



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.02.2021**

CORAM

THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P(MD) No.3480 of 2021 and
WMP(MD) Nos.2817 & 2818 of 2021

T.Kanakku Malayandi

.. Petitioner

Vs

- 1.The District Collector,
Madurai District,
Madurai.
- 2.The Competent Authority and
Special District Revenue Officer,
(Land Acquisition),
National Highway Authority of India,
No.223, Velankanni Church Road,
Anna Nagar,
Madurai - 625 020.
- 3.The Project Director,
The National Highways Authority of India,
Surya Tower 2nd Floor,
K.K.Nagar,
Madurai.
- 4.J.R.Varadhachari
- 5.J.R.Yajendra Babu

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the second respondent in respect of the order passed in Na.Ka.No.117/2018/A1 dated 18.01.2021 and to quash the same and order the 1st respondent to deposit the amount of compensation with the Authority/District Judge for making reference under Section 64 of the Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 for the determination of the authority as tot he person to whom the compensation is payable.

For Petitioner	: Mr.C.Jawahar Ravindran
For Respondents	: Mr.K.P.Krishnadoss
	Special Government Pleader

O R D E R

The case of the petitioner herein is that he is a cultivating tenant in respect of nanja land measuring 1 acre 40 cents in S.No.93/2 in Thamaraipatti II Bit Village, Madurai East Taluk. Originally the subject property was owned by one J.R.Ramamoorthy. The father of the petitioner took lease of the said property in the year 1939. After the demise of his father in 1964,



the petitioner and his family have been cultivating in the said property. According to him, his name was also entered in the Tenancy Register. Ulavadai Patta was also transferred in his name. The petitioner claims that in all the revenue records, his name has been entered as cultivating tenant and in that capacity he was regularly paying rent to the landlord.

2. According to the petitioner, the original owner J.R.Ramamoorthy died in the year 1998 and after his demise the fourth and fifth respondents being the sons become legal representatives of the said J.R.Ramamoorthy. The fourth and fifth respondents continued to receive rent from the petitioner.

3. While so, the subject property under cultivation of the petitioner herein was subjected to acquisition proceedings in terms of the Provisions of National Highways Act. The third respondent has published a gazette notification dated 19.04.2018 under Section 3A (1) of the National Highways Act, 1956 for acquisition of lands for the expansion of national highways and the same was published in the Hindu and tamil dailies on 29.04.2018. The petitioner being a cultivating tenant submitted his petition, dated 12.05.2018 to the second respondent, who is the competent authority, praying grant of compensation to him by recognising him as a cultivating tenant in terms of Provisions of National Highways Act. The petitioner has also given his representation on 19.07.2018, by submitting all his supporting documents including Cultivating tenant patta. According to the petitioner, despite all the relevant documents being submitted to the second respondent, there was no positive action taken from the side of the second respondent. Subsequently, there was another Gazette publication of notification dated 06.08.2019 for the acquisition of lands. Once again the petitioner submitted his representation dated 21.08.2019 to the second respondent. Being a registered cultivating tenant, the petitioner will come under the purview of the interested person by virtue of Section 3(b) of the National Highways Act.

4. As there was no action on the side of the second respondent, the petitioner was constrained to file WP.No.25508 of 2019 and this Court by order dated 29.11.2019, disposed of the Writ Petition by directing the second respondent to conduct enquiry after giving due opportunity to the parties, and pass orders in accordance with law. In pursuant to the direction passed by this Court as above, the petitioner as well as the respondents 4 & 5 have appeared for enquiry and on conclusion of the enquiry, order was passed by the second respondent on 18.01.2021, holding that the petitioner did not establish the claim as a cultivating tenant. The second respondent has held that the petitioner has not submitted any documents to prove his tenancy under the respondents 4 & 5 and also referred to O.S.No.93 of 2008, filed by the petitioner and ultimately held that there was absolutely no evidence produced by



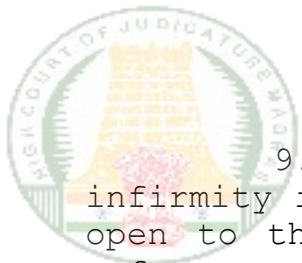
the petitioner in order to establish his tenancy to consider him for payment of compensation. Challenging the order, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner reiterated the above facts and submitted that number of documents have been submitted before the second respondent. But, unfortunately overlooking all the documents, the authority erroneously concluded that the petitioner has not established his cultivating tenancy under the respondents 4 & 5. The learned counsel would submit that there was no document produced for terminating the tenancy at the instance of the owners and according to the counsel the petitioner produced number of documents for the payment of rent/kuthagai to the owners and the receipts issued by the respondents 4 & 5. Despite all the documents, the second respondent rejected the claim of the petitioner, unjustly.

6. This Court perused the impugned order passed by the second respondent on 18.01.2021, the second respondent while rejecting the claim of the petitioner, has held that the petitioner had not produced sufficient materials in order to establish his claim of being cultivating tenant under the respondents 4 & 5 herein. The second respondent concluded that no iota of material or document had been produced by the petitioner in support of his claim. In the absence of any proof, the second respondent rejected the claim of the petitioner for compensation under cultivating tenant in the subject land, acquired by the second respondent under National Highways Act.

7. When the second respondent has factually considered the claim of the petitioner and the objections of the fourth and fifth respondents, the owners of the property, this Court in exercising its extra ordinary jurisdiction under Article 226 of the Constitution of India, cannot re-appreciate the factual controversies on the basis of the documents, which are to be produced by the petitioner herein. In a dispute of this nature, the claim of the petitioner has to be established by a proper investigation, in realm of facts. The rival claims and investigation of facts cannot be undertaken by this Court in its writ jurisdiction. Be that as it may, in terms of Section 3 H of the National Highways Act 1956, it is upto the competent authority to refer any dispute regarding the claim of the person interested to the Civil Court of original jurisdiction, within limits of whose jurisdiction land is situated.

8. In that view of the matter, the proper course for remedy to the petitioner is to approach the Civil Court, seeking reference of his dispute by the second respondent. Since the dispute involved settlement off actual dispute, the Civil Court alone is competent authority to decide the claim of the petitioner herein.



9.In the above circumstances, this Court does not find any infirmity in the order passed by the second respondent. It is always open to the petitioner to approach the second respondent, seeking reference of the dispute of the civil court under the provisions of the Act and if any reference is sought by the petitioner, the second respondent may pass appropriate orders, in terms of provisions of the act, referring the issue before the competent Civil Court without undue delay.

10.But so far as the challenge of the order passed by the second respondent dated 18.01.2021 is concerned, this Court does not find any infirmity and therefore the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

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To

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Special District Revenue Officer,
(Land Acquisition),
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3.The Project Director,
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+1 CC to M/s.SPL GP (SR-6942[F] dated 24/02/2021)

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RK (27.04.2021) 4P 5C