



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P. No. 7420 of 2021

1. Aslam Basha
2. S. Mohamed Ziyaulla SheriffPetitioners

Vs

1. The District Collector,
Tiruvannamalai,
Tiruvannamalai District.

2. The Chief Administrative Officer,
Construction Division,
Southern Railway,
Egmore, Chennai - 600 008.

3. The Tahsildar,
Office of the Tahsildar,
Polur - 606 803,
Tiruvannamalai District.

....Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the first respondent, quash the order of the first respondent dated 29.01.2021 and consequently direct the first respondent to re-fix the value of the land in survey Nos.868/1, 868/2, 869/1A, 869/2, 847A/5A in all measuring 73 cents (32000 sq.ft) in term of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay the same to the petitioners along with interest at the rate of 9% per annum from the date when the land was taken possession.

For Petitioners: Mr.Balan Haridas

For R1 & R3 : Mr.A. Selvendran
Government Advocate

For R2 : Mr.P.T.Ramkumar,
Standing Counsel

O R D E R

The Writ Petition has been filed for issuance of Writ of Certiorarified Mandamus, calling for the records from the first



respondent, quash the order of the first respondent dated 29.01.2021 and consequently direct the first respondent to re-fix the value of the land in survey Nos.868/1, 868/2, 869/1A, 869/2, 847A/5A in all measuring 73 cents (32000 sq.ft) under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay the same to the petitioners along with interest at the rate of 9% per annum from the date when the land was taken possession.

2. The case of the petitioners is that they owned the land in survey No. 868/1 to an extent of 0.06.5 hectare, in survey No.868/2 to an extent of 0.01.0 ares, in survey No.869/1A to an extent of 0.16.0 hectare, in survey No.869/2 to an extent of 0.02.5 hectare, in survey No.847A/5A to an extent of 0.03.5 hectare and in survey No. 847A/5A to an extent of 0.29.5 hectare situated at Polur Town, Tiruvannamalai District. It was acquired in the year 2008 for conversion of Meter Gauge Railway Line to Broad Gauge from Katpadi to Villupuram. The acquisition process was completed in the year 2009. However, the land value was not fixed till the year 2011. In the guise of private negotiation, the second respondent fixed the value of the land at Rs.120/- per sq.ft and forced the petitioner to get the compensation. At that point of time, the guideline value was at Rs.362/- per sq.ft. Therefore, the petitioners made a representation on 04.01.2012, to re-fix the value of the property on the basis of the Government guideline value, before the first respondent. It was not considered and the petitioner filed a writ petition before this Court in W.P.No.11920 of 2012 and this Court, by an order dated 27.04.2012, directed the respondents to pass orders on their representation.

3.By an order dated 11.07.2012, the third respondent rejected the request made by the petitioner and aggrieved by the same, the petitioners filed a writ petition before this Court in W.P.No. 28093 of 2012. This Court, by an order dated 02.06.2020, set aside the order passed by the third respondent herein and directed the first respondent to consider the petitioners representation for re-fixation of the value of the land and pass fresh orders within the period of four weeks. Again the first respondent rejected the representation submitted by the petitioners by an impugned order dated 29.01.2021.

4.The learned counsel for the petitioners would submit that the subject land acquired by the respondents is situated near the Railway Station, Bus Stand and other Commercial and Residential area and its guideline value is at Rs.362/- per sq.ft. Even though the petitioners had private negotiation with the respondents, they are entitled to receive the compensation by its guideline value. The petitioners were compelled to receive the compensation at Rs. 120/- per sq.ft. and as such,



this Court specifically considered the representation of re-fixation on the value of the property. However, the first respondent did not consider the direction issued by this Court and had mechanically rejected the same.

WEB COPY

5. The subject land was not under cultivation of the petitioner from the year 2008. Therefore, there is an agricultural income loss for the petitioner from the year 2008 and the compensation was fixed only on 16.02.2012. The first respondent has relied upon G.O.Ms.No.103, Revenue, dated 28.02.2011 to decline the request of the petitioners. Once the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force, there is no scope for any private negotiation and consequently the said G.O. has no role to play. In support of his contention, he relied upon the Judgment reported in 2011 (10) SCC 404 in the case of State of Haryana Vs. Mukesh Kumar and Ors, the relevant portion is extracted here under :

"33. The right to property is now considered to be not only a constitutional or statutory right but also a human right. Human rights have already been considered in the realm of individual rights such as the right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even the claim of adverse possession has to be read in that context."

6. He is also relied upon the Judgment reported in 2020 SCC online SC 950 in the case of B.K.Ravichandra and Ors Vs. Union of India and Ors, the relevant portion is extracted as follows :

"29. It is, therefore, no longer open to the state : in any of its forms (executive, state agencies, or legislature) to claim that the law - or the constitution can be ignored, or complied at its convenience. The decisions of this Court, and the history of the right to property show that though its pre-eminence as a fundamental right has been undermined, nevertheless, the essence of the rule of law protects it. The evolving jurisprudence of this Court also underlines that it is a valuable right ensuring guaranteed freedoms and economic liberty. The phrasing of Article 300-A is determinative and its resemblance with Articles 21 and 265 cannot be overlooked they in effect, are a guarantee of the supremacy of the rule of law, no less. To permit the state : whether the Union or any State Government to assert that it has an indefinite or overriding right to continue occupying one's property (bereft of lawful



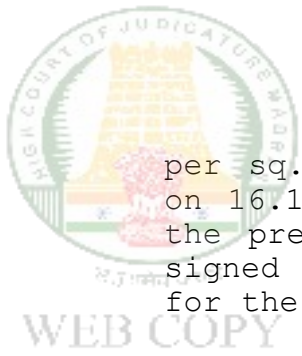
WEB COPY

sanction)- whatever be the pretext, is no less than condoning lawlessness. The court's role is to act as the guarantor and jealous protector of the people's liberties : be they assured through the freedoms, and the right to equality and religion or cultural rights under Part III, or the right against deprivation, in any form, through any process other than law. Any condonation by the court is a validation of such unlawful executive behavior which it then can justify its conduct on the anvil of some loftier purpose, at any future time-activity described as a "loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need."

7.The third respondent filed a counter stating that the subject lands have been acquired under private negotiation and the value of the lands have been fixed at the guideline submitted by the Sub Registrar, Polur. In fact, the meeting effected by the first respondent with the land owners and the committee consisting of Secretary and members on 16.12.2011 and the value of the land has been fixed at Rs.120/- by the Committee on 16.12.2011. It has been duly accepted by the land owner and signed in the valuation register. Thereafter, the compensation amount was disbursed to the petitioner on 16.02.2012.

8.That apart, sale deed had been executed by the petitioners on 16.02.2012 by accepting the value of the land at Rs.120/- per sq.ft and there is no question by forcing them to receive the said amount.The New Act came into force on 01.01.2014, whereas, the compensation was paid as early as on 16.02.2012, i.e., the date of execution of sale deed. Therefore, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, will not apply to the present re-fixation of compensation as requested by the petitioner.

9.The learned counsel for the second respondent submitted that by a letter dated 17.12.2011, the petitioner accepted the rate fixed during private negotiation conducted on 16.12.2011. However, they claimed compensation for non-cultivation for a period of four years. After accepting the rate fixed during Committee meeting, the petitioners have duly executed the sale deed in favour of the third respondent on 16.02.2012, on receipt of the sale consideration at Rs.38,09,040. Therefore, the entire transaction was done under the private negotiation and as such, they cannot claim higher compensation by re-fixing the value for the subject property. This Court, by an order dated 02.06.2020, directed the first respondent to consider their representation for re-fixing the value of the land at Rs.362/-



per sq.ft. The petitioners duly attended the Committee meeting on 16.12.2011 and accepted the value fixed by the Committee in the presence of the first respondent herein. They also duly signed in the valuation register by accepting the value fixed for the subject property.

10. Heard, Mr. Balan Haridas, learned counsel appearing for the petitioner, Mr. A. Selvendran, learned Government Advocate appearing for the respondents 1 & 3 and Mr. P. T. Ramkumar, learned Standing Counsel appearing for the second respondent.

11. The land belonged to the petitioners were acquired in the year 2008 for the purpose of conversion of Meter Gauge Railway Line to Broad Gauge from Katpadi to Villupuram. In the light of private negotiation, the respondent fixed the value at Rs.120/- per sq.ft. for the subject land. The value of the land has been fixed as per the guideline value fixed by the Sub-Registrar, Polur, during the meeting convened by the first respondent with the petitioners. The meeting of the Committee consisting of Secretary and members and was convened on 16.12.2011 in the presence of the first respondent herein. The petitioners participated in the Committee meeting and accepted the value fixed by the Committee and signed in the valuation register. Accordingly, they were paid compensation at Rs.120/- per sq.ft. on 16.02.2012. On that date, the petitioners have executed the sale deed in favour of the third respondent by a sale deed dated 16.02.2012.

12. Admittedly, the New Act came into force only on 01.01.2014, whereas the entire land acquisition proceedings, the subject land was acquired in the year 2008 and the compensation for the said land was disbursed as early as on 16.02.2012 i.e., on the date of execution of sale deed. Therefore, the New Act is not applicable to the petitioners to re-fix the compensation. Admittedly, the land was acquired in the year 2008 and the land acquisition process was completed in the year 2009. However, the sale deed was executed on 16.02.2012 and the compensation was paid to the petitioner on 16.02.2012. Therefore, the petitioners sustained loss of cultivation of the subject property from the year 2008 till the execution of sale deed dated 16.02.2012. Therefore, the petitioners are entitled for loss of income from the year 2008 to 16.02.2012. The Judgment relied upon by the petitioner related to right over the property. Whereas, in the case on hand, the property was also acquired under private negotiation and the petitioners were duly paid compensation under the sale deed dated 16.02.2012. The above judgment are not applicable to the case on hand. Therefore, the first respondent rightly rejected the representation of the petitioner and this Court finds no infirmity or illegality in the order passed by the first



respondent. Hence, the writ petition is devoid of merits.

13. Insofar as the fixation of land value dated 28.02.2011, which was in force for the private negotiation in that period. Therefore, the re-fixation of the land value would arise only if the land was acquired under the Act and not to private negotiation accepted by both the parties i.e., the requestion body and the land owners. Therefore, the petitioners are directed to make a fresh representation to the first respondent in respect of the loss of income for the period from 2008 to 16.02.2012 and on receipt of the same, the first respondent is directed to consider the same and fix the compensation for loss of income for the period from 2008 to 16.02.2012 to the land comprised in survey Nos.868/1, 868/2, 869/1A, 869/2, 847A/5A in all measuring 73 cents (32000 sq.ft) under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, within a period of six weeks from the date of receipt of a copy of this order.

14. In the result, the writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The District Collector,
Tiruvannamalai, Tiruvannamalai District.
2. The Chief Administrative Officer,
Construction Division,
Southern Railway, Egmore, Chennai - 600 008.
3. The Tahsildar,
Office of the Tahsildar,
Polur - 606 803,
Tiruvannamalai District.

+1cc to M/s. Balanharidas, Advocate, S.R.No.58141

+1cc to M/s. P.T. Ramkumar, Advocate, S.R.No.58120

W.P. No. 7420 of 2021

RR(CO)

RGA(22/12/2021)