concluded.

18. Hence the writ appeals are partly allowed. No costs. Consequently, connected civil miscellaneous petitions are closed."

4. Mr.P.B.Sampath Kumar, learned counsel for Respondent Nos.1 to 44 would contend that there is a slight distinction between the case of the respondent and that of the case which was subject matter of the above appeals. The learned counsel has drawn our attention to the value fixed by the Special District Revenue Officer, (LA) (NH 68), Salem dated 15.10.2018, wherein a requisition has been sent to the respondent stating that the amount of compensation has been computed and in this regard, the Special District Revenue Officer (LA) has addressed the appellant on 30.07.2018. It is to be pointed out that these communications are pursuant to the orders passed in writ petition which is subject matter of the present appeal. Therefore, these communications cannot in any manner strengthen the case of the respondent.

5. The respondents seek for two parallel remedies before two different authorities. The first claim is made before the Special District Revenue Officer (LA) claiming payment of 18% of interest on the compensation fixed. The other remedy is before the District Collector, claiming enhanced/additional market value, solatium and interest. It is stated that the respondents have withdrawn the amount fixed as compensation by Special District Revenue Officer. However, this statement is disputed by the learned counsel for the appellant/NHAI contending that the same is still in deposit.

6. We do not wish to go into this controversy for the simple reason that the appeal for the enhanced compensation is pending before the District Collector. The appeals made by all the appellants which we have referred above, the situation is similar and we directed all claims be adjudicated by the District Collector. Therefore, we are of the opinion that the respondent should also adjudicate all their claims before the District Collector, before whom the appeal is pending i.e., claim for additional market value, solatium and interest.

7. It is submitted by the learned counsel for the appellant that the counsel who has appeared for the respondent in this appeal has advanced arguments before the District Collector two weeks ago. This will come to show that the matter is pending consideration with the District Collector.

8. In the result, the writ appeal is allowed and the directions issued by the writ Court is set aside and the respondents/ writ petitioners are permitted to raise all the issues in the pending application/appeal before the District Collector, Salem i.e., claim for additional market value, solatium and interest and the same shall be considered after conducting enquiry and a reasoned order be passed on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mrm

To

1. The Project Director,
National Highways Authority of India (NH 68)
212, 3/D-3.1, Srinagar Colony,
Narasothipatty, Salem 636 004.
2. The Competent Authority and
Special District Revenue Officer
(LA) (NH 68)
3-B/8, Ram Nagar, 2nd Nagar,
Swarnapuri, Salem-636 004.
3. The Competent Authority and
Special District Revenue Officer,
(LA) (NH7 & NH47),
Krishnagiri District.
4. The District Collector,
Salem.

+1cc to Mr.P.B.Sampath Kumar, Advocate, S.R.No.31141

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&
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NRL (Co)
CS/13/05/2019