

In the High Court of Judicature at Madras

Dated : 12.2.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.13380 and 24274 of 2016 & 3671 of 2018
and all connected pending WMPs

K.Chandran

...Petitioner in
WP.13380/2016

1.Mr.Kulanthai Pandiyan

2.Mrs.K.Selvarani

...Petitioners in
WP.Nos.24274/2016 & 3671/18

Vs

1.The Government of India, Ministry
of Road Transport & Highways,
Transport Bhavan, No.1, Parliament
Street, New Delhi-110001.

2.The Principal Secretary to Government,
Department of Highways & Minor Ports,
Secretariat, Fort.St.George, Chennai-9.

...Respondents
1 & 2 in both

WP.Nos.13380 & 24274 of 2016

3.The District Collector-cum-Arbitrator,
Collectorate, Kanchipuram

...R3 in both WP

Nos.13380 & 24274 of 2016 &

R1 in WP.No 3671 of 2018

4.The Competent Authority & Special
District Revenue Officer (LA), National
Highways, Kancheepuram, Kancheepuram
District.

...R4 in both WP

Nos.13380 & 24274 of 2016 &

R2 in WP.No.3671 of 2018

5.National Highways Authority of India,
rep.by its Project Director, Project
Implementation Unit, No.1/54-28,
Butt Road, St.Thomas Mount,
Near Kathipara Junction, Chennai-16.

...R5 in both WP

Nos.13380 & 24274 of 2016

6.National Highways Authority of India,
G5 & 6, Sector 10, Dwarka, New Delhi.
Pin : 110075 rep.by its Project Director

...R3 in WP.No.
3671 of 2018

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus

(i) to call for the records from the 4th respondent in Rc.No.177/2007/ NH45 dated 08.1.2014, quash the same as the same is against the provisions of Section 3G(1) of the National Highways Act and also against the judgment of the Honourable Supreme Court reported in (2010) 12 SCC 51 and consequently direct the 4th respondent to determine the compensation by 100% escalation every year from 2008 to 2014 and calculate solatium of 30% from the total compensation as the concern road is with the State Government and the State Government released the funds for compensation and make the payments accordingly to the petitioner (WP.No.13380 of 2016);

(ii) to call for the records from the 4th respondent in Rc.No.177/2007/ NH45 dated 08.1.2014, quash the same as the same is against the provisions of Section 3G(1) of the National Highways Act and also against the judgment of the Honourable Supreme Court reported in (2010) 12 SCC 51 and consequently direct the 4th respondent to determine the compensation by 100% escalation every year from 2008 to 2014 and calculate solatium of 30% from the total compensation as the concern road is with the State Government and the State Government released the funds for compensation and make the payments accordingly to the petitioner (WP.No.24274 of 2016); and

(iii) to call for the records of the 1st respondent District Collector cum Arbitrator in Na.Ka.784/2015/F5 dated 06.1.2017, quash the same and consequently direct the 1st respondent to conduct the proceedings for redetermination of the compensation by providing an opportunity as mentioned in the judgement of this Court passed in WP (MD) No.3832 of 2010 and WP No.24146 of 2013 (WP.No.3671 of 2018).

For Petitioners in WP.Nos.13380 &
24274 of 2016 : Mr.D.Muthukumar

For Petitioners in WP.No.3671 of
2018 : Mr.D.Muthukumar for
M/s.Paul and Paul

For Central Government : Mr.G.Karthikeyan, ASG

For State : Mr.M.Elumalai, GA

For National Highways : Ms.S.R.Sumathy
in WP.13380/16 & 3671/18

For National Highways : Ms.K.Suhazini
in WP.24274/2016 for M/s.P.Wilson Associates

COMMON ORDER

I have heard Mr.D.Muthukumar, learned counsel appearing for the petitioners, Mr.G.Karthikeyan, learned Additional Solicitor General appearing for the Central Government, Mr.M.Elumalai, learned Government Advocate appearing for the State Government and Ms.S.R.Sumathi, learned Standing Counsel appearing for the National Highways Authority of India (NHAI).

2. The petitioner in WP.No.13380 of 2016 is one Mr.K.Chandran and the challenge is to an award passed by the Competent Authority and Special District Revenue Officer (LA), National Highways, Kancheepuram, Kancheepuram District dated 08.1.2014 in exercise of his powers under Section 3G(1) of the National Highways Act, 1956 (for brevity, the Act) and for a consequential relief to determine the compensation by giving 100% escalation every year from 2008 to 2014, calculate solatium of 30% from the total compensation as the concern road is with the State Government and the State Government released the funds for compensation and make the payments accordingly to the petitioner.

3. The petitioners in W.P.No.24274 of 2016 and 3671 of 2018 are one and the same. In W.P.No.24274 of 2016, the challenge is to an award passed by the same Authority namely the Competent Authority and Special District Revenue Officer (LA), National Highways, Kancheepuram, Kancheepuram District dated 08.1.2014 under Section 3G(1) of the Act and for a consequential direction to determine the compensation by giving 100% escalation every year from 2008 to 2014, calculate solatium of 30% from the total compensation as the concern road is with the State Government and the State Government released the funds for compensation and make the payments accordingly to the petitioners.

4. In W.P.No.3671 of 2018, the petitioners seek to quash the order passed by the District Collector-cum-Arbitrator, Kancheepuram dated 06.1.2017 and to direct him to conduct fresh proceedings for re-determination of the compensation by providing adequate opportunity to the petitioners.

5. Since the prayer sought for in W.P.Nos.13380 and 24274 of 2016 is identical, they are taken up for consideration at the first instance.

W.P.Nos.13380 & 24274 of 2016 :

6. The petitioners sought to set aside the award passed by the Competent Authority under the provisions of the Act in determining the compensation payable for the lands, which have been acquired for forming a national highway.

7. The question would be as to whether the writ petitions are maintainable. This issue arises because Section 3G(5) of the Act states that 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. The Central Government notified District Collectors/District Magistrates of each districts to be the Arbitrators to decide the claim for enhanced compensation or claim for deduction of compensation awarded by the Competent Authority as Section 3G(5) provides remedy for both parties.

8. The petitioners' contention is that the State Government has been actively involved in the decision making process in as much as the Principal Secretary to Government, Highways and Minor Ports Department, Chennai attended the award enquiry and based on the directions issued by him, the compensation has been arrived at and that no useful purpose will be served by approaching the District Collector, who is an officer much subordinate in rank to that of the Principal Secretary to Government. This is the principal submission made by the learned counsel for the petitioners to assail the order passed by the Competent Authority.

9. It is further contented by the learned counsel for the petitioners that if this contention is accepted by this Court, then it will be well open to appoint an independent Arbitrator to decide the matter. Certain decisions of other Courts are relied upon wherein a similar view has been taken.

10. Thus, it is to be seen as to whether the Principal Secretary to Government of Tamil Nadu, Highways and Minor Ports Department was actively involved in the decision making process for arriving at the compensation and if it is so, will it prejudice the case of the petitioners if they go before the District Collector by invoking the remedy under Section 3G of the Act.

11. A perusal of the counter affidavit filed by the Project Director, NHAI shows that the entire land acquisition proceedings have been done under the Act and it is the Special District Revenue Officer (LA), National Highways, who had handled the entire land acquisition proceedings. It is only after the lands were acquired, the Competent Authority fixed the value of the land at Rs.2,500/- per sq.ft., or Rs.26,910/- per sq.meter. Since the lands had to be given to the State Government, the matter was addressed to the State Government and the State Highways Department allotted funds to the tune of Rs.35,73,68,290/-. From the counter affidavit, it is further seen that it is the Competent Authority, who has decided the compensation payable to the land owners including the notional increase, which has to be given on year to year basis. Furthermore, it has been specifically stated that the State Government has not fixed the quantum of compensation, which is under the powers of the Special District Revenue Officer (LA), National Highways, Kancheepuram and that the State Government allotted funds required for payment of compensation.

12. The Competent Authority and Special District Revenue Officer (LA), National Highways has filed a counter and Mr.M.Elumalai, learned Government Advocate points out that the award passed by the Competent Authority is as per the Act and that there were no instructions from the State Government regarding fixation of quantum.

13. In the light of the specific stand taken in the counter affidavits and also on a reading of the impugned award, this Court finds that the State Government had no role to play in the matter of fixing the compensation. Having held so, the other apprehension expressed by the learned counsel for the petitioners needs to be addressed i.e the District Collector, being an officer subordinate in rank to that of the Principal Secretary to Government, would not have exercised jurisdiction to enhance the compensation in the award.

14. This submission is not tenable for the reason that the District Collector exercised his powers under Section 3G of the Act pursuant to a Notification issued by the Central Government and that the Central Government, in its wisdom, has thought fit to notify District Collectors/ District Magistrates of each Districts to be the Arbitrators. Thus, the role of the Arbitrator exercising powers under Section 3G of the Act is entirely different from the other administrative powers exercised by him being the head of the concerned district. Therefore, the petitioners need not and cannot have any

apprehension in this regard. In the light of the above reason, this Court is of the view that the petitioners should avail the remedy available under Section 3G of the Act as it has been found that the State Government had no role in the matter of determination of compensation by the Competent Authority.

15. Accordingly, W.P.Nos.13380 and 24274 of 2016 are disposed of by directing the petitioners to file an application under Section 3G of the Act before the District Collector-cum-Arbitrator, Collectorate, Kancheepuram within a period of 12 weeks from the date of receipt of a copy of this order. If such an application is filed, the District Collector-cum-Arbitrator, Collectorate, Kancheepuram is directed to take the application on file and proceed to determine the enhanced compensation after affording adequate opportunity to the petitioners to put forth their contentions. The petitioners are at liberty to place oral and documentary evidence in support of their stand. On considering all the aspects and testing the correctness of the order passed by the Competent Authority under the Act, the District Collector-cum-Arbitrator, Collectorate, Kancheepuram shall pass a speaking order on merits and in accordance with law within a period of four months from the date, on which, the personal hearing is concluded. No costs.

W.P.No.3671 of 2018 :

16. Next I move on to consider as to what relief the petitioners in W.P. No.3671 of 2018 are entitled. The order impugned is dated 06.1.2017 passed by the District Collector rejecting the application filed by the petitioner under Section 3G of the Act. It appears that the petitioners sought for adjournment of the said application on the ground that they filed W.P.No.24274 of 2016 challenging the award of the Competent Authority. Despite making a request, the District Collector rejected the application and confirmed the award passed by the Competent Authority.

17. Certain dates and events are required to be looked into to examine as to whether the petitioners had an effective opportunity in putting forth their contentions and as to whether there is a violation of the principles of natural justice. The District Collector fixed the date of hearing on the application filed under Section 3G of the Act on 07.4.2016 at 4 PM. This was communicated to the petitioners vide communication dated 29.3.2016 by stating that the personal hearing was preponed to 07.4.2016 at 4 PM instead of 08.4.2016.

18. The learned counsel for the petitioners submits that the petitioners appeared before the concerned Authority on the said

date. However, since the National Highways did not file their submissions, the matter stood adjourned. Subsequently, the petitioners were informed that the hearing was fixed on 25.6.2016. On receipt of the said hearing notice, the petitioners' counsel sent a letter to the District Collector dated 20.7.2016 stating that the petitioners filed W.P.No.24274 of 2016 challenging the award passed by the Competent Authority and requested the hearing to be deferred. This letter was sent by the petitioners' counsel by registered post and it was received in the office of the District Collector on 22.7.2016 as could be seen from the postal acknowledgment card. Thereafter, again the hearing was rescheduled, fixed on 16.9.2016 and intimated to the petitioners by notice dated 31.8.2016. Once again, the petitioners' counsel sent a letter on 14.9.2016 stating about the pendency of W.P.No.24274 of 2016 and also stating that there was a State Bandh called for on 16.9.2016 and requested for deferment of the proceedings. However, the District Collector passed the impugned order on 06.1.2017.

19. On perusal of the reference column in the impugned order, it is seen that the District Collector had taken on record the report of the Project Director, NHAI dated 01.11.2016. Obviously, this communication was not served on the petitioners. That apart, the District Collector, having received the said report dated 01.11.2016, ought to have issued notice to the petitioners and afforded an effective opportunity to place all the materials in support of their contention that the petitioners are entitled to protection under the Central Act 30 of 2013. Thus, the above facts will clearly show that there has been a violation of the principles of natural justice as the petitioners did not have adequate opportunity to put forth their contentions.

20. The learned counsel for the petitioners has placed reliance on the recent decision of the Hon'ble Supreme Court in the case of Union of India Vs. Tarsem Singh [reported in 2019 (9) SCC 304].

21. This decision is pressed into service to buttress the submission that the petitioners are entitled to the protection under the Central Act 30 of 2013 and that the petitioners are entitled to solatium and interest. Since this Court has relegated the petitioners to go before the District Collector-cum-Arbitrator, Collectorate, Kancheepuram under Section 3G of the Act, liberty is granted to the petitioners to place the decision relied upon by them in support of their contention.

22. For the above reasons, W.P.No.3671 of 2018 is allowed and the impugned order dated 06.1.2017 is set aside. In the light of the directions issued by this Court in W.P.No.24274 of 2016, the petitioners are entitled to agitate all their rights. It is made clear that well before the hearing date, a copy of the report of the Project Director, NHAI dated 01.11.2016 shall be served on the petitioners. No costs. Consequently, all connected pending WMPs are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

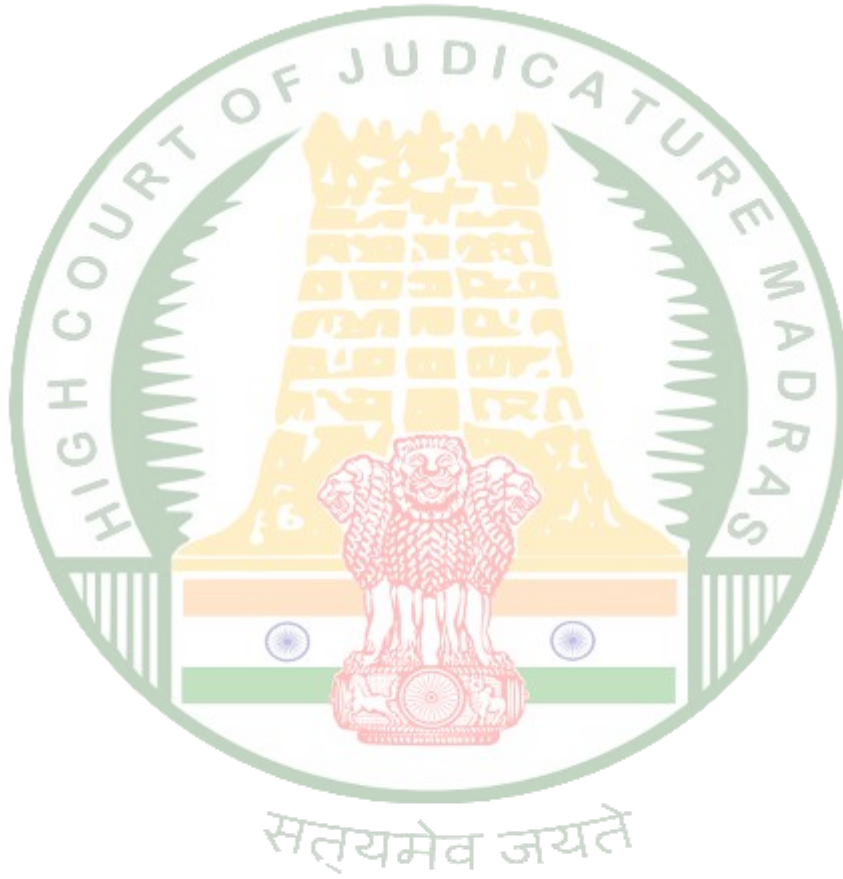
- 1.The Government of India,
Ministry of Road Transport & Highways,
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- 2.The Principal Secretary to Government,
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Ports, Secretariat,
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- 3.The District Collector-cum-Arbitrator,
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+2cc to Mr.D.Muthukumar, Advocate SR.11883,11884
+1cc to M/s.Paul & Paul, Advocate SR.11882
+1cc to M/s.P.Wilson Associates, Advocate SR.11573
+1cc to MR.G.Karthikeyan, Advocate SR.11880

+1cc to Mrs.S.R.Sumathy, Advocate SR.11505
+1cc to the Government Pleader SR.13034

WP.Nos.13380 & 24274 of 2016
& 3671 of 2018 & all connected
pending WMPs

PA(CO)
CB(10/03/2020)



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