

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.01.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No. 14903 of 2017

Vimal Kumar

...Petitioner

-vs-

1. The State of Tamil Nadu,
Rep. by its Secretary/Industries Department,
Fort St.George,
Chennai - 600 009.
 2. The District Collector,
Kancheepuram District,
Kancheepuram.
 3. The Special Tahsildar (Land Acquisition),
Irungattukottai Scheme Unit I,
Sriperumbudur.
 4. The Managing Director,
SIPCOT,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.
 5. The Panchayat Union,
Sriperumbudur,
Represented by its Executive Authority,
Sriperumbudur.
- ... Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in Roc.No.22/2016 and to quash the order dated 03.10.2016 made therein and consequently to direct the respondent to re-deliver to the petitioner the lands, measuring acres 6.93 in Survey Nos.104/2A, 104/2C, 104/4B, 104/6, 104/7, 104/8, 104/10, 104/3, 104/11, 104/9B, 104/4A, 104/5, 104/9, 104/18, 104/19A, 104/23, 104/1, 104/13, 104/14, 104/15 and 105/12, 113/12, 113/16, 113/18, 113/7, 114/11, 114/12, 122/2, 122/7, 122/16, 122/18, 122/19, 174/2, 173/1, 173/2, 173/3, 100/1, 100/2, 100/3, 105/1, 105/2, 105/3, 105/10, 105/11, 105/12, 105/13, 105/14, 115/3B and 121/3 Irungattukottai, Sriperumbudur Taluk.

For Petitioner : Mr.T.M.Hariharan

For Respondents : Mrs.Sudarsana Sundar [R1 & R2]

Mr.M. Elumalai
Government Advocate [R3]

R5-No appearance

ORDER

Heard Mr.T.M.Hariharan, learned counsel for petitioner, Mrs.Sudarsana Sundar, learned counsel for respondents 1 and 2 and Mr.M.Elumalai, learned Government Advocate for respondent No.3.

2. With consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. The petitioner, whose lands have been acquired for a project developed by SIPCOT, the 4th respondent, seeks for issuance of Certiorarified Mandamus to quash the order passed by the 2nd respondent dated 03.10.2016 and consequently direct the respondents to re-deliver to the petitioner lands measuring an extent of 6.93 acres comprised in various survey numbers, which have been set out in the prayer sought for in this writ petition.

4. The petitioner's case is that he owned vast extent of land measuring about 28.17 acres in various survey numbers in Irungattukottai village. These lands were developed as housing lay out and approval has been obtained from the competent authority whereunder a condition was imposed to set apart an extent of 7.02 acres for public purposes i.e., for the purpose of formation of roads, school, playground etc. The petitioner has executed the Gift deeds in favour of the 5th respondent Panchayat Union, which are all registered as gift deeds whereby an extent of 7.02 acres was set apart for the aforementioned public purposes.

5. Out of the total extent, which were acquired from the petitioner, survey No.121/3 also forms part, which was acquired and the award was passed. However, the claim for enhanced compensation was not referred to the Civil Court under Section 18 of the Land Acquisition Act (hereinafter referred to as 'the Act'). When the petitioner made a representation, the same was rejected stating that there is no proof to show that request for

reference was made within the time prescribed under Section 18 of the Act. This portion of the order passed by the 2nd respondent dated 03.10.2016, which is also impugned in this writ petition, was separately challenged by the writ petitioner in W.P.No.14902 of 2017, which has been allowed by order dated 29.01.2020 with a direction to refer the matter to the Civil Court for enhanced compensation.

6. Insofar as this writ petition is concerned, the petitioner challenges the order passed by the 2nd respondent rejecting the claim made by the petitioner to re-deliver the extent of 6.93 acres on the ground that the compensation payable in respect of those lands have been deposited for the benefit of the 5th respondent Panchayat Union. According to the petitioner, the stand taken by the 2nd and 3rd respondents in their counter affidavit stating that 5th respondent Panchayat Union will be entitled to compensation is wholly illegal. It is submitted that the compensation has to be paid to the petitioner and his family members even in respect of 7.02 acres, which was set apart for public purpose to benefit the residents of the lay out, which was promoted by the petitioner. Now the entire lay out has been acquired and the public purpose for which the extent of 7.02 acres was set apart does not survive, the respondents should pay the compensation to the petitioner and his family members. In respect of this claim, learned counsel placed reliance on the judgment of the Hon'ble Division Bench of this Court in the case of Umayal Ramanathan Vs. Secretary to Government and Anr. [reported in 2018 (1) CWC 896].

7. The learned counsel appearing for the SIPCOT and the learned Government Advocate submitted that the petitioner having executed the gift deeds in favour of the local body, the title of the petitioner to the said property gets diversified and gets vested with the local body and therefore, the 5th respondent is entitled to be paid, the compensation. The learned Government Advocate referred to the judgment of the Division Bench in W.A.Nos.1557 and 1558 of 2012 dated 31.03.2015 in the case of The District Collector, Kancheepuram District Vs. S. Rajasekaran and Ors. and submitted that in the said case gift deeds were not executed in favour of the local body and therefore, it was held that the local body will not acquire any right or title over the property/lay out. Hence, the local body is not entitled for any compensation. In this regard, the Division Bench has referred to Clause 4(v) of G.O.Ms.No.141, Industries (SIPCOT-LA) Department. The correctness of this submission has to be decided. In fact, such submission was not made before the 2nd respondent as has been made by the petitioner before this Court.

8. The petitioner's case is that the lands, which were set apart for public purpose, no longer survive because, the entire lay out has been acquired and if it is so, the petitioner is entitled to claim the land back as the purpose of the gift deeds is lost and has become redundant. If the lands have already been acquired and utilised, then the petitioner is entitled for compensation payable under the provisions of the Act 30 of 2013. In the considered view of this Court, this issue needs to be re-adjudicated by the 2nd respondent because the contentions now advanced before this Court were never advanced before the 2nd respondent nor the 5th respondent Panchayat Union was heard in the matter. Therefore, this Court is of the view that the matter should be remitted back to the 2nd respondent for reconsideration.

In the light of the above, the writ petition stands allowed and the impugned order is set aside insofar as it rejects the claim made by the petitioner for re-delivering the lands or in the alternative for payment of enhanced compensation under Act 30 of 2013 and the matter is remitted to the 2nd respondent to take a fresh decision in the matter after issuing notice to the petitioner as well as 5th respondent Panchayat Union. The petitioner is permitted to file a written submission before the 2nd respondent raising all factual and legal contentions and also rely upon the decisions, which they proposed to rely on. After affording effective opportunity to the petitioner, SIPCOT, Special Thasildar and the 5th respondent Panchayat Union, the 2nd respondent shall pass a reasoned order on merits and in accordance with law within a period of three (3) months from the date on which the written submissions is made by the petitioner. No costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

mp

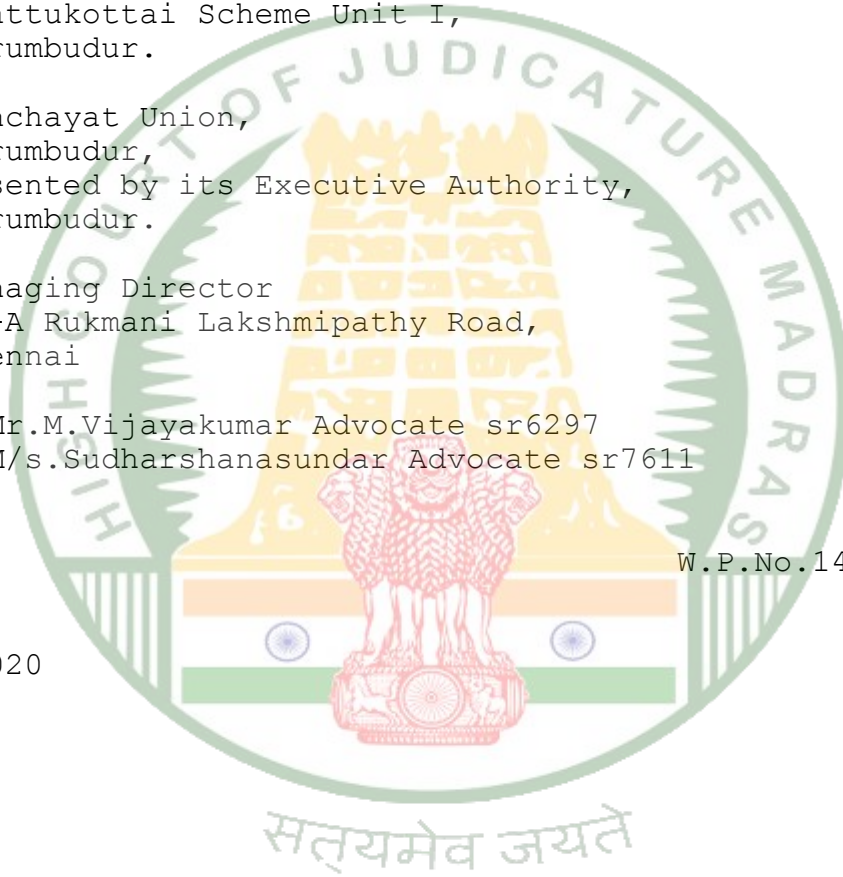
To

1. The Secretary/Industries Department,
Fort St.George,
Chennai - 600 009.
2. The District Collector,
Kancheepuram District,
Kancheepuram.
3. The Special Tahsildar (Land Acquisition),
Irungattukottai Scheme Unit I,
Sriperumbudur.
4. The Panchayat Union,
Sriperumbudur,
Represented by its Executive Authority,
Sriperumbudur.
5. The Managing Director
SIPCOT 19-A Rukmani Lakshmipathy Road,
Egmore Chennai

+1 cc to Mr.M.Vijayakumar Advocate sr6297
+1 cc to M/s.Sudharshanasundar Advocate sr7611

W.P.No.14903 of 2017

sj(co)
aa04/03/2020



WEB COPY