



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.603/2016 and CMP.Nos.16237, 17625/2016, 3920, 3921/2017
and 6772/2021

1. Union of India rep. by the
Secretary to Government (Rev),
Government of Pondicherry.
2. The Deputy Collector (Rev)
(North)-cum-Land Acquisition Officer,
Pondicherry.
3. The Defence Estate Officer,
Defence Estate Office,
Madras Circle, 306 Anna Salai,
Teynampet, Chennai-600 018. ... Appellants

(3rd appellant impleaded as proposed party
vide order dated 30.01.2017 made in
CMP.No.19960/2016)

-vs-

1. V.Kumaravelu
2. Sivaram Alva ... Respondents

Appeal Suit filed under Section 54 of the Land
Acquisition Act against the order dated 29.03.2016 in
L.A.O.P.No.5/2016 on the file of the learned II Additional
District Judge, Pondicherry.

For Appellants : Ms.N.Mala,
1 and 2 Government Pleader, Pondicherry

For 3rd appellant : Mr.R.Sankaranarayanan,
Additional Solicitor General of
India assisted by
Mr.M.Aravind Kumar,
Senior Central Government
Panel Counsel



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For 2nd Respondent : Mr.R.Singaravelan,
Senior Counsel for Ms.B.Ramya

For 1st Respondent : Notice sent, unclaimed

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

This Appeal Suit has been directed against the award dated 29.03.2016 passed in L.A.O.P.No.5/2016 by the learned II Additional District Judge, Pondicherry.

2. On an earlier occasion i.e. on 22.11.2021, this Court has passed the following Order:

'This appeal has been brought by the Union of India represented by the Secretary to Government (Rev), Government of Pondicherry, the Deputy Collector (Rev) (North) cum Land Acquisition Officer, Pondicherry and the Defence Estate Officer, Madras Circle, the appellants herein assailing the correctness of the impugned award dated 29.3.2016 passed by the learned Second Additional District Judge, Pondicherry in L.A.O.P.No.5 of 2016 granting a total compensation of Rs.19,59,04,210/- payable to the land owners, the respondents herein in respect of the acquisition of two parcels of land situated in R.S.Nos.117 and 124/2 at Ariankuppam Revenue Village, Pondicherry to an extent of 344858 sq.ft., and 197230.8 sq.ft., respectively for setting up of Coast Guard station, with a further direction to pay the statutory interest as provided under Section 28 of the Land Acquisition Act with reduction of Rs.39,09,093/-, since that amount was already paid.

2. Mr.R.Sankaranarayanan, learned Additional Solicitor General of India appearing for the impleaded third appellant, assailing the impugned award, placing three-fold submissions, contended that when the Defence Estates Officer being the interested and necessary party was not impleaded before the Reference Court as a necessary party, the impugned award cannot be sustained and the appeal necessarily has to be remanded back to the Reference Court for hearing the parties afresh on this score. In support of his submissions, he has placed reliance on the following



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judgments:-

(i) Neyveli Lignite Corporation Ltd., v. Special Tahsildar (Land Acquisition), Neyveli and others, (1995) 1 SCC 221 (SC);

(ii) Delhi Development Authority v. Bhola Nath Sharma (Dead) by LR's and others, (2011) 2 SCC 54 (SC);

(iii) The Land Acquisition Officer and Special Tahsildar, Land Acquisition and 2 others v. M.Mahalingam, 2010 SCC Online Mad 3009 (DB).

3. Continuing his arguments, learned Additional Solicitor General submitted that in Neyveli Lignite Corporation Ltd., v. Special Tahsildar (Land Acquisition), Neyveli and others, (1995) 1 SCC 221, the Apex Court has mandated that the requisitioning body/interested party should have been impleaded as one of the necessary parties by the landowners while seeking for enhancement of compensation. In the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. The denial of the right to a person interested is in negation of fair and just procedure offending Article 14 of the Constitution. Again placing reliance on the judgment in Delhi Development Authority v. Bhola Nath Sharma (Dead) by LR's and others, (2011) 2 SCC 54, learned Additional Solicitor General submitted that the Apex Court has held that the Reference Court should implead the interested party for the purpose of determining the amount of compensation payable to the landowners. This Court also in the Land Acquisition Officer and Special Tahsildar, Land Acquisition and 2 others v. M.Mahalingam, 2010 SCC Online Mad 3009 has also held that in the absence of the beneficiary for whose benefit the land was acquired, the Reference Court cannot award compensation, for the simple reason that the authority for whose benefit the land was acquired ought to have been impleaded as party respondent in the LAOP proceeding, as without making the interested person as a party, there cannot be a complete and effectual determination. Secondly, it was also argued that the Reference Court also fell in error in determining the compensation on square feet basis as, when large tract of land is sought to be acquired, it should be on acreage basis. In support of his submission, he also placed reliance on the judgment of



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the Apex Court in Indumati Chitale v. Government of India and another, AIR 1996 SC 531. Thirdly, the Reference Court also attempted to compare the lands which are incapable of comparison, as they are all located far away from the lands acquired. Finally concluding his arguments, learned Additional Solicitor General pleaded that when the land in question was acquired in the year 2007 and the award was also passed on 30.9.2008, after sleeping over for a long time, the claimants have filed the claim petitions only on 29.2.2016 that were also taken up. But, amazingly, the Reference Court has also passed the impugned award within a month's time on 29.3.2016 that raises an eyebrow on everybody.

4. Opposing the above prayer, Mr.R.Singaravelan, learned Senior Counsel appearing for the second respondent/landowner submitted that the land in question has been acquired for setting up of a Coast Guard station in a prime location at Pondicherry. Although the award was passed on 30.9.2008, challenging the meagre amount of compensation erroneously fixed by the Land Acquisition Officer, the matter was taken up to the Reference Court and meeting out the parameters of speedy justice, when the impugned award was passed on 29.3.2016, it is not open to them to say that the Reference Court has expeditiously disposed of the matter. Secondly, the owner of the land, after losing the land, has attained the age of 80 and he may not even be able to see the fruits of the award if the matter is remanded back to the Reference Court at this stage. Even the prayer made by the third appellant for remanding the matter also is not going to serve any purpose for the reason that they have relied upon only two documents and no fresh documents were filed. When the said documents have been considered by the Land Acquisition Officer and they do not have any other document to be placed before the Reference Court as well as before this Court, the prayer made by the third appellant deserves no acceptance.

5. Since the land measuring 6-65-10 Hectares in Ariyankuppam village, Pondicherry has been acquired for setting up of a Coast Guard station, we are of the view that the Defence Estate Officer being the interested party has to pay the just compensation, ought to have been impleaded as party respondent before the Reference Court, which has not been done.



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When the Apex Court in Neyveli Lignite Corporation and in Delhi Development Authority cases cited supra has repeatedly held that in the absence of the beneficiary who is ultimately to bear higher compensation should be impleaded as necessary party before the Reference Court, without impleading the requisitioning body, the authority for whose benefit the land was acquired, there cannot be a complete and effectual determination of compensation. Therefore, we propose to remand the matter back to the Reference Court on the following twin conditions:-

- (i) Subject to deposit of the entire award amount by the appellants before the Reference Court, the second respondent will be permitted to withdraw a sum of Rs.10,00,00,000/- (Rupees ten crores only).
- (ii) On compliance of the condition (i) above, the Reference Court will be directed to dispose of the matter on merits and in accordance with law within a period of two months time as agreed by both parties.

6. However, Mr.R.Sankaranarayan, learned Additional Solicitor General appearing for the third appellant sought two days time for taking written instructions.

In view thereof, list the matter on 25.11.2021.

3. Accordingly, when the matter was called to-day, Mr.R.Sankaranarayanan, learned Additional Solicitor General of India assisted by Mr.M.Aravind Kumar, learned Senior Central Government Panel Counsel appearing for the 3rd appellant, on instructions submitted that the 3rd appellant is having some difficulty in depositing the award amount for the reason that they have a fair chance of success before the trial court.

4. At the outset, a perusal of the records would go to show that this Court, by an order dated 05.09.2017, without prejudice to the contentions of both the parties, has granted stay thereby directing the appellants to deposit 25% of the enhanced compensation awarded by the Reference Court to the credit of LAOP.No.5/2016 on the file of the learned II Additional District Judge, Pondicherry and that the said interim order was also duly complied with. Subsequently, it also appears that CMP.No.251/2018 was filed to withdraw the said amount by the landowners and by an order dated 13.09.2019, this Court directed the learned II Additional District Judge, Pondicherry to permit the land owners in this appeal to withdraw Rs.1,00,00,000/- from



25% of the total amount deposited before the Court. Now the balance amount lies in the credit of L.A.O.P.No.5/2016 on the file of the learned II Additional District Judge, Pondicherry/Reference Court. It is also pertinent to mention here that after hearing the parties, since it was found that the beneficiary respondent/Requisitioning body, namely, The Defence Estate Officer, Defence Estate Office, Madras Circle, 306 Anna Salai, Teynampet, Chennai-600 018, has not been impleaded as a party in the Reference Court, this Court has impleaded the Defence Estate Officer as 3rd appellant in the present Appeal Suit in the light of the ratio laid down by the Hon'ble Supreme Court in the decisions relied on in M/s.Neyvely Lignite Corporation Limited v. Special Tahsildar (Land Acquisition), Neyveli and others (1995) 1 SCC 221 and Delhi Development Authority v. Bhola Nath Sharma (Dead) by LR's and others (2011) 2 SCC 54 (SC) holding that the requisitioning body/interested party should have been impleaded as one of the necessary parties by the landowners while seeking for enhancement of compensation. In the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. The denial of the right to a person interested is in negation of fair and just procedure offending Article 14 of the Constitution.

5. Be that as it may, since the Reference Court has ordered payment of Rs.19,59,04,210/- payable to the land owners, in all fairness, when they have questioned the correctness of the impugned award, they are liable to deposit the entire amount before going into the merits of the case. As we have indicated in our earlier order dated 22.11.2021 cited above, the Reference Court has to undertake a fresh exercise to study and peruse the documentary evidence and also the oral evidence to be adduced by both the parties. Therefore, it is unnecessary at this juncture to prejudge who will be the winner before the Reference Court. Hence, the deposit of the entire award amount does not mean that the appellants are going to have a tough time ahead before the Reference Court.

6. In view of all the above, the judgment and decree of the Reference Court/II Additional District Judge, Pondicherry dated 29.03.2016 in L.A.O.P.No.5/2016 are set aside and the matter is ordered to be remanded back to the Reference Court on twin conditions, namely, (i) subject to the deposit of the entire award amount by the appellants before the Reference Court less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this Order and on such deposit,



the 2nd respondent is permitted to withdraw a sum of Rs.10,00,00,000/- (Rupees Ten Crores Only) and (ii) on compliance of the above condition, the Reference Court is directed to dispose of the matter on merits and in accordance with law, within a period of two months thereafter as agreed by both parties.

7. While disposing of the L.A.O.P.No.5/2016 afresh, the Reference Court is directed to implead the Defence Estate Officer, Defence Estate Office, Madras Circle, 306 Anna Salai, Teynampet, Chennai-600 018, as party respondent in L.A.O.P.No.5/2016. The Reference Court is further directed to receive the documents filed by both sides in this Appeal as well as the other documents to be filed, if they so desire. Reference Court is also directed to afford sufficient opportunity to both sides to adduce oral and documentary evidence.

8. With the above observations and directions, the Appeal Suit is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The II Additional District Judge,
Pondicherry.

+3cc to Mr.Arvind Kumar, Senior Central Government panel Counsel,
SR.No.61386 and 61387

+3cc to Mr.Prakash Adiapadam, Advocate SR.No.61345

A.S.No.603/2016

NRJK(CO)
GN(16/02/2022)