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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 05.07.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.23675 of 2018

S.K.Selvarajan

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Petitioner

-Vs-

1.The District Collector / Arbitrator
Cuddalore District, Cuddalore.

2.The Land Acquisition Officer,
NH-45-C / District Revenue Officer
Collectorate, Villupuram.

3.The Project Director
National Highways Authority of India
Villupuram.
(R3 suo-motu impleaded as per the order
of this Court on 28.09.2018 by VBDJ)

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Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the first respondent to consider and pass orders on merits by disposing the written representation made by the petitioner on 18.08.2018 within a stipulated time.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.Richardson Wilson
Government Counsel - for RR 1 and

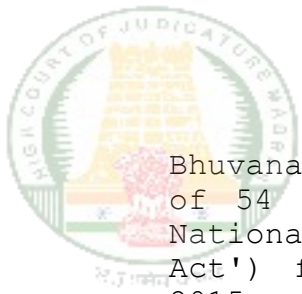
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Mrs.S.R.Sumathy - for R3

O R D E R

The prayer sought for herein is for a Writ of Mandamus directing the first respondent to consider and pass orders on merits by disposing the written representation made by the petitioner on 18.08.2018 within a stipulated time.

2. The case of the petitioner is that, the petitioner's land situated at R.S.No.67/3A1B, Sethiyathope Village and Post,



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Bhuvanagiri Taluk, Cuddalore District was acquired to an extent of 54 Sq.mtrs by the respondents under the provisions of the National Highways Act (Hereinafter referred to as 'Highways Act') for establishment of a road ie., NH 45-C, in the year 2015.

3. Thereafter, award enquiry was conducted and compensation was fixed. Accordingly, award was passed by the second respondent on 26.12.2017.

4. As against the said Award since the petitioner felt aggrieved, he has filed a written representation to the first respondent ie., District Collector on 18.08.2018, where, instead of seeking the first respondent District Collector / Arbitrator to decide the issue under Section 3G(5) of the Highways Act, the petitioner had made a request before the first respondent in the said representation that, his request shall be referred to the competent authority who was appointed under Section 51 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (In short 'the 2013 Act'). Since the said request made to the District Collector has not been considered and a reference as sought for by the petitioner has not been made, the petitioner has approached this Court by filing this writ petition with the aforesaid prayer.

5. Initially, the District Collector, Cuddalore District and the Land Acquisition Officer, Villupuram were the respondents and subsequently the third respondent ie., the Project Director, National Highways Authority of India, Villupuram was suo-motu impleaded as the third respondent.

6. Mr.C.Prakasam, learned counsel appearing for the petitioner has submitted that, as per Section 105(1) of the 2013 Act the provisions of the said 2013 Act shall not apply to the enactments, relating to land acquisition, specified in the Fourth Schedule.

7. He would further submit that, in the Fourth Schedule of the 2013 Act, there are 13 legislations enlisted, wherein in Serial No.7, the Highways Act ie., National Highways Act, 1956 also is stated. Therefore, if any land acquisition is made under the National Highways Act, the provisions of the 2013 Act shall not apply.

8. In this context, it is the further contention of the learned counsel for the petitioner that, however as per the amendment brought in the 2013 Act, the appellate authority is the competent authority as appointed under Section 51 as well as Section 64 of 2013 Act and therefore, the reference should be made before the competent authority, who was appointed under



Section 51 and 64 of the 2013 Act. Such reference shall be made by the District Collector to the competent authority and therefore the petitioner's representation referred to above shall not be decided under Section 3G(5) of the Highways Act.

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9. Per contra, Mr. Richardson Wilson, learned Government Counsel appearing for the official respondents would submit that, the said submission made on behalf of the petitioner by quoting the provision ie. Section 105 of the 2013 Act as if that the land acquisition proceedings initiated under the Highways Act would not be covered under the various provisions of the 2013 Act is under total misconception. Further elaborating the arguments, the learned Government Counsel would submit that, no doubt under Section 105(1) of the 2013 Act, it has been stated that subject to sub-section (3), the provisions of the 2013 Act shall not apply to the enactments relating to the land acquisition specified in the Fourth Schedule.

10. However, he would submit that, under sub-section (3) of Section 105, the legislation has mandated the Central Government that, by a Notification, within a period of one year from the date of commencement of the Act, to direct that any of the provisions of the Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule.

11. By relying upon sub-section (3) of Section 105, the learned Government Counsel would further submit that, the Central Government, in pursuance of the mandate provided under sub-section (3), has issued Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015. (In short '2015 Order') In the said Order, what has been mandated under Section 105(3) of the 2013 Act has been complied with by the Central Government, through which the I, II and III Schedule of the 2013 Act shall also mutatis mutandis be made applicable to any land acquisition initiated under various legislations found place in the Fourth Schedule including the Highways Act.

12. Therefore, the learned Government Counsel would further contend that, insofar as the petitioner's case is concerned, his land was acquired under the National Highways Act, 1956, where Award has been passed. As against the Award, if the petitioner has got any grievance, he can very well prefer an appeal by way of arbitration to the District Collector, who is the arbitrator under Section 3G(5) of the Highways Act. In the instant case, the petitioner has adopted the same by sending such appeal or



arbitration petition by way of a written representation dated 18.08.2018 to the District Collector, as an Arbitrator within the meaning of Section 3G(5) of the Highways Act, can very well decide the said appeal filed by the petitioner and accordingly give a quietus to the issue raised therein, of course by adopting the various provisions of the 2013 Act especially in the context of Schedule I, II and III of the 2013 Act, as has been envisaged in the 2015 Order.

13. Therefore, absolutely there can be no difficulty for the first respondent District Collector / Arbitrator to decide the petitioner's appeal under Section 3G(5) of the Highways Act and therefore, in this context, the petitioner need not have any misconception as projected by the learned counsel for the petitioner as if the District Collector under Section 3G(5) of the Highways Act does not have any power to decide it by way of arbitration and he can only refer the matter to the competent authority under the provisions of the 2013 Act.

14. I have considered the submissions made by learned counsel appearing for the petitioner as well as the learned Government counsel appearing for the respondents and have perused the materials placed on record.

15. Though the controversy raised in this writ petition appears to be a larger one, it is in fact in a very narrow compass, which can be easily resolved.

16. Section 105 of the 2013 Act reads thus,
"S.105.Provisions of this Act not to apply in certain cases or to apply with certain modifications
- (1) Subject to Sub-Section(3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the fourth Schedule.

(2) Subject to Sub-section (2) of Section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions



(4)



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20. Therefore, by issuance of the 'Removal of Difficulties Order 2015', the mandate issued to the Central Government having been fulfilled, the I, II and III Schedule of the 2013 Act shall also be made applicable to all those land acquisition proceedings initiated under various legislations in IV schedule including the National Highways Act, 1956.

21. Here in the case in hand, admittedly the land of the petitioner was acquired for National Highways purpose under the provisions of the National Highways Act, pursuant to which Award has been passed on 26.12.2017.

22. Aggrieved over the said Award, the petitioner also rightly filed a written representation by way of an appeal to the first respondent / District Collector on 18.08.2018.

23. In the said representation / appeal, the petitioner has stated that, he realised that the appeal by way of arbitration under Section 3G(5) of the National Highways Act is not all applicable in his case.

24. The said assertion made in the said representation by the petitioner is a total misconception of the legal position, as the petitioner's appeal certainly should have been filed to the first respondent / District Collector only under Section 3G (5) of the Highways Act and that he has rightly done so.

25. Once such a Section 3G(5) appeal is filed, the District Collector being the Arbitrator under the said provision, can decide the same in accordance with law, where, whatever the beneficial provisions available under the 2013 Act, especially in the teeth of Schedule I, II and III as contemplated by way of Section 105(3) read with the 2015 Order, can be applied and accordingly the said plea can be decided and arbitral award can be passed by the first respondent District Collector. Before the Arbitrator, the petitioner will have a chance of agitating the issue by providing any kind of input to substantiate the plea for enhanced compensation or any other benefits on the compensation and once such a procedure is being adopted by the District Collector ie., the first respondent under Section 3G(5) of the National Highways Act, the grievance of the petitioner can be met.

26. Assuming that, ultimately if the first respondent, as an arbitrator, passed an award and, if it is still not adequate according to the petitioner, a further appeal is also available for the petitioner to invoke the provisions of the Arbitration and Conciliation Act, 1995 especially under Section 34 of the said Act and therefore, the said procedure which has been clearly contemplated under these legislations will give a series



of forums to the petitioner to agitate the issue for getting reasonable and adequate compensation for the land acquired for public purpose.

27. Therefore, the petitioner need not have any apprehension nor any misconception and state that, the first respondent cannot decide his appeal dated 18.08.2018 under Section 3G(5) of the National Highways Act.

28. Therefore in this context, the submission made by the learned counsel appearing for the petitioner, in the aforesaid circumstances, cannot be accepted. But at the same time, what has been pointed out by the learned Government Counsel as discussed above, is to be accepted.

29. In that view of the matter, this Court has no hesitation to dispose, this writ petition by giving the following direction to the respondents especially to the first respondent.

- That the first respondent is hereby directed to consider the written representation of the petitioner dated 18.08.2018 as against the award passed by the second respondent dated 26.12.2017 by treating it as an appeal / arbitration petition within the meaning of Section 3G(5) of the National Highways Act and accordingly decide the same on merits and in accordance with law.
- It is made clear that, while deciding the appeal / representation of the petitioner under Section 3G(5) of the National Highways Act, the first respondent District Collector/ Arbitrator shall have it in mind that, the Schedule I, II and III of the 2013 Act shall also be made applicable to the land acquisition proceedings, which has been made under the provisions of the National Highways Act. Accordingly, the arbitration shall be conducted and decided as early as possible.

30. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

KST



To

- 1.The District Collector / Arbitrator,
Cuddalore District, Cuddalore.
- 2.The Land Acquisition Officer, NH-45-C /
District Revenue Officer
Collectorate, Villupuram.
- 3.The Project Director,
National Highways Authority of India
Villupuram.

+1cc to the Government Pleader, S.R.No.31420(11/08/2021)

W.P.No.23675 of 2018

PCH(CO)
CB(02/08/2021)