



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.A. (MD) No.1680 of 2018

Against W.P(MD)No.16825 of 2017

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Gandhimathi

... Appellant/Petitioner

-vs-

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Special District Revenue Officer,
Land Acquisition,
National Highways,
Nagercoil, Kanyakumari District.

3.The Project Director,
National Highways Authority of India,
Tirunelveli.

... Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the order dated 04.07.2018, made in W.P.(MD) No.16825 of 2017, on the file of this Court.

PRAYER IN W.P(MD)No.16825 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for records pertaining to the impugned order in Na.Ka.No.J3/534/2015 dated 18.08.2017 passed by the 2nd respondent and quash the same and consequently direct the respondents to conduct re-enquiry by taking into account the letter No.NHAI/11013/DGM (LA & Coord)/2015 -FTS - 586/06 dated 03.02.2016 issued by the National Highways Authority of India and to enhance the compensation for the acquisition of the petitioner's land in Survey No.223/1A, situated at Pothaiyadi, Thamaraikulam Village, Kanyakumari District for the formation of four lane road NH-47 (Kerala - Tamilnadu Border to Kanyakumari and NH-47B (Nagercoil to Kavalkinaru)).

For Appellant	:	Mr.M.Ramu
For Respondents 1 & 2	:	Mr.A.K.Baskara Pandian
		Special Government Pleader
For 3 rd Respondent	:	Mr.K.K.Senthilvelan



J U D G M E N T

[Judgment of the Court was delivered by T.S.SIVAGNANAM, J.]

This Writ Appeal by the Writ Petitioner is directed against the order dated 04.07.2018, made in W.P.(MD) No.16825 of 2017.

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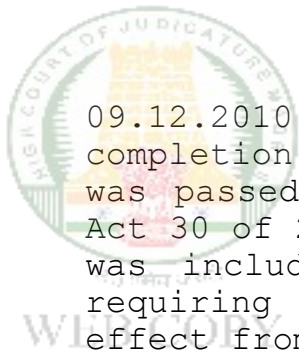
2.In the Writ Petition, the appellant challenged the order passed by the Special District Revenue Officer, Land Acquisition, National Highways, Nagercoil dated 18.08.2017, and sought for a direction to the respondents to conduct fresh enquiry by taking into account the letter No.NHAI/11013/DGM (LA & Coord)/2015 - FTS - 586/06 dated 03.02.2016, issued by the National Highways Authority of India and to enhance the compensation for the acquisition of the petitioner's land in Survey No.223/1A, situated at Pothaiyadi Four Lane Road NH-47 and NH47B.

3.The plea raised before the Writ Court was that the competent authority viz., the second respondent herein has rejected the request for award of solatium at 100% and additional compensation at 12% with interest as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred as Act 30 of 2013). The learned Writ Court did not agree with the said contention and held that Act 30 of 2013 came into force from 01.01.2015 and the National Highways Act, 1956 was included to the Schedule IV under Section 105 of the Act only with effect from 01.01.2015 and therefore, the request is not feasible for consideration. While making such observation, the Writ Court dismissed the Writ Petition. The learned Writ Court also took note of the decision of the Hon'ble Supreme Court in **Chakrapani & Others v. Union of India [(2011) Writ L.R. 193]** and granted liberty to the appellant to raise the issue with regard to claim for 100% solatium and 12% additional compensation with interest before the appropriate authority. This order is put to challenge in this Writ Appeal.

4.We have heard Mr.M.Ramu, learned counsel appearing for the appellant, Mr.A.K.Baskara Pandian, learned Special Government Pleader appearing for the respondents 1 and 2 and Mr.K.K.Senthilvelan, the learned counsel appearing for the third respondent.

5.The controversy involved in this appeal lies in a very narrow compass. The following facts are not disputed:

The Notification under Section 3(a)(1) of the National Highways Act 48 of 1956 (hereinafter referred to as Act 48 of 1956) was published on 25.01.2010. The substance of the said Notification was published under Section 3A(3) of Act 48 of 1956 in the local newspaper on 10.04.2010, calling for objections from the land owners. It is stated that the objection petitions were enquired on 24.06.2010 and the Notification under Section 3D(1) was published on

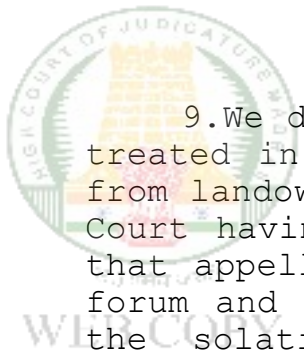


09.12.2010 and paper publication was effected on 03.05.2011. On completion of enquiry under Section 3G(3) of Act 48 of 1956 an Award was passed on 25.02.2013 in Award No.1 of 2013. The provisions of Act 30 of 2013 came into effect on 01.01.2015 and the Act 48 of 1956 was included in the IV Schedule, which list out the enactments requiring land acquisition and rehabilitation and Resettlement with effect from 01.01.2015.

6.The question to be decided would be as to whether the respondent/ National Highways Authority of India can deny solatium, additional amount and interest to the appellant merely because the land acquisition was completed and award was passed on 25.02.2013, much prior to 01.01.2015.

7.This issue is no longer *res integra* in view of the decision of the Hon'ble Supreme Court in ***Union of India and another v. Tarsem Singh and other (Civil Appeal No.7064 of 2019)***. In the said decision it was pointed out that even in acquisitions that took place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. The Hon'ble Apex Court referred to Section 113, which was inserted into Act 30 of 2013 and pointed out that the insertion of said provision and issuance of Ordinance was to apply the principles contained in ***Nagpur Improvement Trust v. Vithal Rao [(1973) 1 SCC 500]*** as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule. Further, it is pointed out that the National Highways Act being one of the aforesaid enactments should flow to the persons, whose lands have been acquired. Further, it was pointed out that it is clear even the Government is of the view that it is not possible to discriminate between landowners covered by the Act 30 of 2013 and the landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. After referring to the said decision as well as the judgment of the Division Bench of this Court in ***T.Chakrapani v. Union of India*** (supra), which was quoted with approval, it was held that solatium and interest is payable even in cases that arise between 1997 and 2015. The above legal position has clearly set out the entitlement of the landowners to solatium and interest even though the acquisition was completed and notification was issued and award was passed under 3G(3) of the National Highways Act, 1956 on 25.02.2013 well before coming of Act 30 of 2013.

8.One more argument was put forth by the learned Standing Counsel appearing for the National Highways Authority of India that the Writ Court has granted liberty to the appellant to approach appropriate authority and it would be for the appellant to do so.



9.We do not accept the said contention. The landowner cannot be treated in such a fashion, especially when the land is taken away from landowner by way of compulsory acquisition. The Hon'ble Supreme Court having settled the legal position, we are of the clear view that appellant, the erstwhile landowner, need not be driven to any forum and the National Highways Authority of India should disburse the solatium and interest on the compensation fixed by the arbitrator, who has enhanced the compensation determined by the Special District Revenue Officer, considering the prolonged litigation.

10.One more fact, which has weighed in our mind to take such a decision is because few of the landowners, whose lands were also acquired for the very same NH 47 and NH 47 B have been dealt with under Act 30 of 2013. Prima facie it appears to be a discrimination, though landowners have dragged the national highways Authority of India to litigation and the land acquisition proceedings were delayed and by then Act 30 of 2013 came into force and the benefits of Act 30 of 2013 have to be necessarily extended to them by the National Highways Authority of India. Therefore, this is a vital point to come to a conclusion that the appellant should not be driven to the authorities by making an application etc., but the National Highways Authority should voluntarily come forward to compute the solatium and interest and settle the same.

11.Obviously it goes without saying that the solatium will be calculated by applying the provisions under Land Acquisition Act, 1894 and the appellant cannot said the acquisition should be treated under Act 30 of 2013.

12.For the above reasons, the Writ Appeal is allowed and the order of the learned Single Judge dated 04.07.2018, made in W.P.(MD) No.16825 of 2017 is set aside and the third respondent National Highways is directed to the disburse the solatium and interest in terms of the above observation and direction issued by us within a period of three months from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

sj



To

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Special District Revenue Officer,
Land Acquisition,
National Highways,
Nagercoil,
Kanyakumari District.

+1 CC to M/s.M.RAMU, Advocate SR-94461.

W.A. (MD) No.1680 of 2018
24.10.2019

CS(13.11.2019) 5P 4C