



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.07.2021

PRONOUNCED ON : 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P(MD)Nos.14914 of 2020 and 24052 of 2018

and

W.M.P (MD) .No.12543 of 2020 and W.M.P. (MD) .No.21758 of 2018

(Through Video Conference)

WEB COPY

W.P(MD) .No.14914 of 2020:

- 1.Rudhra Devi
- 2.S.Jeyalakshmi

.. Petitioners

Vs.

1.The Competent Authority-cum-District Revenue Officer,
(Competent Authority-LA under NH Act),
Collector's Office Complex,
Dindigul - 624 004,
Dindigul District.

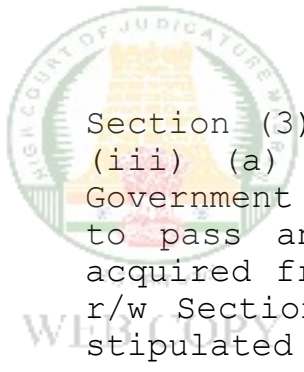
2.The Divisional Engineer,
National Highways Division,
19 A, Jawahar Street,
Madurai-20,
Madurai District.

3.The Project Director,
National Highways Authority of India,
Project Implementation Unit,
Plot No:1, Aishwaryam Heights,
Indira Nagar, Sennamanaickenpatti (P.O)
Thadikombu Road,
Dindigul-624 004,
Dindigul District.

4.The Special Tashildar-LA,
National Highways-209(By-pass),
1st Floor, Sakthi Complex,
Opp., to Krishna School,
Oddanchatram-624 619,
Dindigul District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to re-determine the compensation in accordance with the First Schedule to the RFCTLARR Act in view of applicability of such compensation benefits thereunder to land acquisitions made under the provisions of National Highways Act 1956, in compliance with sub-



Section (3) of Section 105 of RFCTLARR Act and in terms of Para 4.6 (iii) (a) and (b) of the Comprehensive Guidelines issued by the Government of India in No.NH-11011/30/2015-LA dated 28.12.2017 and to pass an award re-determining compensation in respect of land acquired from the petitioners, along with interest under Section 72 r/w Section 80 of the RFCTLARR Act within the period that may be stipulated by this Court.

For Petitioners	: Mr.M.Ajmal Khan for M/s.Ajmal Associates
For Respondents 1, 2 & 4	: Mr.R.Suresh Kumar Government Advocate
For Respondent No.3	: Mr.Arul Vadivel @ Sekar Standing Counsel

W.P(MD) .No.24052 of 2018:

1.S.K.Rajasekaran
2.K.Boomi
3.A.O.Muniyandi
4.P.Rajamani
5.N.K.Santhakumari (alias) Santha Solarajan .. Petitioners

Vs.

1.The Special District Revenue Officer(Land Acquisition),
(Competent Authority-LA under NH Act),
National Highways-49,
Collector Office Complex,
Ramanathapuram-623 503.

2.The Project Director,
National Highways Authority of India,
Project Implementation Unit,
No.1, 2nd Floor, Subramaniapuram 3rd Street,
Karaikudi,
Sivagangai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the 1st respondent to re-determine the compensation in accordance with Section 105 (3) of the RFCTLARR Act and in terms of Para 4.6 (iii) (a) and (b) of the Comprehensive Guidelines issued by the Government of India dated 28.12.2017 and to pass an award re-determining compensation in respect of land acquired from the petitioners with interest within the period that may be stipulated by this Court.

For Petitioners	: Mr.M.Ajmal Khan for M/s.Ajmal Associates
For Respondent No.1	: Mr.R.Suresh Kumar Government Advocate



For Respondent No.2 : Mr.Arul Vadivel @ Sekar
Standing Counsel

COMMON ORDER

The issues involved in both the writ petitions are common and hence they are taken up together, heard and disposed of through this common order.

2. The petitioners in both the writ petitions have sought for the issue of writ of mandamus to direct the respondents to re-determine the compensation as per the guidelines issued by the Government of India dated 28.12.2017 and determine the compensation in accordance with the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'the New Act').

3. The lands belonging to the petitioners are situated at Oddanchatram village and Nelmudikarai Village respectively. In the case of the petitioners in W.P(MD).No.14914 of 2020, the requisition was made by the Highways Department to the State Government for acquiring lands to lay Oddanchatram by-pass road in Dindigul District. Accordingly, the Central Government through notification dated 17.07.2008, authorised the District Revenue Officer, Dindigul to be the competent authority to perform the functions under the National Highways Act, 1956 (hereinafter called as 'the Act'). Accordingly, notification was published in the Gazette under Section 3 A (1) of the Act on 15.02.2012. The same was published in the newspapers on 05.04.2012. The subsequent notification under Section 3 D (1) of the Act was published on 31.08.2012 and it was gazetted on 06.09.2012. Thereafter the competent authority proceeded to initiate compensation proceedings under Section 3 G of the Act and the award was passed on 30.12.2013.

4. Insofar as the petitioners in W.P.(MD).No.24052 of 2018 is concerned, the Gazette notification under Section 3A(1) of the Act was published on 29.03.2012 and it was published in the local daily on 01.06.2012. Thereafter the Gazette notification under Section 3D (1) of the Act was published on 02.01.2013 and it was published in the local daily on 23.02.2013. Thereafter, the award proceedings were conducted under Section 3(G) of the Act and the competent authority passed the award on 23.08.2014.

5. The common ground that has been taken by the petitioners is that no amount was deposited before the Competent Authority for Land Acquisition (CALA) before 31.12.2014. Therefore, according to the petitioners, on the coming into force of the guidelines issued by the Government of India dated 28.12.2017, they are entitled for determination of compensation under the 'New Act' as per Clause 4.6 (iii)(a)(b). Hence the present writ petitions have been filed for a direction to the respondents to re-determine the compensation under



the 'New Act' and to pay the same to the petitioners.

6. The first respondent has filed a counter affidavit in both the writ petitions. A stand has been taken to the effect that the State Government had followed their own procedure in depositing the compensation amount before the Competent Authority for Land Acquisition (CALA). A Further stand has been taken to the effect that the petitioners are not entitled for the re-determination of compensation and at the best, the petitioners can only file an application before the Arbitrator (District Collector) under Section 3 G(5) of the Act and claim for enhancement of compensation.

7. Insofar as the counter affidavit filed in W.P.(MD).No.24052 of 2018 is concerned, the Special District Revenue Officer has taken a stand that the compensation amount has been deposited in the respective Bank as on 30.11.2014 and a sum of Rs.3,75,85,580/- (Rupees Three crores seventy five lakhs eighty five thousand five hundred and eighty only) was available in the CALA account. Therefore, it is stated in the counter affidavit that the petitioners are not entitled for the benefit under the 2017 guidelines issued by the Government of India.

8. Insofar as the Highways Department is concerned, they have filed a counter affidavit in W.P.(MD).No.14914 of 2020 to the effect that the entire amount pertaining to Oddanchatram village was available in the Bank account of CALA as early as on 06.01.2014 and therefore, the Highways Department cannot be found fault with if the State Government has followed a different procedure while depositing the compensation amount.

9. Insofar as the counter affidavit filed by the Highways Department in W.P(MD).No.24052 of 2018 is concerned, a specific stand has been taken to the effect that the total compensation amount of Rs.15,28,82,897/- (Rupees Fifteen crores twenty eight lakhs eighty two thousand eight hundred and ninety seven only) was available with CALA as on 31.12.2014 and therefore the petitioners are not entitled for claiming the benefits under the 2017 guidelines issued by the Government of India.

10. Heard Mr.M.Ajmal Khan, learned Senior Counsel appearing for the petitioners, Mr.Arul Vadivel @ Sekar, learned Standing Counsel appearing for the NHAI and Mr.R.Suresh Kumar, learned Government Advocate appearing for the other respondents.

11. The only issue that arises for consideration in the present case is as to whether the petitioners are entitled to the benefits conferred under the 2017 Guidelines issued by the first respondent. For proper appreciation, the relevant Clause in the Guidelines is extracted hereunder:-



"4.6. Date of determination of market value of land

(i)...

(ii)...

(iii). By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013, shall be applicable to the NH Act, 1956, with effect from 01.01.2015. As such, the following is clarified:

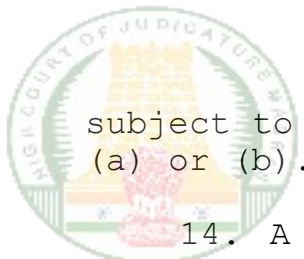
(a). All cases of Land Acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.

(b). In cases, where the land acquisition process was initiated and award of compensation under Section 3G had also been announced before 01.01.2015 but the full amount of Award had not been deposited by the acquiring agency with the CALA, the compensation amount would be liable to be determined in accordance with the First Schedule with effect from 01.01.2015.

(c). In cases, where the process of land stood completed (i.e. Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the CALA, and compensation paid to the land owners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process would be deemed to have been completed and settled. Such cases would not re-opened."

12. When the New Act came into force, Section 105 (3) of the Act provided that the Central Government by Notification can direct any of the provisions of the New Act with respect to determination of compensation in accordance with the First Schedule, to be applied even to land acquisition cases falling under the Enactments specified under the IV Schedule. One of the Enactment that has been mentioned under the IV Schedule is the National Highways Act.

13. Keeping this in mind, the first respondent issued the necessary Guidelines dated 28.12.2017 and provided for the applicability of the New Act for determination of compensation



subject to the same coming within the parameters of Clause 4.6 (iii) (a) or (b).

14. A careful reading of Clause 4.6 (iii) (a) shows that the New Act can be applied for determination of compensation if the award has not been announced till 31.12.2014 or where the award has been announced but the compensation has not been paid in respect of majority of the land holdings as on 31.12.2014. This Clause will not apply to the case of the petitioners, since the award has been passed under Section 3 G of the Act on 30.12.2013 and 23.08.2014 respectively.

15. Insofar as the Clause 4.6 (iii) (b) is concerned, it will apply to cases where the award has been passed before 01.01.2015, but the full award amount has not been deposited by the Acquiring Agency with CALA. It has to be seen if this clause will apply to the case of the petitioners.

16. Insofar as the petitioners in W.P.(MD).No.14914 of 2020 is concerned, it pertains to Oddanchatram village. In this case, the acquisition proceedings were carried out by the District Revenue Officer who was appointed as the competent authority by the Central Government. The award was passed under Section 3 (G) of the Act on 30.12.2013. The NHAI has taken a stand that a total sum of Rs.16,76,55,000/- (Rupees Sixteen crores seventy six lakhs and fifty five thousand only) was approved by the Department and whereas the State Government has followed their own procedure in depositing the compensation before the competent authority. Even as on 31.12.2014, there was a balance amount of Rs.2,93,88,279/- (Rupees Two crores ninety three lakhs eighty eight thousand two hundred and seventy nine only) that was available with the competent authority and this amount was more than the compensation amount payable to the petitioners.

17. The first respondent has filed a counter affidavit and even in the said counter affidavit, it is not clear as to when the amount of compensation was deposited with CALA insofar as Oddanchatram village is concerned. It is merely stated in the counter affidavit that the State Government had followed their own procedure in depositing the amount with CALA.

18. The information that has been provided to the petitioners under the RTI Act shows that no amount was deposited before CALA as on 31.12.2014 insofar as Oddanchatram village is concerned.

19. It is clear from the above factual scenario that no compensation was deposited before CALA insofar as Oddanchatram is concerned as on 01.01.2015 and hence the petitioners will be entitled for the benefit under Clause 4.6 (iii) (b) of the 2007 guidelines issued by the Government of India.



20. Insofar as the petitioners in W.P.(MD).No.24052 of 2018 is concerned, a specific stand has been taken by NHAI to the effect that a sum of Rs.3,75,84,580/- (Rupees Three crores seventy five lakhs eighty four thousand five hundred and eighty only) was already available in the account of CALA as on 30.11.2014. The same stand has been reiterated by the first respondent also in the counter affidavit. The learned counsel appearing for NHAI in order to substantiate the stand taken by the NHAI submitted that a sum of Rs.15,28,82,897/- (Rupees Fifteen crores twenty eight lakhs eighty two thousand eight hundred and ninety seven only) was available and whereas the total award amount that was payable was only Rs.13,11,01,580/- (Rupees Thirteen crores eleven lakhs one thousand five hundred and eighty only) and therefore excess amount was available. A reply affidavit has been filed for the rejoinder and it will be relevant to extract paragraph No.3 in the affidavit hereunder:

"3. It is submitted that a deposit of Rs.15,28,82,897/- was available as on 31.12.2014 as per Trichy Baroda Bank Statement. If the entire amount sanctioned toward payment of compensation is deposited immediately on it receipt from the Competent Authority, the NHAI funds could be kept idle. In order to avoid pooling of Government funds in the bank deposit, the funds are being provided considering the balance available in the Bank. So the question of deposit of compensation amount pertaining to Nelmudikarai Village was not deposited before 31.12.2014 does not arise."

21. In the instant case, the crucial question that requires the determination of this Court is as to whether the compensation amount had been deposited with CALA as on 01.01.2015 pertaining to Nelmudikarai village. The information that has been provided by the second respondent under the RTI Act shows that the amount of compensation was actually deposited with the competent authority only on 06.01.2015, 07.01.2015 and 08.01.2015 respectively. It is seen from the Bank statement that a total amount of Rs.13,11,01,580/- (Rupees Thirteen crores eleven lakhs one thousand five hundred and eighty only) was deposited in three installments on those three days. Ultimately, the compensation was paid to the petitioners on 03.06.2015, 12.02.2016, 20.02.2016 and 22.10.2015 respectively. There are absolutely no materials to show that the compensation amount was deposited before CALA on or before 01.01.2015.

22. A ground was taken by the learned counsel appearing on behalf of NHAI and the learned Government Advocate to the effect that the 2017 guidelines cannot have a retrospective effect and the concluded award cannot be reopened. To substantiate this submission,



the learned counsel relied upon the Judgment of this Court in **A.Muthuramalingam v. Project Director and another**, reported in **2019 SCC OnLine Mad 13990**.

23. In the considered view of this Court, this argument made on the side of the respondents is not sustainable. The petitioners could not have sought for re-determination of the compensation if not for the 2017 guidelines. The guidelines itself provides for re-determination of compensation if the case falls under Clause 4.6 (iii)(a)(b). The writ petition was filed immediately in the year 2018 after this guidelines came into effect. Therefore, the petitioners cannot be non-suited on the ground that they are trying to reopen the award or that their claim is hit by laches.

24. In view of the above discussion, there is no doubt in the mind of this Court that the petitioners in W.P.(MD).No.24052 of 2018 are also entitled for re-determination of the compensation in line with Clause 4.6 (iii) (b) of the 2017 guidelines since the award amount has not been deposited by the acquiring agency with CALA before 01.01.2015.

25. In the result, both the writ petitions deserve to be allowed and there shall be a direction to the competent authority-cum-District Revenue Officer (Land Acquisition), Dindigul District and Ramanathapuram District respectively to re-determine the compensation in accordance with the first schedule of the 'New Act', after affording opportunity to the petitioners and the Highways Department and pass an award within a period of three months from the date of receipt of a copy of this order.

26. Accordingly, both the writ petitions are allowed with the above directions. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Competent Authority-cum-District Revenue Officer,
(Competent Authority-LA under NH Act),
Collector's Office Complex,
Dindigul - 624 004,Dindigul District.

2.The Divisional Engineer,
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Project Implementation Unit,
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+2 CC to M/s.C.ARULVADIVEL, Advocate (SR-23441& 22443[F] dated
22/07/2021)

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-23421 & 23423[F] dated
22/07/2021)

+1 CC to M/s.GP (SR-23875[F] dated 26/07/2021)

ORDER MADE IN

**W.P(MD)Nos.14914 of 2020
and 24052 of 2018
22.07.2021**

KMK (CO)
TR(02.08.2021) 9P 12C