



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.2691 of 2020

J.Siluvairajan

.. Petitioner

Vs.

- 1.The District Collector,
Kanyakumari District,
Nagercoil.
- 2.The Competent Authority &
District Revenue Officer,
Land Acquisition National Highways,
Tirunelveli @ Nagercoil.
- 3.The Project Director cum DGM (Tech.)
No.314E, K.P.Road,
Near Ayappan Kovil,
Parvathipuram, Nagercoil - 629 003.
- 4.The Union of India,
Rep. by its Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi.
- 5.The Special Tahsildar (LANH Unit III),
Villvancode, Thiruthuvapuram,
Kanyakumari District.
- 6.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 1st respondent to pass orders on the Appeal, dated 28.09.2018 for re-fixation of compensation awarded, in the modified award No.7/2015-29, dated 20.08.2018 as per the provision of Section 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and to apply multiplier two and pay the revised compensation



together with interest and other benefits to the petitioner.

For Petitioner : Mr.G.Justin

For Respondents : Mr.M.Rajarajan for RR1, 2, 5 & 6
Government Advocate

Mr.Su.Srinivasan for R3

Mr.R.Vijayarajan for R4
Senior Standing Counsel

ORDER

This writ petition is filed to direct the 1st respondent to pass orders on the Appeal, dated 28.09.2018 to enhance the compensation, awarded by the second respondent as per the provisions of Sections 26 to 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013).

2.Mr.M.Rajarajan, learned Government Advocate takes notice for respondents 1, 2, 5 & 6, Mr.Su.Srinivasan, learned counsel takes notice for 3rd respondent and Mr.R.Vijayarajan learned Senior Standing Counsel takes notice for 4th respondent. Heard both sides. Considering the facts and circumstances of this case and by consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

3.Though no serious objections can be there from the respondents for disposal of appeal, which was preferred under Section 3(g)(5) of the National Highways Act, this Court noticed the improper way, by which the compensation has been determined by the second respondent while passing the award. It is not in dispute that while determining compensation for the lands acquired under the National Highways Act, the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (herein after referred as Act 30 of 2013) applies.

4.Sections 26 to 30 of the Act 30 of 2013 reads as follows:

26.Determination of market value of land by

Collector.-(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated: or



WEB COPY

(b) the average sale price of similar type of land situated in the nearest village or nearest vicinity area: or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.

Explanation 1.- The average referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.- For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.- While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.- While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purpose of calculating market value.

(2) The market value calculated as per Sub-Section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under Sub-section (1) or sub-section (2) cannot be determined for the reason that --

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area: or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section

(1) for similar land are not available for the



WEB COPY

immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas;

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five percent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (Whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

27.Determination of amount of compensation.—The Collector having determined the market value of the land to be acquired shall calculate the total amount of compensation to be paid to the land owner (whose land has been acquired) by including all assets attached to the land.

28. Parameters to be considered by Collector in determination of award.—In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—

firstly, the market value as determined under



WEB COPY

section 26 and the award amount in accordance with the First and Second Schedules;
secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

29.Determination of value of things attached to land or building.-(1) The Collector in determining

the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him.



WEB COPY

30. Award of solatium.-(1)The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a -Solatium? amount equivalent to one hundred per cent. of the compensation amount.

Explanation.- For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

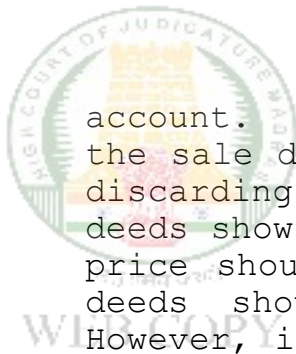
(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section(2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

5.As per Section 26, the market value or guideline value for the purpose of registration of sale deeds or agreements can be considered. Similarly, the average sale price for similar type of land in the nearest village or nearest vicinity can be taken. The amount which was agreed to be paid by private negotiations, if it is higher than the market value taken from other sources also can be taken. It is made clear that the market value should be assessed as on the date of notification under Section 11 of the Act, that is the date of publication of preliminary notification. Insofar as acquisition under National Highways is concerned, the date of preliminary notice under Section 3 (A) is the relevant date for fixation of compensation for the land acquired.

6.First explanation to Section 26 states that the average sale price as per Section 26(b) shall be determined taking into account the sale deeds or the registered agreements of sale for similar type of area in the nearest village or nearest vicinity during immediately preceding three years of the year in which such acquisition of land is proposed. For an effective comparison, a field map showing the entire area with reference to survey numbers and important places to show the potential value may be prepared by the competent authority.

7.As per Explanation II, one half of the total number of sale deeds, where highest sale price is mentioned should be taken into



account. This means that the competent authority should collect all the sale deeds and according to the value shown in the lands, after discarding 50% of the sale deeds from the bottom line, the sale deeds showing higher value should be taken. Then, the average sale price should be determined by taking into account 50% of the sale deeds showing higher value and by taking the average value. However, it is open to the Collector to discard any document, if he is of the opinion that the price mentioned in the document does not indicate the actual prevailing market value. There must be application of mind and a document can be discounted only for valid reason and there can be no presumption.

8.Explanation III shows that the price paid as compensation for land acquired on an earlier occasion in the same District shall not be taken into account. Since the determination of compensation involves scrutiny of documents and consideration of specific documents out of the documents collected in respect of lands in the nearby vicinity or in the nearby village, the competent authority is required to refer to all the documents which he has considered while fixing the market value on the basis of average sale price. The determination of average sale price cannot be dispensed with as the Collector/Competent authority has to take the highest among the 3 factors. Similarly, the Act provides specific method while the market value cannot be determined in terms of Section 26(1) of the Act. The District Collector having determined the market value of the land he acquired, he is expected to calculate the total amount of compensation to be paid to the land owner by including all assets attached to the land. Therefore, other assets like building other permanent structures attached to land should also be valued and added.

9.Other parameters prescribed under Section 28 should be followed while fixing compensation. In many cases, the competent authority are determining compensation by filling up a form, which is prescribed in the first schedule to the Act and no component is determined with reference to documents or statements. It may be open to the Collector to get a statement from each land owner as regards the parameter to be considered by Collector. Since the parameter prescribed under Section 28 is mandatory, it is the duty of competent authority to consider each component preferably by preparing a questionnaire so that each and every owner may understand and coming with actual loss.

10.As per Section 29, while determining the market value for the building or other immovable property attached to the land, it is open for the competent authority to get assistance of a competent Engineer or an approved valuer. Similarly, Expert opinion can also be obtained for valuing the trees and loss that would be caused to the land owner by engaging an Expert in the field of agriculture, forestry, horticulture or sericulture as the case may be. Again



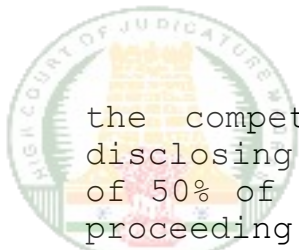
assessing the value of standing crops damaged during the process of land acquisition.

11.The market value determined by the competent authority shall be multiplied by the factor to be specified in the first schedule. This factor depends upon area, whether it is urban or semi urban or rural area. The factor for multiplication should be considered and there should be specific indication in the award itself and how the classification of the area was done for fixing the multiplying factor. In all similar cases, this Court has come across during the last three months, this Court shockingly noticed that the award of competent authority in majority of cases do not disclose the documents considered and how the value was arrived at while fixing the average sale price. Even in the present case, the second respondent has passed the award on the basis of certain values without disclosing the factual basis/documents which were collected in terms of Section 26 of the Act.

12.It is to be seen that under the National Highways Act, the scope of challenging the award is limited. Any one who is aggrieved by the award of competent authority fixing compensation, has to approach the District Collector by way of appeal under Section 3(G) (5) of the National Highways Act. It is stated under sub section 6 of Section 3(G) that subject to the provisions of National Highways Act, the provisions of Arbitration and Conciliation Act 1996 shall apply. Therefore, the District Collector will entertain the appeal as an arbitrator. When the District Collector dispose the appeal as an arbitrator, there is no further appeal and the remedy of the land owner is to file a petition to set aside the award as if the decision of appellate authority is an award of arbitrator under the Arbitration and Conciliation Act 1996 and the land owner may have to pay ad-valorem court fee.

13.Having regard to the provisions of Arbitration and Conciliation Act, it may be open to the land owner to challenge the award of competent authority with limited scope and hence, this Court is of the view that the award of competent authority should be strictly in terms of the provisions of Sections 26 to 30 of the Act and the award should also disclose application of mind and reflect the materials and documents considered by the competent authority while fixing compensation. Otherwise the land owners will not be able to file appeal or challenge award in an effective manner. Unless the award of competent authority or Collector shows the observance of procedure and consideration of all factors by referring to all materials, the award is liable to be challenged on the ground of violation of principles of natural justice.

14.In this case, when I see whether the competent authority has followed the procedure prescribed under the Act, particularly, Sections 26 to 30 of the Act 20 of 2013, the award can be held as unconstitutional and void. In the present case,



the competent authority has determined the compensation without disclosing the documents considered by the authority. The average of 50% of the total sale deeds of the highest price for three years proceeding the date of publication of Section 3 A of the Act is taken as Rs.460.84. What are the documents that were considered and what are the documents which were deleted and discarded are not indicated. Whether the documents considered are in respect of lands nearby vicinity or nearby village as contemplated under the Act has to be seen. The petitioner may not know how the basic values were arrived by the competent authority. The statements of facts taken for determining each component as per Sections 26 to 30 of Act 30 of 2013 have to be narrated as indicated in the previous paragraphs.

15.Though the petitioner has come forward to get a direction to dispose the appeal, this Court in the interest of justice set aside the order of competent authority, so that the petitioner's right to file the appeal in an effective manner will not be deprived. Article 300 A protect every citizen from being deprived of a property otherwise than by due process of law. Since the award of competent authority does not indicate due observance of procedure and consideration of factors which are mandatory, this Court in exercise of its power under Article 226 of the Constitution of India mould the relief in the interest of justice.

16.Hence, this writ petition is allowed and this Court for the reasons stated above quash the award of second respondent, dated 20.08.2018 and remit the matter to the second respondent to determine the compensation payable to the petitioner in the manner indicated above after disclosing all the documents and materials collected by the second respondent for fixing just compensation in terms of Sections 26 to 30 of Act 30 of 2013. If the petitioner is aggrieved by the quantum, it is then open to him to file appeal in terms of Section 3 (G) (5) of National Highways Act. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

To

1.The District Collector,
Kanyakumari District,
Nagercoil.



2.The Competent Authority &
District Revenue Officer,
Land Acquisition National Highways,
Tirunelveli @ Nagercoil.

3.The Project Director cum DGM (Tech.)
No.314E, K.P.Road,
Near Ayappan Kovil,
Parvathipuram, Nagercoil - 629 003.

4.The Secretary,
Ministry of Road Transport and Highways,
Transport Bhawan,
No.1, Parliament Street,
New Delhi.

5.The Special Tahsildar (LANH Unit III),
Villvancode, Thiruthuvapuram,
Kanyakumari District.

6.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District.

+1 CC to M/s.R.VIJAYARAJAN, Advocate (SR-5873[F] dated 12/02/2020)

+1 CC to M/s.SU.SRINIVASAN, Advocate (SR-5869[F] dated 12/02/2020)

+1 CC to M/s.G.JUSTIN, Advocate (SR-5957[F] dated 12/02/2020)

+1 CC to M/s.SPL.GP (SR-6141[F] dated 13/02/2020)

W.P. (MD) .No.2691 of 2020
12.02.2020

JMN(04.03.2020) 10P : 11C