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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27..04..2021

ORDERS PRONOUNCED : 12..05..2021

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

WRIT PETITION NO.7571 OF 2021

R.Ramesh

... Petitioner

-Versus-

1.The Special District Revenue Officer (LA),
Tamil Nadu Road Development Project-II,
Chennai 600028.

2.The Special Tahsildar (LA),
Tamil nadu Road Development Project-II,
Thiruvannamalai,
Thiruvannamalai District.

... Respondents

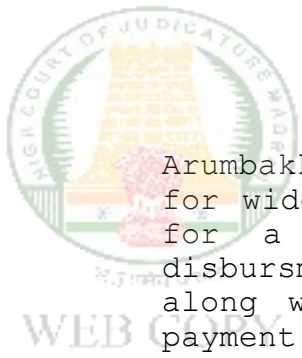
Writ Petition filed under Article 226 of The Constitution of India praying to issue a writ of mandamus directing the respondents to consider the representation of the petitioner dated 08.03.2021 for payment of compensation for the lands acquired in S. NO.56 / 3A1B10 measuring an extent of 0.60 square meters and in S. NO. 56/3A1B25 measuring an extent of 0.0287 square meters in Arumbakkam Village Thirukoilur Taluk, Kallakurichi District, for widening of the state highway SH 09 Cuddalore - Chittur and Consequently direct the 1st Respondent to disburse the compensation amount of Rs. 7,87,925.57 paise along with the interest and damages payable towards the delay in payment of the said compensation.

For Petitioner	:	Mr.V.Neeranjan
For Respondent(s)	:	Mr.V.Anandamoorthy, Spl. G.P. for RR1 and 2

ORDER

[This case has been heard through video conference]

This writ petition seeks a direction to the respondents to consider the representation of the petitioner dated 08.03.2021 for payment of compensation for the lands acquired in S.NO.56/3A1B10 measuring an extent of 0.60 Sq.mt and in S.NO.56/3A1B25 measuring an extent of 0.0287 Square Meters in



Arumbakkam Village Thirukoilur Taluk Kallakurichi District for widening of the state highway SH 09 Cuddalore - Chittur and for a consequential direction to the 1st respondent for disbursement of the compensation amount of Rs.7,87,925.57 paise along with interest and damages payable towards the delay in payment of the said compensation.

2. The case of the petitioner is that, he is the owner of the above said lands. The above lands were acquired by the respondents for the purpose of widening the existing Cuddalore - Chittur State Highway. After due award enquiry, compensation was also paid to the petitioner in respect of other lands and insofar as the lands in question, no compensation has been paid to the petitioner. He had made a representation to the authorities seeking compensation for the above said lands but the same has not been considered by the respondents till date. Hence, this writ petition.

3. The 1st respondent filed a detailed counter affidavit inter alia contending that the lands in question along with other lands were acquired for upgradation of Cuddalore - Chittur State Highways at 41/700 km to 49/000 and final award was also passed on 01.08.2018. Insofar as the land measuring to an extent of 2682 square meters in S.No.56/3, has been converted into house site layout and the plot owners did not appear for award enquiry despite due notice. Therefore, after passing the award, compensation pertaining to the land in S.No.56/3 was ordered to be kept undisbursed and deposited into the Government Account. Thereafter, a special camp was conducted on 30.11.2018 to enquire with the land owners at Thirukovilur and land owners had appeared and they were enquired. On examination of the records placed before him, the Land Acquisition Officer found that the land in S.No.56/3 and the adjacent lands in S.Nos.56/2, 56/4 have been converted into layout containing 103 plots and the layout was not approved as per rules and the plots in the layout were sold to various individuals. Further, on verification of the records, the compensation was paid to 28 plot owners. Totally 2682 square meters of land were acquired in S.No.56/3 out of which 347 square meters of land were reserved for open space reservation. As per the rules, the above said lands were to be transferred to the local body for public utility on obtaining approval. The petitioner was not the owner of the land and hence, compensation was not paid to him. The respondent has not received any representation as alleged by the petitioner seeking compensation for the land in question.

4. The learned counsel appearing for the petitioner would submit that the layout is an unapproved layout and even though certain extent of lands were earmarked for road purposes, those



areas were not gifted to the local body concerned. Thus, the ownership of the land in question was not transferred and the ownership remains with the original owner. In these circumstances, the petitioner alone entitled to receive the compensation payable for the land in question. Even during the special camp, except the petitioner nobody made any claim over the compensation amount payable for the land in question. Such being the factual position, the respondents 1 and 2 refused to pay the compensation to the petitioner and kept the amount undisbursed and deposited the same into the Government Account.

5. The learned Special Government Pleader appearing for the respondents, per contra would contend that admittedly the land in question for which compensation is sought was reserved for public utility viz., for road and public purpose and as per the provisions of The Tamil Nadu Town and Country Planning Act, 1971, the land in question shall automatically vest with the local body and the petitioner cannot claim any right over the space reserved for public purpose viz., road. Even in case of unapproved layout, the lands which were reserved for public purpose will automatically vest with the local body and they are entitled to maintain the same. Therefore, the petitioner cannot claim compensation for the lands acquired for the public purpose and the Land Acquisition Officer was absolutely right in keeping the amount undisbursed and deposited into current account.

6. I have considered the rival submissions carefully and also perused the records carefully.

7. The issue involved in this writ petition is as to whether the owner of the lands is entitled to receive compensation towards the lands which were set apart in an unapproved layout for public purposes and road and not gifted to the local body concerned?

8. Admittedly the layout is an unapproved layout and the areas which were reserved for public purpose in the layout have not been transferred to the local body concerned by way of gift. Reserving any area for street, open space, etc. in a layout plan is normally for a public purpose and is meant to be used by the public in general. In the land reserved for public purpose, the local body concerned gets a right over it as a custodian to manage the same. The reservation however, does not by itself, confer any right, title or interest thereof in the local body until that land is transferred in their favour by way of a gift deed. Even though the lands were set apart for public purposes, the promoter of the layout deemed to be the owner of the lands unless and otherwise, the promoter transfers the land in favour of the local body by way of gift deed or by any other mode and the land reserved for public purpose will not automatically get vested with the Government or local body without proper transfer of title.



9. In this context, it is useful to refer to a judgement of the Hon'ble Supreme Court in P.T.Chet Ram Vashist (Dead) by LRs v. Municipal Corporation of Delhi, (1995) 1 SCC 47 wherein the Hon'ble Supreme Court has held as follows:-

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"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law. "

10. Thus, the law is very clear that unless the property is transferred to local body concerned, the local body cannot claim to be the legal owner of the lands in question and as such they are not entitled to compensation.

11. A Division Bench of this court in The District Collector, Kancheepuram District and another v. S.Rajasekaran, (2015) 3 LW 636 has held that until the reserved area is transferred to the local body, it cannot claim to be the legal owner of that area. The relevant portion of the judgement of the



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Division Bench of this Court reads as under:-

"15. It is the admitted case of the appellants that for the land in question, which was set apart for the public purpose in the approved layout, the writ petitioners have to execute a gift deed in favour of the local body. Since the writ petitioners are the owners of the entire land even after the approval, they are entitled for compensation. The owners of the lands except the lands set apart for public purpose have sold the plots/lands to individual owners. Hence, even after the approval of the layout, the local body has got some right over the lands set apart for public purpose. So the lands set apart for public purpose in the approved layout can be used by the public and the plot owners and other local body etc., Because of that, we cannot presume that the lands were automatically transferred to the local body or vest with the local body and that is why, the one of the condition laid down in the approved layout is that they are insisting the writ petitioners to execute a gift deed in favour of the local body. In this case, admittedly, even though the layout was approved, there was no gift deed executed in favour of the local body till the acquisition proceedings is over. Hence, the title to the lands in question is not at all transferred to the local body and the local body cannot be the legal owner of the lands in question."

12. Another Division Bench of this Court in The Project Director, National Highways Authority of India, Trichirappalli-620 001 v. Subramani, (W.A.No.238 of 2013 dated 21.04.2017) has held that since the land in question was not gifted to local body, they are not entitled to claim compensation. The relevant portion of the judgement reads as under:-

"3. It is pertinent to note that payment to the Local Panchayat does not arise since the layout was admittedly not sanctioned by the competent authority and as such, the subject land was not gifted to the Local Panchayat and that possession of the property was also not taken by them. Further, the Local Panchayat itself vide proceedings dated 6.8.2010, gave no objection for the respondents 1 to 4 to receive compensation, which is a sum of Rs.23,52,895/-. Further, the persons who had purchased



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unapproved plots had also not made any claim in respect of the acquired property. Therefore, there is absolutely no rival claimant from any quarter to claim compensation apart from the respondents 1 to 4. It is the specific case of the respondents 1 to 4 that they are the owners of the subject land and entitled to receive the compensation. The appellant raised contention that irrespective of the fact that whether layout is an approved or not, roads and streets are necessarily earmarked for the usage of those purchasers and for the public at large and therefore, after selling the plots by the respondents 1 to 4 by forming a layout even if it is not approved, it goes without saying that such roads lose the character of private property as such, the respondents 1 to 4 are not entitled to compensation. We do not find any substance in the said contention raised on behalf of the appellant in view of the fact that the Local Panchayat itself has reported no objection for the respondents 1 to 4 to receive the compensation, which shows that they have no right over the acquired subject property."

13. In view of the above settled legal proposition and considering the entire facts and circumstances of the case, more particularly, the layout was not approved and the reserved areas were not transferred to the local body, the title of the lands in question remains with the owner of the property / promoter, the petitioner alone is entitled for compensation.

In the result, this Writ Petition is allowed and the respondents 1 and 2 are directed to pay the compensation to the petitioner in respect of the lands comprised in S.NO.56 / 3A1B10 measuring an extent of 0.60 square meters and in S.NO.56/3A1B25 measuring an extent of 0.0287 square meters in Arumbakkam Village, Thirukoilur Taluk, Kallakurichi District together with all statutory benefits. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmk



To

1.The Special District Revenue Officer (LA),
Tamil Nadu Road Development Project-II,
Chennai 600028.

2.The Special Tahsildar (LA),
Tamil nadu Road Development Project-II,
Thiruvannamalai,
Thiruvannamalai District.

+lcc to Mr.V.Neeranjan, Advocate, S.R.No.26302

W.P.No.7571 of 2021

PVS (CO)

B.VC (18/08/2021)