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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

W.P.No.10610 of 2021

and

W.M.P. No.11222 of 2021

R.Nirmala Devi,
W/o. Rajasekaran

...Petitioner

Vs.

- 1.The Special District Revenue Officer,
Land Acquisition N.H. 45-A (Unit-1)
Cuddalore, 2nd Floor,
District Collectorate Office,
Cuddalore-607 001.
- 2.The Special Tahsildar,
Land Acquisition N.B. 45-A (Unit-1)
Cuddalore, No.64, 3rd Cross Street,
Seetharam Nagar, Pudhupalayam,
Cuddalore-607 001.
- 3.The Commissioner,
Department of Industries and Commerce,
SIDCO Corporate Office Building,
3rd Floor, Thiru Vi.Ka. Industrial Estate,
Guindy, Chennai-600 032.
- 4.The Joint Director/General Manager,
District Industries Centre,
SIDCO Industrial Estate,
Semmandalam, Cuddalore-607 001.
- 5.The Chairman,
Cair Board, "Cair House",
Mahathma Gandhi Road,
Kochi-682 016.
- 6.The President,
Cuddalore District Cair, Fibre and
Yarn Manufacturers Association,
No.123, Murugan Koil Street,
Sangallikuppam, SIDCO Post,
Cuddalore Taluk, Cuddalore Dt.-607 005.

...Respondents



Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records on the file of the 2nd respondent relating to the impugned order passed on 08.03.2021 in bearing Ref. No.NA.KA.THEY.NA.45A/NI.E/A1/140/2018 with regard to the compensation paid to the petitioner's land and to quash the same.

For Petitioner : Mr.N.U. Pressanna

For Respondents : Mr.K.M.D.Muhilan,
Government Advocate for R1 to R3

Mr.K.Ramamoorthy,
Central Govt. Standing Counsel for R5

R4 and R6 - No appearance

O R D E R

(The case has been heard through video conference)

The Writ Petition has been filed challenging the order passed by the 2nd respondent directing the petitioner to return a sum of Rs.59,51,894/- being a compensation paid to a superstructure in a land acquisition proceedings.

2. Brief facts leading to the filing of Writ Petition is that, the petitioner is the owner of the property in New Survey Nos.63/5, 63/21, 66/5, 66/6 in Old Survey No.186/1, 229/3, 229/4, 229/5, 237/8 at Kudikadu Village, Cuddalore Taluk, Cuddalore District. Earlier, the petitioner has entered into a lease agreement with the 6th respondent association. Thereafter, the 6th respondent had constructed a superstructure in the land for manufacturing of coir and fiber and also installed machineries for their manufacturing process. Subsequently, there is a dispute between the petitioner and the 6th respondent regarding payment of lease amount and there is huge arrears of rent payable to the petitioner. In those circumstances, the 6th respondent by letter dated 21.03.2019, informed the petitioner that, they are not able to pay the arrears of rent and they have decided to hand over the building constructed by them towards the arrears of rent. The 6th respondent also stated that they will not claim any right over the building. Subsequently, in the year 2019, a land acquisition proceedings has been initiated for expansion of National Highways No.45A. Thereafter, an award was passed in favour of petitioner for the land as well as building for a sum of Rs.93,83,536/- as compensation and the same was paid to the petitioner. Thereafter, the impugned notice has been issued, without any enquiry whatsoever, directing the petitioner to refund the compensation amount to the tune of Rs.59,51,894/-



along with interest, which was paid towards superstructure, on the ground that the superstructure is not belong to the petitioner. Now, challenging the said order, the present Writ Petition has been filed, mainly on the ground that before passing the impugned order, no notice has been given to the petitioner and no enquiry was conducted and the impugned order has been passed in an arbitrary manner, thereby, directing the petitioner to refund the said compensation.

3. The 1st and 2nd respondents have filed a counter affidavit stating that, the lands were acquired under the National Highways Act, 1956 (hereinafter called as 'Act') for expansion of National Highway by following due process of law, and the award enquiry under Sec.3G(3) of the Act, was also conducted on 10.08.2019, in which, the petitioner, her son Velayuthapandian, who was the President of 6th respondent association and other claimants attended enquiry and submitted their objections. Thereafter, entire compensation including the building was paid to the petitioner. Subsequently, the respondents 1 and 2 came to know that the superstructure standing therein belong to the respondents 3 to 5, suppressing the said fact, the petitioner and her son Velayuthapandian, the President of 6th respondent association claiming to be the owners of superstructure, and fraudulently obtained compensation for both land and superstructure. Immediately, on the basis of the letter sent by the 4th respondent, the 1st respondent has taken action to recover the amount paid to the petitioner and there is no illegality in the order.

4. The 3rd and 4th respondents have also filed a separate counter affidavit stating that, for the purpose of developing traditional industries, the Ministry of MSME, had launched a scheme, and allotted Funds for Regeneration of Traditional Industries in the year 2005, in which various Nodal Agencies have been evolved in implementing the said scheme, and the 5th respondent herein is one of such nodal agency, for the purpose of developing coir industry.

5. The 6th respondent association for developing coir, fiber and yarn manufacturing applied for sanction of funds under the above said scheme to establish a Common Facility Centre in Cuddalore. Following a detailed study, a sum of Rs.44 lakhs was sanctioned for establishing a Common Facility Centre. The petitioner, who is none other mother of President of 6th respondent association and also the owner of the land leased out the land for 6th respondent. After detailed negotiations arrived between 3rd to 6th respondents, it was agreed that, the 5th respondent herein would contribute a sum of Rs.33,00,000/- towards establishment of the said Common Facility Centre and the 3rd respondent herein agreed to advance a loan of Rs.10,00,000/- and the 6th respondent herein agreed to contribute a sum of



Rs.1,00,000/- . The petitioner has agreed to let out her land for a sum of Rs.5000/- . Subsequently, on 07.01.2009, an agreement was entered between the 5th respondent, who is a nodal agent, 4th respondent, who is implementing agency, and the 6th respondent (Special Purpose Vehicle), for the purpose of establishing the Common Facility Centre under SFURTI scheme. In terms of clause 2 of the above said agreement, all the assets generated in the grant sanctioned by the 5th respondent Nodal Agency shall be in the name of 5th respondent herein and 6th respondent implementing agency also undertake and agreed that the amount can be utilised only for the purpose, it was released. Thereafter, all the grant made by the 5th respondent has been deposited in the account for the purpose of establishing the Common Facility Centre and as per the agreement, the following amounts have been paid :-

Sl. No.	Amount given by and in favour of	Cheque or D.D.No.	Date	Amount Rs.
1	5 th respondent	D.D.No.242417	25.03.2009	3,00,000/-
2.	3 rd respondent	D.D.No.124744		10,00,000/-
3.	5 th respondent	D.D.No.242556	08.06.1999	9,00,000/-
4.	5 th respondent	D.D.No.242557	08.06.1999	9,00,000/-
5.	5 th respondent	D.D.No.242558	08.06.1999	9,00,000/-
6.	5 th respondent	D.D.No.242559	08.06.1999	3,00,000/-

The above said amount were granted by 3rd and 5th respondents herein for setting up a Common Facility Centre.

6. Subsequently, the land and building was sought to be acquired under the Act, and an award was also passed. A total compensation of Rs.78,59,122/- has been paid to the petitioner, in which a sum of Rs.59,51,894/- was awarded as compensation for the superstructure. Only thereafter, they came to know that, the superstructure was not belong to the petitioner, immediately action was taken by the authorities and notice was issued by the 4th respondent to refund the amount as he is not the owner of the superstructure. The petitioner along with her son suppressing the fact that, the superstructure is not belong to them, they have received the compensation and they have also gone to the extent of removing the board in the building to believe that the land and building belong to the petitioner.

7. Mr.N.U.Pressanna, learned counsel appearing for petitioner would submit that, the petitioner is the owner of land and they have entered into a lease agreement with the 6th respondent association for the purpose of constructing coir unit therein, and there was a huge arrears of rent, which could not be paid by the 6th respondent. In such circumstances, the 6th



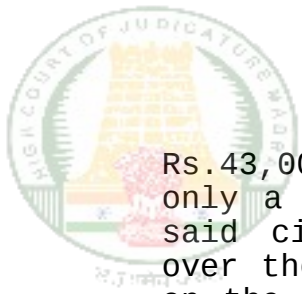
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respondent requested the petitioner to take over the building towards arrears of rent payable by them and they have also sent a letter to that effect. By virtue of the above letter, the petitioner claims to be the owner of the building and received the compensation and she has not committed any irregularity. The learned counsel also submitted that the impugned order has been passed in utter violation of principles of natural justice, without conducting any enquiry whatsoever and on that score, the impugned order is liable to be set aside.

8. Per contra, Mr.K.M.D.Muhilan, learned Government Advocate appearing for respondents 1 to 3, would submit that, admittedly, the Common Facility Centre has been established from the funds granted by the 3rd and 5th respondent and the 6th respondent had paid only a sum of Rs.1 lakh. Fully aware of the fact that, the building is not belong to them, the petitioner along with her son, who was President of 6th respondent association had received the compensation for the superstructure. Now, that amount only sought to be recovered by the respondents 1 to 5. Since it is an admitted fact that, the petitioner is not the owner of superstructure, there is no necessity for conducting any enquiry. The available records would clearly shows that, the entire fund for the construction of superstructure was paid by the 3rd and 5th respondents. It is clear case of collusion between the petitioner and 6th respondent and cheated the Government.

9. I have considered rival submissions made by learned counsel appearing for petitioner as well as learned Government Advocate appearing for respondents 1 to 3 and 5.

10. The admitted facts are that, the petitioner is the owner of the land and the land has been leased out to the 6th respondent for the purpose of running a coir unit therein, thereafter, a superstructure was put up therein. Subsequently, the land and building was acquired by the respondents 1 and 2 for the purpose of widening National Highway 45A, the entire compensation for the land and superstructure has been paid to the petitioner. The case of the petitioner is that, even though the building was constructed by the respondents 3 and 5, the 6th respondent association has to pay huge amount towards arrears of lease amount, they have voluntarily handed over the building to her in lieu of arrears of lease amount, by virtue of the same, she has received the compensation. Admittedly, the petitioner is not claiming ownership over the superstructure, she is claiming right based on a letter given by the 6th respondent asking the petitioner to take over the building. It is also admitted fact that, the President of 6th respondent is none other than son of petitioner. From the counter affidavit filed by the respondents 3 and 4, it could be seen that, a total sum of Rs.44,00,000/- has been spent on the building, in which, a sum of



Rs.43,00,000/- has been paid by the respondents 3 and 5, and only a sum of Rs.1 lakh was paid by the 6th respondent. In the said circumstances, the 6th respondent cannot claim ownership over the building, and they have no right to transfer the title on the superstructure to the petitioner, it is also not binding on the respondents 3 and 5. It is also stated that, subsequently, the President of 6th respondent also appeared before the 3rd respondent and given a letter stating that, the building is not belong to them and they are not the owner of building.

11. Considering the above circumstances, both the petitioner and the 6th respondent cannot claim any right over the superstructure and they are not entitled to get a compensation for the superstructure. So far as the contention of petitioner regarding conducting enquiry, it is the fact that, the building is not belongs to 6th respondent, and the superstructure has been constructed by the funds granted by 3rd and 5th respondents, the petitioner and the 6th respondent cannot claim any right over it and they are not entitled for any compensation to the superstructure and the petitioner received the compensation on misrepresentation. In view of the above factual position, conducting an enquiry is only an empty formality. Therefore, I find no merit in this Writ Petition and the same is liable to be dismissed. Accordingly, the Writ Petition stands dismissed. The respondents 1 to 5 are directed to take steps to recover the amount in accordance with law. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To

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3.The Commissioner,
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4.The Joint Director/General Manager,
District Industries Centre,
SIDCO Industrial Estate,
Semmandalam, Cuddalore-607 001.

5.The Chairman,
Cair Board, "Cair House",
Mahathma Gandhi Road,
Kochi-682 016.

+1cc to Mr.N.U.Pressanna, Advocate SR.No.36899

+1cc to the Government Pleader SR.No.37407

W.P.No.10610 of 2021

VG-II(CO)
RVM(25/08/2021)