



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.07.2019

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.2648 of 2019

M.Gnansekaran

...Petitioner

-Vs-

1.The District Collector,
Sivagangai District,
Sivagangai.

2.The Special Thasildhar (Land Acquisition),
National High Ways Authority,
49 Unit-1, Manamadurai,
Sivagangai District.

...Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the respondent No.2 to pay compensation to the petitioner for the acquired land in Survey No.30/1 in Vellikuruchi Village, Manamadurai Taluk, Sivagangai District in an extent of 441 square meters by the second respondent.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.M.Rajarajan
Government Advocate

ORDER

The prayer in this writ petition is for a Writ of Mandamus, to direct the respondent No.2 to pay compensation to the petitioner for the acquired land in Survey No.30/1 in Vellikuruchi Village, Manamadurai Taluk, Sivagangai District in an extent of 441 square meters by the second respondent.

2.Heard Mr.R.Venkatesan, learned counsel appearing for the petitioner and Mr.M.Rajarajan, learned Government Advocate appearing for the respondents.

3.The grievance of the petitioner is that, the petitioner's land has been acquired for the public purpose i.e., laying of four lane High Way. However, having acquired the land of the petitioner,



the respondents have determined the compensation only for the standing trees and the building constructed therein, but the land cost has not been compensated so far. According to the learned counsel for the petitioner, the reason for non-paying the compensation for the land value is that the land was originally assigned to the petitioner by the Government and therefore, the petitioner is not entitled to receive the compensation for the land costs.

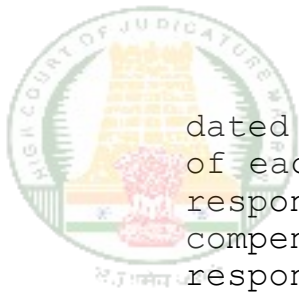
4.I have heard Mr.M.Rajarajan, learned Government Advocate appearing for the respondents, who also reiterated that, since the land has been assigned admittedly to the petitioner in the year 1984 and subsequently, in the year 1989, the petitioner had been in occupation and constructing the building and had developed the standing crops and the Government, for the public purpose, wanted to acquire the land assigned to the petitioner, the development made by the petitioner ie., the building, standing trees alone can be compensated and value of the land, which has been assigned to the petitioner since is free of cost, it cannot be paid the compensation. In that view of the matter, the petitioner cannot seek compensation for the land cost of the acquired land.

5.I have considered the said submission made by both sides.

6.The learned counsel appearing for the petitioner has relied upon the decision of this Court made by the learned Judge in W.P. (MD)No.33736 of 2016, dated 09.01.2018 in the matter of Athikesavan and eight others Vs. Sate of Tamil Nadu Rep. by its Secretary to Government Public Works Department, Chennai and others, where the learned Judge passed the following order:

"7.The point in dispute here is no more res integra. In the land acquisition case in The Special Land Acquisition Officer, Hosanagar Vs. K.S.Ramachandra Rao and others (AIR 1972 SC 2224), the Hon'ble Supreme Court has held that it is not given to the respondents to retract from the position they have chosen to invoke the Land Acquisition Act and ignore their option to resume the lands. This was followed by this Court in R.Abdul Jabbar and 5 others Vs. The State of Tamil Nadu and 4 others (1996(II) CTC 719) as well as in P.Mallaiah Vs. Government of A.P., Rep. by its Secretary, Irrigaiton & Command Area Development Department, Hyderabad & another in W.P.No.3306 of 2003. Therefore, the contention of the fifth respondent taken in paragraph No.5 of its counter, that even though the compensation amount has been determined for the petitioners, the same cannot be disbursed to the petitioners in view of the condition pertaining to resumption provided to in the Order of assignment in their favour cannot stand to scrutiny.

8.In the said circumstances, the separate Orders



dated 27.06.2016 passed by the fifth respondent in favour of each of the petitioners is hereby quashed and the fifth respondent is further directed to disburse the compensation amount as has been determined by him fifth respondent within twelve weeks from the date of receipt of a copy of this order. This petitioner is disposed of accordingly. No costs."

7.The learned counsel for the petitioner would further submit that as against the said order passed by the writ Court, appeal was filed by the respondent therein in W.A.No.1666 of 2018, where the Division Bench, by order dated 14.12.2018, in the matter of State of Tamil Nadu, rep., by its Secretary to Government, Public Works Department, Secretariat, Chennai-600 009 and others Vs., Athikesavan and others has confirmed the decision taken by the writ Court and has passed the following order:

"15.Therefore, from the reading of the above judgment, it is clear that once the provisions of the 1894 Act are invoked and proceeded with waiving their rights over the lands, the appellants cannot legally and factually deny compensation for the acquired lands of the respondents/writ petitioners. Further, the Land Acquisition Officer having issued notices under Sections 4(1), 9(3) and 10 and passed awards under Sections 11 and 12(2) of the Act, in the name of the respondents/writ petitioners treating the lands in question as that of the respondents/writ petitioners, is estopped from denying the interim compensation or compensation for the lands by the impugned proceedings.

16.Thus, we do not find any infirmity or illegality in the order passed by the learned Single Judge and accordingly, this writ appeal fails and the same is dismissed, confirming the order dated 09.01.2018 passed in W.P.No.33736 of 2016. No costs. Consequently, the connected civil miscellaneous petition is also dismissed."

8.By relying upon these decisions, the learned counsel for the petitioner would submit that, the petitioner, therefore, is entitled to receive compensation for the land cost of the acquired land and therefore, the respondent cannot deny the same.

9.The learned Government Advocate appearing for the respondents fairly submitted that, in view of the judgments referred to above, taking into account those judgments, the representation of the petitioner, dated 06.08.2018, seeking for compensation to the land cost of the acquired land, would be considered on merits and order would be passed to that effect.

<https://hcservices.ecourts.gov.in/hcservices/>

10.Considering the said submission made by both sides and by



taking into account the aforesaid factual matrix, this Court is inclined to dispose of this Writ Petition with the following directions:

that the representation of the petitioner, dated 06.08.2018, given to the first respondent shall be considered on merits and in accordance with law by taking into account the law declared by this Court in the judgment dated 09.01.2018 in W.P.No.33736 of 2016, as has been confirmed in W.A.No.1666 of 2018 dated 14.12.2018 and accordingly, pass the order with regard to the compensation as claimed by the petitioner for the land cost and if the compensation is determined and awarded for the land cost the same shall be disbursed by the respondents to the petitioner at the earliest. The needful shall be done, as indicated above, by the respondents and final order shall be passed within a period of eight weeks from the date of receipt of a copy of this order.
No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The District Collector,
Sivagangai District,
Sivagangai.
- 2.The Special Thasildhar (Land Acquisition),
National High Ways Authority,
49 Unit-1, Manamadurai,
Sivagangai District.

+1 CC to M/s.R.VENKATESAN, Advocate (SR-74014[F] dated 08/07/2019)

W.P. (MD) No.2648 of 2019
08.07.2019

gns/rmk
JMN(26.08.2019) 4P : 4C