

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24537 of 2015

1.Ashwin Kumar
2.G.Mallika
3.Bindumathavi
4.K.Ranjith Kumar

... Petitioners

Vs

1. Union of India,
Rep. By its Secretary,
Ministry of Shipping Road Transport and Highways
(Department of Road Transport and Highways),
New Delhi - 110 001.

2. The Competent Authority and
Special District Revenue Officer (LA),
National Highways Scheme,
Kanchipuram and Thiruvallur District.

3. The Project Director,
National Highways Authorities,
Chennai.
(R3 was impleaded suo-motu as per order
dt.10/8/15 by NKKJ in W.P.No.24537/15)

... Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus to direct the respondents to determine the compensation for the land at the rate of present market value of the property and pay the petitioners for difference amount (value as per the rates in force - what was paid to petitioners) and pay this amount or pay the interest for the amount determined at the rate of 15% from the date of taking possession of the land till the date of actual payment.

For petitioner : Mr.P.Ganesan

For R2 : Mr.M.Elumalai, GA

For R3 : Mr.Su.Srinivasan, Standing counsel

For R1 : No Appearance

ORDER

Heard Mr.P.Ganesan, learned counsel for the petitioner and Mr.M.Elumalai, learned Government Advocate for the second respondent.

2. The petitioner seeks enhancement of compensation of the land which have been acquired for the formation of National Highways. Under the National Highways Act, 1956, erstwhile Section 3 of the Act was substituted with Sections 3-A to 3-J by Act 16 of 1997 with retrospective effect from 24.01.1997. In terms of sub-section 1 of Section 3-G, the compensation amount shall be determined by an order passed by the Competent Authority. In terms of sub-section 5 of Section 3-G, 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. Thus, Section 3-G(5) provides a remedy for enhancement of compensation and such remedy is available to either of the parties. Therefore, the petitioner has to necessarily resort to such remedy.

3. In the event the petitioner files such application, then there is a likelihood of rejecting the same by the District Collector concerned on the ground that it has been filed beyond the period of 30 days as the procedure to be adopted is in terms of Arbitration and Conciliation Act, 1996. In fact, such orders were challenged before the Court and the writ petitions were allowed holding that application for enhancement of compensation filed under Section 3-G(5) cannot be rejected on the ground that it has been filed beyond the period of 30 days and it was held that the provisions of Arbitration and Conciliation Act, 1996, is the procedural law and the substantive law is the National Highways Act, 1956, under which, the land looser is entitled to claim enhancement of compensation. Therefore, this Court is inclined to dispose of the writ petition by issuing appropriate direction.

4. The Arbitrator as notified by the Central Government is the District Collector of the concerned District. In this case, I find that the land is situated at Kanchipuram District. Therefore, in the light of the above, the writ petition is disposed of by directing the petitioner to file an application before the District Collector, Kanchipuram, under Section 3-G(5) within a period of 30 days from the date of receipt of a copy of this order. If any such application is filed, the District Collector, Kanchipuram, shall entertain the same without rejecting on the ground of limitation and issue notice to all the parties including the National Highways and decide the

petitioner's claim for enhancement of compensation. The petitioner is entitled to raise all the contentions both factually and legally before the District Collector, Kanchipuram, who shall consider the same in accordance with law. Considering the fact that the lands were acquired in the year 2009, the District Collector, Kanchipuram, is requested to expedite the hearing and conclude the proceedings not later than two months from the date on which he completes the enquiry, provided the petitioner extends his cooperation in the early completion of proceedings. No Costs.

"For Being Mentioned"

This matter having been listed under the caption 'For Being Mentioned' on 08.01.2021 in pursuance to the order of this Court dated 28.01.2021 and made herein the presence of Mr.P.Ganesan, Advocate for the petitioner, and of Mr.G.Karthikeyan, Additional Solicitor General for the first respondent, and of Mr.E.Manoharan, Special Government Pleader for the second respondent and Mr.Su.Srinivasan, Standing Counsel for the this respondent, this Court made the following order:-

Heard Mr.P.Ganesan, learned counsel for the petitioner, Mr.G.Karthikeyan, learned Additional Solicitor General for the first respondent, Mr.E.Manoharan, learned Special Government Pleader for the second respondent and Mr.Su.Srinivasan, learned Standing Counsel for the third respondent.

2.This matter is listed today [08.01.2021] under the caption "for being mentioned". It is submitted by the learned counsel for the petitioner that initially the land in question fell within the jurisdiction of Kanchipuram District and therefore, this Court while disposing of the writ petition by order dated 28.01.2020 directed the District Collector, Kanchipuram to consider the contentions raised by the petitioner in accordance with law. However, as of now, the land in question falls within the jurisdiction of Tiruvallur District and therefore, prays for appropriate amendment.

3.Considering the above submission, the order dated 28.01.2020 shall stand amended by substituting the Tiruvallur District instead of Kanchipuram District wherever it occurs. Further, since there is a direction to the District Collector, Tiruvallur District and the same has been issued only today, the District Collector, Tiruvallur District is directed to pass orders within a period of two months from the date of receipt of

copy of the amended order after hearing the petitioner and the National Highways authorities.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rkm/cse

To

1. The Secretary,
Ministry of Shipping Road Transport and Highways
(Department of Road Transport and Highways),
New Delhi - 110 001.
2. The Competent Authority and
Special District Revenue Officer (LA),
National Highways Scheme,
Kanchipuram and Thiruvallur District.
3. The Project Director,
National Highways Authorities,
Chennai.

Copy To

1. The District Collector,
Kancheepuram.
2. The District Collector,
Tiruvallur District.

(with direction)

सत्यमेव जयते

+1cc to Mr.P.Ganesan, Advocate Sr.No.1349

+1cc to the Government Pleader Sr.No.7223

MP[CO]
SRG 28/02/2020
SV(CO)
CS/25/01/2021

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