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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.06.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.5580 & 5581 of 2018
and WMP Nos.6903 & 6904 of 2018

1. Mr.R.Baskaran
2. Mr.R.Vijayakumar ..Petitioner in WP No.5580 of 2018
1. Mr.G.Sivaraj ..Petitioner in WP No.5581 of 2018

.vs.

1. The State of Tamil Nadu,
Represented by its Chief Secretary,
Secretariat, Chennai 600 009
2. Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai 600 009.
3. The Accountant General,
Teynampet, Chennai 600 018.
4. The Director,
Adi Dravidar Welfare Department,
Chennai - 600 005.
5. The District Collector,
Dharmapuri.
6. The Land Acquisition Officer &
Special Tahsildar,
Housing Scheme (Adi dravidar Welfare Department),
Dharmapuri. ... Respondents in both WPs

Common Prayer:- Writ petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the entire records relating to G.O.No.40, Adi Dravidar and Tribal Welfare Department, dated 22.02.2016 from the file of the 2nd respondent and the consequential proceedings in Lr.No.10597/N1.A-2/2006-1, dated 26.08.2016 from the file of the 1st respondent, quash the same and further direct the respondents 1 and 2 to compute the balance of compensation amount payable to the writ petitioner on the basis of the judgement and decree dated 12.01.2009 in A.S.No.669 of 1999 batch on the file of this Court.



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For Petitioner : Mr.D.Shivakumaran
in both WPS

For Respondents : Mr.K.Parameswaran,
in both WPS Government Advocate for R1, R2
R4 to R6

C O M M O N O R D E R

On consent given by both sides, both these writ petitions are taken up together and common order is passed.

2. The lands belonging to the petitioners were acquired under the Land Acquisition Act, 1894, and an award was passed in the year 1992 by the 6th respondent. Aggrieved by the compensation fixed, a reference was made under Section 18 of the Act to the Sub Court seeking for enhancement of compensation. The Sub Court by a judgement and decree dated 05.04.1999 enhanced the compensation. The petitioners were aggrieved by the amount fixed by the Sub Court and therefore, three appeals came to be filed in A.S.No.669, 670 of 1999 and 43 of 2000. The Government also filed cross objections in all the Appeals which was numbered as 54 & 55 of 2002 and 87 of 2008. All these cases were taken up for final hearing and by common judgement dated 12.01.2009, this Court fixed the compensation at the rate of Rs.27,43,627/- per hectare. This judgement has become final. It is seen from records that execution proceedings were also initiated and it was dismissed for default.

3 At the time, when the cross-objections were filed by the Government, they had sought for the Stay of the execution of the award and this Court had granted stay by imposing certain conditions directing the Government to deposit 75% of the compensation amount fixed by Court below. Out of the said amount, the petitioners were also allowed to withdraw 2/3rd of the amount and the balance 1/3rd was directed to be invested in an nationalised bank.

4. After the disposal of the appeals and the cross-objections, a Government order came to be passed and a calculation was done and a final amount was arrived at. The grievance of the petitioner is with regard to the calculation of the amount and the manner in which, the interest was calculated and therefore, the present writ petitions have been filed challenging the Government Order passed by the 2nd respondent.

5. Mr.D.Shivakumaran, learned counsel for the petitioners submitted that while making the calculation, two grave errors were committed by the 2nd respondent. The 1st error that was pointed out was that the interest amount on the compensation ought to have been worked out of Rs.27,49,627/- that was fixed by this Court from 09.11.93 to 24.03.2016 at the rate of 15% p.a. However, the interest was calculated only



from 09.11.1993 up to 14.06.2004. The 2nd error that was pointed out by the learned counsel was that the amount deposited in the year 2004 was only on the basis of the interest calculated on the compensation fixed by the Sub Court and while working out the final payment, the interest ought to have been reworked by taking the value finally fixed by this Court at the rate of Rs.27,49,627/- per hectare. This was not done in the calculation that was made in the impugned Government Order.

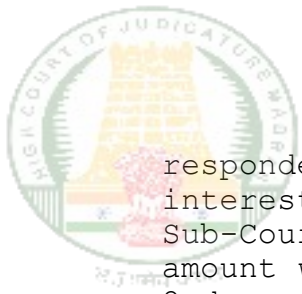
6. The learned counsel for the petitioners further brought to the notice of this Court the detailed representation that was made by the petitioners on 18.07.2016 wherein the petitioners have made the calculation in each case by way of annexure to the representation. In spite of the receipt of the representation, the 2nd respondent refused to consider the same and rejected the representation by communication dated 26.08.2016.

7. The learned counsel for the petitioner further submitted that the issue involves correct calculation of the award amount and the interest payable thereon and the same can be effectively done only in an execution proceedings. The learned counsel therefore submitted that leave can be granted to the petitioners to file an execution petition and work out their remedy for the recovery of the compensation amount before the appropriate Court.

8. Mr. Parameswaran, learned Government Advocate appearing on behalf of the respondents submitted that the calculation done by the 2nd respondent is perfectly correct and there is no error as pointed out by the learned counsel for the petitioners. The learned counsel submitted that since the 2nd respondent is willing to settle the entire compensation in favour of the petitioners, there is no question of executing the judgement and decree of this Court. The learned counsel therefore submitted that there is absolutely no merits in the present writ petitions and the same are liable to be dismissed.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. There is no serious dispute with regard to the compensation that was fixed by this Court, while passing the final judgement in the Appeals and the cross-objections. The dispute is only with regard to the manner in which the award amount and the interest has been calculated by the 2nd respondent. Prima facie, this Court is able to see that the interest has been calculated only for the period from 1993 to 2004 and whereas, it should have been calculated from 09.11.1993 to 24.03.2016 at the rate of 15% per annum on the final compensation amount fixed by this Court. This Court is also able to see that when the amount was deposited by the



respondent during the pendency of the cross-objections, the interest was calculated based on the compensation fixed by the Sub-Court. This was again taken to be basis when the final amount was determined. The error that has crept in is that the 2nd respondent ought to have reworked the interest on the final amount that was fixed by this Court while disposing of the Appeals and the Cross-objections.

11. The crux of the issue is regarding the calculation of the award amount and the interest payable thereon. This means that it requires a factual consideration. This can be effectively done only before Executing Court, since both the parties will have to put forth their contentions before the concerned Court and the Court can factually go into the issue and pass a final order with regard to the final compensation amount and the interest payable thereon. This exercise cannot be undertaken by a writ Court.

12. This Court prima facie finds that there is an error in the calculation of the award amount and also the interest amount and therefore, this Court has no hesitation to interfere with the impugned Government Order in G.O.Ms.No.40, Adi Dravidar and Tribal Welfare Department, dated 22.02.2016 and also the rejection letter dated 26.08.2016. By setting aside the Government Order and the rejection letter, no prejudice will be caused to the respondents, since the entire matter is now going to be sent to the file of the Execution Court. Before the execution Court, both the parties will have the opportunity to present their calculations and the Execution Court can factually assess the contentions put forth by both the sides and an order can be passed. By resorting to this process, the right and interest of both the parties can be balanced.

13. In the result, the impugned Government Order made in G.O.Ms.No.40, Adi Dravidar and Tribal Welfare Department, dated 22.02.2016 and the consequential rejection letter in letter No.10597/Ni A-2/2006-1, dated 26.08.2016, is hereby quashed. The petitioners are given the liberty to file an Execution petition before the competent Court, within a period of six weeks from the date of receipt of copy of this order. The Execution Court shall issue notice to the respondents and thereafter, proceed to decide the case and pass final orders, within a period of six months. All the writ petitions are accordingly allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar



To

1. The Chief Secretary,
The State of Tamil Nadu,
Secretariat, Chennai 600 009
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Adi Dravidar and Tribal Welfare Department,
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3. The Accountant General,
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RJI (CO)
GMY (14/07/2020)