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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.27876 OF 2011

AND

M.P.NOS.1, 2, 3 OF 2011 AND 1 OF 2012

V.K.Sasikala

... Petitioner

.Vs.

1. The State Tamil Nadu
rep.by its Secretary to Government,
Highways Minor Ports (HQ),
Secretariat, Chennai - 9.
2. The Collector,
Collector of Kancheepuram,
Kancheepuram District.
3. The Tahsildar,
Land Acquisition Division,
Highways Road Project,
Tambaram,
Chennai - 45.
4. The Managing Director,
Tamil Nadu Road Development Corporation,
Perungudi,
Chennai.
5. The Special Tahsildar (L.A),
Radial Road Scheme, Tambaram,
Chennai - 45.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records of the first respondent made in impugned G.O.Ms.No.256, Highways and Minor Ports (HQ) dated 06.08.2010 and published in the Tamil Nadu Gazette dated 15.09.2010 purported to have been issued under Section 15(1) of Highways Act, 2001 along with consequential order of the award proceeding in Proc.ERc.16832/2009/F1 dated 15.09.2011 in order No.12/11 received on 16.11.2011 of the second respondent, in so far as the petitioner's land situated at S.No.391/4 part (now 391/4B, 391/1 part (now sub divided as 391B), 391/5 part now sub divided



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as 391/5B, S.No.391/7 part now sub divided as 391/7B in Paiyanur Village, Chengalpattu Taluk, Kancheepuram District and quash the same.

For Petitioner : Mr.B.Kumar
Senior Counsel
for Mr.A.Ashokan

For Respondents: Mr.M.R.Gokul Krishnan
Government Advocate
(for R-1 to R-3 & R-5)

: Mr.M.Sivavarthanan (for R-4)

O R D E R

This writ petition is filed to issue a Certiorari, calling for the records of the first respondent made in impugned G.O.Ms.No.256, Highways and Minor Ports (HQ) dated 06.08.2010 and published in the Tamil Nadu Gazette dated 15.09.2010 purported to have been issued under Section 15(1) of Highways Act, 2001 along with consequential order of the award proceeding in Proc.ERc.16832/2009/F1 dated 15.09.2011 in order No.12/11 received on 16.11.2011 of the second respondent, in so far as the petitioner's lands comprised in S.No.391/4 part (now 391/4B), 391/1 part (now sub divided as 391B), 391/5 part now sub divided as 391/5B, S.No.391/7 part (now sub divided as 391/7B) situated at Paiyanur Village, Chengalpattu Taluk, Kancheepuram District and quash the same.

2. The case of the petitioner is that the petitioner owned the lands comprised in S.No.391/4 part (now 391/4B), 391/1 part (now sub divided as 391B), S.No.391/5 part now sub divided as 391/5B and S.No.391/7 part now sub divided as 391/7B situated at Paiyanur Village, Chengalpattu Taluk, Kancheepuram District. The said lands were acquired for a public project viz., widening of Old Mahabalipuram Road. Therefore, notification dated 10.12.2009 with regard to the proposal for acquisition of patta lands including the petitioner's lands for widening of Old Mahabalipuram Road was published under Section 15(2) of the Tamil Nadu Highways Act, 2001 (hereinafter referred to as 'the Act' for short) in 'Thina Thanthi' newspaper on 04.01.2010. Accordingly, the owners of the lands were requested to file their objections to why not acquisition of their lands could not be taken up by the Government, within 15 days from the date of above publication and the enquiry was fixed on 22.01.2010. The petitioner, who received the said notice, appeared for the enquiry on 22.01.2010 and raised her objections. The objections raised by the petitioner was forwarded to the requisitioning



body and the remarks were obtained. Thereafter, necessary proposals were sent to the Government with the copy of the objection received from the petitioner and other land owners and along with the remarks of the requisitioning body. The Government after due consideration of the remarks of the requisitioning body, overruled the objections raised by the petitioner and other owners and passed order to acquire their lands for widening of Old Mahabalipuram Road in the public interest as contemplated under Section 15(1) of the Act by G.O.Ms.No.256, Highways and Minor Ports (HQ) Department, dated 06.08.2010 and the same was published in Government Gazette No.36 dated 15.09.2010. Thereafter, the second respondent published notification under Section 15(2) of the Act in two newspapers as prescribed under Rule 5 of the Tamil Nadu Highways Rules, 2003 (hereinafter referred to as 'the Rules' for short) on 04.01.2010 and the substance of notification under Section 15 (2) of the Act was published in newspapers having circulation in the locality as required under Rule 5 of the Rules on 04.01.2010. After issuance of notification under Section 15(1), the subject lands covered under the notification shall vest absolutely with the Government free from all encumbrances.

3. However, the learned Senior Counsel appearing for the petitioner submitted that before passing an award, it is mandate that the petitioner shall be served with notice as contemplated under Section 19(5) of the Act to determine the market value of the property. The respondents have willfully and deliberately not followed the mandatory provisions prescribed for conducting enquiry before determining the award amount for the lands which were acquired by the respondents.

4. The counter affidavit of the fifth respondent reveals that the notice under Section 19(3) of the Act for award enquiry was not received by anybody. Hence, the notice was affixed in the lands of the petitioner and other land owners by the concerned Village Administrative Officer on 16.05.2011 and the award enquiry was posted on 30.05.2011. Accordingly, the enquiry was conducted and award has been passed on 15.09.2011 in Award No.12 of 2011. It is relevant to extract Section 19(5) of the Act, which reads as follows:-

19(5).....Before finally determining the amount, the Collector shall give an opportunity to every person to whom the amount has to be paid to state his case as to the amount.

5. It mandates that the second respondent shall give an opportunity to every person to whom the amount has to be paid. Except the counter statement, there is no evidence to show that



the petitioner has not received the said notice and that they affixed the said notice in the lands of the petitioner, when the petitioner was duly served the other notice under Section 15(2) of the Act and she also appeared for enquiry and raised objections before issuance of notification under Section 15(1) of the Act. Therefore, the petitioner is very much available in the subject lands and she was not served with any notice as contemplated under Section 19(5) of the Act. Hence, this Court has no hesitation to set aside the award passed in respect of the petitioner's lands in S.No.391/4 part (now 391/4B), 391/1 part (now sub divided as 391B), 391/5 part now sub divided as 391/5B, S.No.391/7 part (now sub divided as 391/7B) for non-serving of the notice as contemplated under Section 19(5) of the Act.

6. In view of the above discussion, the award proceeding in Proc.ERc.16832/2009/F1 dated 15.09.2011 insofar as the lands of the petitioner alone is set aside. Accordingly, this Writ Petition is allowed. The matter is remanded back to the second respondent for fresh enquiry to determine the value of the lands of the petitioner. The second respondent is directed to issue notice to the petitioner under Section 19(5) of the Act, after giving full opportunity of hearing and pass appropriate orders on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
The State Tamil Nadu
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Secretariat, Chennai - 9.
2. The Collector,
Collector of Kancheepuram,
Kancheepuram District.



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5. The Special Tahsildar (L.A),
Radial Road Scheme, Tambaram,
Chennai - 45.

+1cc to Mr.M.Sivavarthan, Advocate, S.R.No.48958
+1cc to Mr.A.Ashokan, Advocate, S.R.No.49235
+1cc to the Government Pleader, S.R.No.49469

W.P.No.27876 of 2011

PVS (CO)
PM/26/10/2021