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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.3246 of 2020

M. Egappan

... Petitioner

Versus

1. Tamil Nadu State Highways Department,
Represented by its Director General,
76, Sardar Patel Road,
Guindy, Chennai - 25.

2. The Tashildar,
State Highways 111,
West Garden, Natesan Nagar,
Madavaram, Chennai - 600 060.

3. The Revenue Divisional Officer,
State Highways 111,
West Garden, Natesan Nagar,
Madavaram, Chennai - 600 060.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to forbear the respondents to enter into petitioner premises in S.No.201A/2A for any activity of marking up and surveying, without any notification.

For Petitioner : Mr. M. Leo Prabhu

For Respondents : Mr. V. Veluchamy
Government Advocate.

ORDER

This writ petition has been filed seeking a direction to forbear the respondents to enter into the petitioner's premises in Survey No.201A/2A for any activity of marking up and surveying without any notification.

2. The petitioner is living with four brothers as joint family for the past five decades, he has inherited the property



comprised in Survey No.201A/2A measuring an extent of 0.38 acre situated at Ambattur, Surappattu Village. Subsequently, the petitioner's father Muthu Reddiyar made a settlement in favour of his sons, which is registered as Doc. No.4675 of 1983, dated 26.08.1983 on the file of Sub Registrar Office, Ambattur. From the date of settlement deed, the petitioner is in possession and enjoyment of the property. While so, on 22.12.1986, a notice was issued by the Special Tahsildar stating that their lands are required for the purpose of expansion of road from Ambattur to Puzhal Highways. Subsequently, an award was passed on 04.03.1988 by the Land Acquisition Officer and Special Tahsildar (RC). Therefore, the petitioner raised several objections and in spite of the same their lands were acquired and no compensation amount has not been paid till now. It is pertinent to state that an extent of 0.32 acre bearing Survey No.200B and 0.02 acre bearing Survey No.201A/2A were acquired by the Tamil Nadu State Highways Department. Be that as it may, the above said properties have been marked up by the first respondent through the respondents 2 and 3 and they had planned to acquire more lands for expansion of road from Ambattur to Puzhal Highways. Therefore, the said act of the respondents without proper intimation, notice is illegal and injustice, and the petitioner and his brothers to claim compensation amount under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Hence, there is no notification issued by the Authorities and the claim was made in the year 1988 under Section 11 of the Land Acquisition Act I of 1894, no compensation amount has been paid by the respondents, which is unfair and unjust. Therefore, the petitioner has come forward with the present writ petition under Article 226 of the Constitution of India.

3. The learned counsel appearing for the petitioner submitted that as per section 12 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 "no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house without previously giving such occupier at least seven days' notice in writing of his intention to do so". Hence, it is a violation of the Act and also Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 states that "...in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this



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Act". The petitioner's land neither utilized for that purpose it was acquired nor any compensation was given to the land owners and hence, it is violating the Act and therefore, he prayed to forbear the respondents to enter into the petitioner's premises.

4. The learned Government Advocate appearing on behalf of the respondents submitted that the 1st respondent/Assistant Divisional Engineer, Ambattur Sub-Division, Tamil Nadu State Highways Department, wherein it has been stated that the petitioner's claim over the property in S.No.201A/2A by inheritance and settlement on 26.08.1983 registered as Doc.No.4675 of 1983 before the Sub Registrar Office, Ambattur. However, the petitioner admitted that his father Muthu Reddy had received the notice in Form-7 issued by the Special Tahsildar (Recurring Compensation), Saidapet, Chennai, vide in Na.Ka.No.91/85 dated 22.12.1986 under Sections 9 and 10 of the Land Acquisition Act, declaring that 0.02 acres in S.No.201A/2A and 0.32 acres in S.No.200B was proposed to acquire by the Government for forming Ambattur Bye Pass Road. Therefore, the petitioner has also filed the copy of the Award No.4 of 1988, dated 04.03.1988 passed by the Special Tahsildar (RC), Saidapet, Chennai, vide in Rc.No.91/85 under Section 11 of the Land Acquisition Act I of 1894, wherein, it is clearly recorded that the total land measuring 1 acre and add in S.No.201A/2 and 0.32 acres in S.No.200B stand registered in the name of Munusamy Reddy and Parthasarathy Reddy under Patta No.40. However, Mr.Munuswamy Reddy and his legal heirs have no rights over the land and Mr.Muthu Reddy, Parthasarathy of Kallikuppam and Parthasarathy of Murugamdu claim compensation over the said land. The actual share of persons was not revealed. Hence, the compensation for the said land under acquisition could not be apportioned. The compensation of the land was ordered to be deposited in the Sub Court, Ponnammallee, under Section 31(2) of the Land Acquisition Act, with reference to under Section 30. Hence, the averments of the petitioner that the said property was under his possession and peaceful enjoyment until notice is denied as untrue. He further submitted that the Tamil Nadu Government in Page Nos.3 to 5 of the Gazette (Extraordinary) Part-II, Section 2 dated 04.03.1988, declared that 9.88 acre at Soorapattu Village was required for the formation of Ambathur Bye Pass Road and directed for acquisition of the same. Subsequently, the Special Tahsildar (Recurring Compensation), Saidapet, has passed an Award No.4/88 dated 04.03.1988, the compensation amount for the land acquired in S.Nos.201A/2A and 200B was ordered to be deposited before the Sub Court, Poonammallee u/s.31(2) of the Land Acquisition Act, as Muthur Reddy. It is admitted that the petitioner's land measuring an extent of 0.32 acre in S.No.200B and 0.02 acre in S.No.201A/2A was acquired by the Tamil Nadu State Highways Department. The



petitioner has also filed the copy of the Award No.4/88, dated 04.03.1988 passed by the Special Tahsildar, Saidapet, Chennai, and the same was registered in the name of Mr.Muthu Reddy. The petitioner is also aware that the petitioner's father received a notice and the said compensation could not be effected due to the claim made by various parties. The width of laying bitumen in the existing road, depends upon the flow of traffic and the rest of portions were left as mud road or foot path and left for future development. These reserved spaces are often encroached. Hence, the construction and maintenance wing of the Highways Department, periodically assessing the flow of traffic, identify the encroachments, conduct eviction drive in accordance with the Rules and develop the roads. As the public encroached the Highways Road at Soorapattu Village, the jurisdictional Assistant Divisional Engineer, Construction and Maintenance, State Highways Department, in co-ordination with respective Taluk officials of the Revenue department measure the metes and bounds of Highways Road and earmarked the encroachment for evictions, if any. Therefore, the encroachments in S.No.201A/2A were identified and unclaimed parts were removed instantly.

5. Heard both side and perused the records.

6. On perusal of the records, it is seen that in the aforesaid lands covered by road and road margin have already been separately sub-divided in S.No.201A/1A-0.40 acres, S.No.202A/1A-0.26 acres and S.No.202/3A-0.01 acres. It is stated that the lands in 0.02 acres in S.No.201A/2A and 0.32 acres in S.No.200B were acquired and the same are vested with the Highways Department and the Revenue Records were ordered to be updated as Highways Road Poramboke. It is also seen that the Highways Department assisted by the Taluk Surveyor has measured the property and identified the encroachments and no question of issue of notice or intimation to the owners of the other survey numbers not connected with the highways road, did not arise. It is also stated that the presence of third persons claiming ownership cannot be entertained and the petitioner claims fresh notification for the lands already acquired and vested with the Highways Department and the compensation amount has been deposited before the Sub-court, Poonamallee. While that being the case, the petitioner cannot claim any right over the aforesaid property. After the award was being passed, the said lands have been taken over and converted it into Highways Road Poramboke, and the petitioner has encroached upon the property and trying to obstruct the free flow of traffic congestion. The learned counsel for the respondent contending that the compensation for the land value solatium 30% and 12% of the market value, totaling a sum of Rs.4,795.50 was ordered to be deposited before the Sub Court, Poonamallee, under Section 31(2) of the Land Acquisition Act. The reason for invoking under



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Section 31(2) was also recorded that Mr.Muthu Reddy, claims compensation without revealing their actual share over the land and their apportionment could not be ascertained without revealing the exact share on the acquired properties and directed the claimants to approach the competent Civil Court to prove their entitlement and receive the compensation. Therefore, he further submitted that they cannot have any right to claim compensation under Section 77 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which came into force from 01.01.2014 and the said award has been passed in the year 1988 and the amount has already been deposited before the competent Court. The Special Tahsildar passed an award and the petitioner's land has been surveyed and the revenue records also mutated and the respective Tahsildar has measured the lands on highways road poramboke comprised in Survey Nos.201A/1A, 201A/2A, 202A/1A, 202/3A, and 200B for further development of the road. Hence, there is no question of petitioner is in possession of the said lands.

6. He further submitted that the petitioner's lands have been taken 32 years ago, have not chosen to proceed further and tried to invoke the provision of the Land Acquisition Act, which cannot be accepted without any basis and further submits that the entry of the officers to the petitioner's property is legally sustainable and the same is vested with the Highways Department and they shall not be prevented in any form when the petitioner has not entitled to claim over the property. This Court has directed the authorities to hold an enquiry in this matter and the Tahsildar will be appropriately hold an enquiry and complete the same.

7. After perusing the records, the Tahsildar, Madhavaram has passed an order in Rc.No.828/2020, dated 28.07.2021. In this case, the petitioner appeared before the authorities and the said writ petition in W.P.No.3246 of 2020 disposed by order dated 19.04.2020 with the following order:-

ORDER: Today when the matter is taken up for hearing, MR.D.Raja, learned Special Government Pleader appearing for the respondent, Tahsildar and the Tahsildar, will pass suitable orders after completing enquiry and sought time.

Considering the request made by the learned Special Government Pleader, the matter is adjourned to 21.06.2021.

In the meantime, the Tahsildar is directed to complete the enquiry and pass orders.



8. Accordingly, the petitioner appeared for enquiry on 27.07.2021 and the hereditary property measuring an extent of 47 cents comprised in S.No.201A/2A belonged to his family and the same was measured by the Highways Department acquired by them without payment of any compensation. Hence, the petitioner sought for registration of the remaining extent in his name in the aforesaid survey field. It was also stated that after perusing the Award No.4/88, dated 04.03.1988 shows that measuring an extent of 2.0 cents of land comprised in S.No.201/A2A and measuring an extent of 32 cents of land comprised in S.No.200B were acquired by the Land Acquisition Officer and the Special Deputy Collector, Saidapet, Chennai-600 015, for laying of Ambattur Bye-Pass Road. However, the said copy of the award nearly 14 persons were claiming compensation for the said land. But, the claimants did not reveal the actual share of each person. Hence, the compensation was ordered to be deposited into the Sub Court, Ponnamallee. In this connection, on verification of the records available in this office, shows that measuring an extent of 100 sq.meters (equivalent to 1076 Sq.ft) comprised in Survey No.201A/2A is classified as Government Punjai and the same was registered in the name of National Highways Department.

Village	Soorapattu
Survey Number	201A
Sub-Division No.	2A
classification	Government Punjai
Extent	Hec.Ares.Sq.Meter 00 01 00.0
Adangal	
Remarks	National Highways

The said Tahsildar found that the total extent of 77 Cents of land 41.0 Cents in S.No.203 and 36.0 Cents of land in S.No.201/A2 was purchased by 1.M.Gajendran, 2.M.Subramani, 3.M.Arumugam, 4.M.Egappan, 5.M.Balaraman S.No.5 minor represented by his eldest brother M.Gajendran from Egappan by virtue of deed of sale registered as Document No.4675 of 1983 dated 26.08.1983. But the petitioner alone is claiming for the remaining extent of 34 Cents in S.No.201/A2 (36 Cents-2 Cents).

Hence, the petitioner was requested to approach this Office with an application showing the documents under which he alone is claiming the



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remaining extent of 34 Cents of land comprised in S.No.201/2A along with the Encumbrance Certificates for the period from 01.01.1983 to till date so as to enable this Office to give him a concrete reply about his requisition.

9. In view of the above-said observations made by the Authorities, wherein, the petitioner was directed to approach the Competent Authorities with an application showing the documents under which, he alone is claiming the remaining extent of 34 cents of land comprised in S.No.201/2A along with encumbrance certificate for the period from 01.01.1983 to till date, and pass appropriate orders regarding the request of the petitioner. It has been observed that when there are five siblings to the said original owner, namely, Mr.Muthu Reddiyar, the question arises how the petitioner alone is seeking for compensation with regard to remaining extent of 34 cents.

10. Having regard to the limited scope of the prayer that is now sought for in this writ petition before this Court and taking into account the submissions made on either side, the Writ Petition is disposed of, the petitioner is directed to approach the Competent Authorities along with relevant documents to prove his title, how he is claiming right over the property when there are other persons available in his family who are also entitled for a share. In case, if there is any authorization for the petitioner to approach the authorities and the same can be produced before the authorities to prove his title. As already pointed out that the award was passed in the year 1988 and the authorities had already been deposited the same before the competent civil Court. It is open to the petitioner to approach the competent civil Court to receive the said compensation already deposited by the Authorities and also the claim of the petitioner shall be considered by the Authorities and pass appropriate orders, on merits and in accordance with law, within a period of sixteen weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gba/msm



To

1. The Director General,
Tamil Nadu State Highways Department,
76, Sardar Patel Road,
Guindy, Chennai - 25.
2. The Tashildar,
State Highways 111,
West Garden, Natesan Nagar,
Madavaram, Chennai - 600 060.
3. The Revenue Divisional Officer,
State Highways 111,
West Garden, Natesan Nagar,
Madavaram, Chennai - 600 060.

+lcc to Mr. M. Leo Prabhu, Advocate, S.R.No.55754
+lcc to the Government Pleader, S.R.No.56238

W.P.No.3246 of 2020

CP[co]
NSK 07/01/2022