

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.No.5706 of 2020
and WMP.No.6656 of 2020

1.Gunasekaran
2.P.Mani
3.Chinnathambi
4.Mariyammal
5.Marimuthu
6.T.Venkatachalam Petitioners

Vs

1.The District Collector
Erode District
Erode.
2.The Revenue Divisional Officer
Brough Road
Erode - 1.
3.The Chairman
Tamil Nadu Electricity Board
Tamil Nadu Generation and Electricity
Distribution Corporation Ltd.,
Anna Salai, Chennai - 600 002. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings Na.Ka.No.20188/1999/B1, dated 11.06.2019 and quash the same and consequently to direct the first respondent to enhance the compensation to the tune of Rs.4,00,000/- per acre together with all benefits like interest, solatium and other aspects.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.D.Raja
Additional Government Pleader [R1, R2]
Mr.N.Damodaran [R3]

ORDER

The property of the petitioners in S.Nos.132/2, 3 & 4 in Anainasuvampalayam, Erode District has been acquired for Bhavani Kattalai Hydro Electric Project of the then TNEB. An award came to be passed in Award No.3 of 2003 dated 10.07.2003. The petitioners, however did not challenge the award under Section 18 of the Land Acquisition Act, 1894. However, some of the other landowners had preferred reference under Section 18, which was considered by the concerned Sub Court in LAOP.No.5 of 2006, which by its order dated 12.10.2011 enhanced the compensation to Rs.2,00,000/- per acre and Rs.2,500/- per coconut tree.

1.2 The petitioners without any loss of time, rushed to the District Collector, Erode District with their application under Section 28-A of the Land Acquisition Act, 1894, and this was pending. In the meantime, the land owners still aggrieved by the order of the Sub Court in LAOP.No.5 of 2006, had approached this Court in A.S.No.535 of 2012. This Court, Vide its judgment dated 24.02.2014, has fixed the compensation at Rs.4,00,000/- per acre with regard to S.Nos.136 and 134/5. So far as other survey number involved in that litigation in S.No.80/1AB is concerned, this Court confirmed the value fixed by the Sub Court. However, it enhanced the value of the coconut trees from Rs.2,500/- to Rs.4,000/- per tree. Subsequent to the decree in A.S.No.535 of 2012, the petitioners approached the District Collector for re-fixation of the compensation under Section 28-A. The District Collector accepted the same and passed the proceedings and fixed the value at Rs.4,00,000/- per acre and Rs.4,000/- per coconut tree.

1.3 It appears that the District Collector has obtained some legal opinion as to the true import of the judgment in A.S.No.535/2012 and came to the conclusion that the property of the petitioners was not contiguous to the property involved in S.No.136 and fixed the compensation at Rs.2,00,000/- per acre as was originally determined by the Sub Court in LAOP.No.5 of 2006.

2. The petitioners herein contend :

- (a) that the Collector has the statutory authority ought not to have been exclusively guided by the legal opinion that he might have obtained;
- (b) that he has not given the petitioners any opportunity before reducing the compensation from Rs.4,00,000/- to Rs.2,00,000/-

3. Mr.D.Raja, learned Additional Government Pleader and Mr.N.Damodaran, learned counsel who appeared for TNEB, the third respondent made a joint statement, in that the properties covered in A.S.No.535/2012 are different from the

properties of the petitioners. Merely because the properties of the petitioners as well as those involved in A.S.No.535/2012 are acquired under the same notification, it does not imply that the violation should also be alike. They also brought to the notice of the Court how the learned Single Judge of this Court has drawn the distinction in the judgment in A.S.No.535/2012, between the property for S.Nos.136 and 134/5 on one hand and the property in S.No.80/1AB on the other hand.

4. After weighing the rival submissions carefully, this Court is satisfied that no prior notice has been given to the petitioners to explain why their property cannot fetch the same amount of compensation as determined by this Court in A.S.No.535/2012. The impugned proceedings of the District Collector has extracted certain portion of the legal advice that he has obtained from a Senior Law Officer of the State. A legal opinion may be guidance to the Collector, but as a statutory authority under the Land Acquisition Act, the Collector has to apply his mind to the issue himself/herself and must give his own independent reasoning as how he/she justifies whatever award that he/she ultimately pass. Here this Court finds that the District Collector appeared to have been influenced exclusively by the legal opinion that he has obtained, and has omitted to consider the relative merit of the petitioners' claim. Therefore, this Court has left with little option, but to set aside the impugned order of the Collector, and to remit the matter back to the District Collector for better or de novo consideration.

5. The writ petition is allowed and the District Collector is now required to take up the enquiry in the matter at the very earliest, but at any rate not later than one week after the conclusion of the ensuing General Election of the Tamil Nadu State Legislative Assembly 2021, and conclude the same within a period of eight weeks thereafter. In particular, the Collector is required to pass a speaking order detailing his justification for his conclusion which necessarily should include the disadvantage that the property of the petitioners may have in comparison to the property covered under the decree of this Court in A.S.No.535/2012. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To:

1.The District Collector
Erode District, Erode.

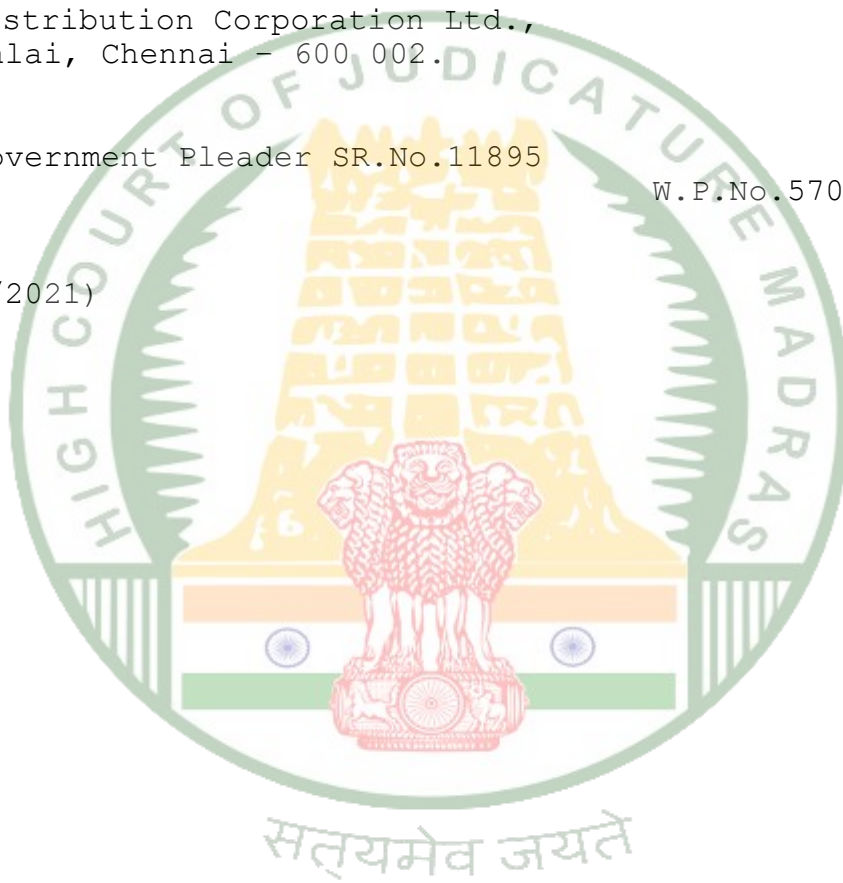
2.The Revenue Divisional Officer
Brough Road, Erode - 1.

3.The Chairman
Tamil Nadu Electricity Board
Tamil Nadu Generation and Electricity
Distribution Corporation Ltd.,
Anna Salai, Chennai - 600 002.

+1cc to Government Pleader SR.No.11895

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AJB(CO)
GMY(17/06/2021)



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