



BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 23.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD)No.17654 of 2019

and W.M.P. (MD) No.14118 and 14121 of 2021

(Through Video Conferencing)

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East India Corporation Ltd.,
Represented by its Managing Director,
Meenakshi

... Petitioner

Vs.

1.Principal Secretary to Government
Government of Tamil Nadu
Fort St. George,
Chennai 600 009.

2.Additional Chief Secretary/Commissioner of
Land Administration,
Ezhilagam
Chepauk, Chennai.

3.District Collector,
Dindigul District,
Dindigul

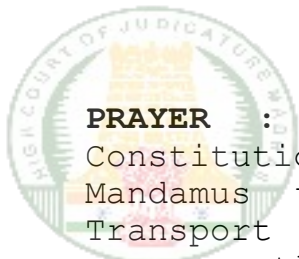
4.District Revenue Officer,
Dindigul Collectorate Building,
Dindigul 624 004.

5.Revenue Divisional Officer/Land Acquisition Officer,
Sub Collector Office Road,
Dindigul 624 001.

6.The Special Tahsildar (Land Acquisition)
Karur-Dindigul Broadgauge line Unit no.III
Dindigul.

7.General Manager,
Southern Railway Headquarters,
Park Town
Chennai 600 003.

... Respondents



PRAYER : Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the Government order in G.O.(Ms) No.28 Transport (I.1) Department dated 05.03.2019 and quash the same and consequently direct the respondents to pass an appropriate Government order including the additional amount of compensation as provided under Section 23(1-A) of Land Acquisition Act 1894.

For Petitioner :Ms.N.Krishnaveni
Senior Counsel for
Mr.P.Thiyagarajan

For Respondents :Mr.M.Lingadurai for R1 to R6
Government Advocate (Civil)

Mr.S.Manohar for
Mr.A.Haja Mohideen for R7&R8

ORDER

The present writ petition questions the legality of the Government order in G.O.Ms.No. 28 Transport (I.1) Department dated 05.03.2019 and the petitioner is also seeking for a consequential relief for a direction to the respondents to calculate the compensation as provided under Section 23 (1-A) of the Land Acquisition Act, 1894 (hereinafter referred to as 'the 1894 Act) and issue a fresh Government order.

2. This case has a checkered history. According to the petitioner company, the lands belonging to the petitioner company measuring almost an extent of one acre was taken possession in the year 1984. Acquisition proceedings were initiated in the year 1987 to acquire a larger portion of lands for formation of a broad gauge railway line. The 4(1) notification that was issued on 24.02.1987 lapsed by operation of law in the year 1990. Thereafter fresh acquisition proceedings were commenced in the year 1990. The 4(1) notification that was issued on 24.12.1990 became a subject matter of challenge before this Court in W.P.No.7766/1992. During the pendency of the writ petition, this Court suggested that some negotiation can take place and a compensation can be fixed and paid to the petitioners therein.

3. The Railways wrote a letter to the second respondent stating that the extent of one acre and 60635 sq. ft. situated at Adiyanuthu Village is not required for the Railways and the acquisition proceedings insofar as these lands are concerned can be dropped. On receipt of the letter, the Government passed a G.O. to the effect that the acquisition proceedings lapsed.

4. In the meantime, the Tahsildar, Dindigul issued notice to

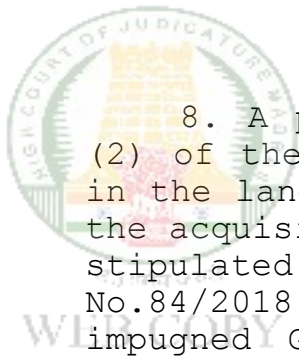


the petitioner and there was some exchange of notices, wherein, the petitioner claimed damages to the tune of Rs.10 crores and also called upon the respondents to deliver possession of the property.

5. Since the representation made by the petitioner was not considered, the petitioner approached this Court and filed W.P.(MD) No.1389/2014 seeking for a direction to the respondents to consider the representation and the same was ordered by this Court on 19.06.2014. Since this order was not complied with, a contempt petition was filed in Cont.P.No.570/2015. This Court, after taking into consideration the fact that the lands were taken possession and the petitioner was not paid any compensation, directed the respondents to deposit a sum of Rs.10 crores. It was informed to this Court that the amount has been deposited before the Revenue Divisional Officer, Dindigul. This Court directed the Revenue Divisional Officer, Dindigul to deposit the amount in a nationalized bank until further orders. Since the amount was deposited, the contempt petition was closed.

6. Even at this stage, there was no land acquisition proceedings initiated nor the petitioner was paid any compensation, but, however, the petitioner had already lost possession of the lands. Therefore, the petitioner once again filed a writ petition in W.P.(MD) No.10757/2016 for a direction to the respondents to initiate land acquisition proceedings and complete the process within the time stipulated by the Court. The petitioner also filed W.P.(MD) No.10758/2016 for a direction to the respondents to pay a sum of Rs.10 crores with accrued interest to the petitioner, pursuant to the same being deposited on the orders passed in the contempt petition.

7. This Court took up both the writ petitions for hearing and insofar as W.P.(MD) No.10757/2016 is concerned, this Court directed the respondents to commence and complete the acquisition proceedings under the Tamil Nadu Acquisition of Lands for Industrial Purpose Act, 1997 (hereinafter referred to as 'the 1997 Act') within a period of one year from the date of receipt of a copy of the order and the petitioner was also directed to cooperate with the respondents for completing the acquisition proceedings. In view of this order, the other writ petition that was filed by the petitioner in W.P.(MD) No.10758/2016 claiming for compensation was closed. The petitioner was aggrieved by the closure of the writ petition in W.P.(MD) No.10758/2016 and hence, preferred an appeal in W.A.(MD) No.150/2017. This writ appeal was allowed by a judgment dated 25.04.2017 and the petitioner was permitted to withdraw Rs.10 crores along with accrued interest by imposing a condition that this amount will be adjusted as against the compensation that will be determined and paid to the petitioner on conclusion of the land acquisition proceedings. Pursuant to the same, the petitioner had also withdrawn the amount.



8. A paper publication was made on 23.12.2017 under Section 3 (2) of the 1997 Act seeking for objections from persons interested in the lands sought to be acquired. Since there was no progress in the acquisition proceedings and it was not completed within the time stipulated by this Court, the petitioner filed Cont.P.(MD) No.84/2018. During the pendency of this contempt petition, the impugned G.O., came to be passed, wherein, the draft award of Rs.10,22,82,598/- was approved and there was a further direction to the third respondent to recover the excess amount of Rs.48,65,576/- from the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

9. Heard the learned Senior counsel for the petitioner, the learned Government Advocate appearing on behalf of the respondents 1 to 6 and the learned counsel appearing on behalf of the respondents 7 and 8.

10. The 7th and 8th respondents have filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

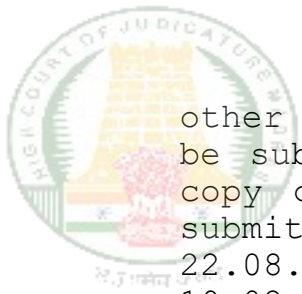
"With reference to para no.11 to 19 of the affidavit, I submit that the land acquisition proceedings in G.O. has been issued by the Principal Secretary to Government, Transport Department, Chennai, as per the G.O.(Ms) No.28 dated 05.03.2019. Following is the compensation to be paid to M/s.East India Corporation Ltd., Madurai. The amount of Rs.10,00,00,000/- (Rupees ten crores only) has been paid to the land owner on 10.05.2017, considering the interest part for the period between 14.05.2017 to probable date of passing the Award 05.03.2019 is Rs.71,48,174/-. Hence, excess amount of Rs.48,65,576/- has to be recovered from M/s.East India Corporation Ltd., Madurai, as per the G.O. Railway authorities has to pay the damages/rent for the land for the period entered on the portion of the land upto the date of publication of 3 (2) notice.

8.With reference to para no.20 of the affidavit, I submit that the damages/rent for the period between 07.06.1990 to 22.12.2017 has been worked out and the same was forwarded to the District Collector, Dindigul for confirming the amount. But it was returned back from the District Collector, Dindigul stating that damages/rent has to be calculated by Railways with intimation to them. Damages/rent calculation is sent to competent authority for sanction. The account section has returned the proposal to submit with following details.

(I) Breakup details of advertisements charges of Rs.2,00,000/-

(II) Breakup details for establishment charges of Rs.1,48,30,977/-

<https://hcservices.ecourts.gov.in/hcservices> Also encumbrance, legal opinion charges and



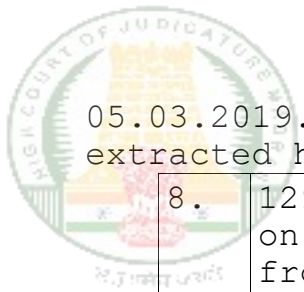
other charges etc., related with the land case etc. may be submitted. For the advertisement charges, the rate, copy of paper cutting of the advertisement etc., to be submitted. Hence RDO/DG was advised vide ltr. Dated 22.08.2019, 11.10.2019, 26.11.2019, 14.01.2020, 19.02.2020, 10.03.2020, 09.05.2020, 08.08.2020, 09.11.2020 & 10.02.2021 to submit above details so as to process for payment of damage/rent. But as on date reply yet to received. Hence railway is making all efforts to process damage/rent to petitioner. After obtaining the sanction, the amount will be paid to the Land Owner M/s.East India Corporation Ltd., Madurai."

11. The main issue that arises for consideration is as to whether the compensation was determined as per the provisions of the 1894 Act by taking into consideration the requirements as provided under Section 23 (1-A) of the Act.

12. The 1997 Act specifically provides under Section 7(6) of the Act that in determining the amount of compensation, the Collector shall be guided by the provisions contained under Sections 23 and 24 of the 1894 Act. Therefore, this Court has to examine as to whether the compensation determined satisfied the provisions of Sections 23 and 24 of the 1894 Act. For proper appreciation Section 23(1-A) is extracted hereunder:

"(1-A) In addition to the market value of the land, as above provided, the Court shall, in every case, award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

13. In the present case, even though the petitioner claims that the possession of the lands were taken in the year 1984, it is an admitted fact over which there is no dispute that the lands were taken possession and handed over to the Railways on 07.06.1990. The date of taking possession of the lands becomes important for the purpose of calculating the compensation under Section 23(1-A). It is seen from the records that the District Collector, Dindigul, through proceedings dated 08.01.2016, while forwarding the proposal had calculated the compensation that would be payable if the lands are acquired. In the said proposal, it has been clearly stated that it must be calculated from the date of taking possession ie., from 07.06.1990 up to the date of passing of the award, which was fixed as 30.06.2016, since the approval has to be granted by taking into consideration the compensation payable as on that date. At this stage, the respondents have properly understood the scope of Section 23(1-A). The entire problem arose when the award was passed on



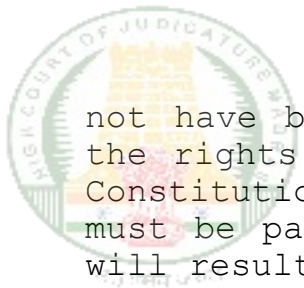
05.03.2019. For proper appreciation, S.No.8 in the award is extracted hereunder:

8.	1296 Additional amount on Market value on land value (ie., Rs.4,75,95,648.51) from the late date of publication of 3 (2) notice ie., 22.12.2017 to the date of passing award ie., on 05.03.2019 (i.e., from 22.12.2017 to 05.03.2019 - 439 days) Rs.4,75,95,648.51 x 12/100 x 439/365)	Rs.68,69,421.27.
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14. The above column that has been extracted pertains to the additional amount of market value of the land calculated at the rate of 12% per annum on such market value. While making this calculation, Section 23(1-A) becomes relevant. It is clear from the said provisions that it has to be calculated from the date of publication of the notification or from the date of taking possession of the lands, whichever is earlier till the date of passing of the award. In the present case, the date of taking possession of the lands was on 07.06.1990. The date of publication of Section 3(2) notice under the 1997 Act was on 22.12.2017. Therefore, as per Section 23(1-A), the date of taking possession was earlier and the same should have been taken into consideration, while calculating the additional amount of market value. Instead it has been calculated from the date of the publication of the notification. As a result of the same, the amount of compensation payable to the petitioner gets substantially reduced. On the face of it, such a calculation goes against the provisions of Section 23 (1-A) of the 1894 Act.

15. The learned counsel for the Railways submitted that while this Court passed an order in W.P.(MD) No.10757/2016, there was a direction to the effect that the respondents must commence and complete the acquisition proceedings under the 1997 Act. Since the acquisition itself was commenced only in the year 2017, the respondents were perfectly right in calculating the award. The learned counsel submitted that in the present case, the award is covered by the orders passed by this Court in the earlier writ petition.

16. This Court is not in agreement with the said submissions made by the learned counsel on behalf of the Railways. This Court had merely directed the acquisition proceedings to be commenced and completed under the 1997 Act. That does not mean that the compensation will be payable to the petitioner only from the date of issuance of the notification under the Act. This is an unfortunate case, where the possession was taken in the year 1990 and after several directions issued by this Court, the acquisition commenced only in 2017. Therefore, this Court never meant that the period between 1990 up to 2017 must be given a go by. Such an order could



not have been passed by this Court, since it will directly affect the rights of the petitioner guaranteed under Article 300-A of the Constitution of India. A person who is deprived of his property must be paid the appropriate compensation, failing which, the same will result in expropriation.

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17. In view of the above, this Court is of the considered opinion that the calculation of the additional amount to the market value of the land was not made in accordance with Section 23(1-A) of the 1894 Act. To that extent, the award stands vitiated and requires the interference of this Court.

18. The impugned Government order dated 05.03.2019 was based on the award that has been held to be bad by this Court and therefore, the impugned Government order also requires the interference of this Court.

19. In the result, the impugned Government order in G.O.Ms.No. 28 Transport (I.1) Department dated 05.03.2019 is hereby quashed. The calculation that has been made at S.No.8 in the award dated 05.03.2019 with regard to the additional market value of the land is also set aside. There shall be a direction to the 5th respondent, namely, the Revenue Divisional Officer and Land Acquisition Officer to once again calculate the additional market value in accordance with Section 23(1-A) of the 1894 Act by taking into consideration the period from the date on which the possession was taken till the date of the award, namely, from 07.06.1990 up to 05.03.2019. This exercise shall be completed by the 5th respondent within six weeks from the date of receipt of a copy of this order. The 5th respondent shall give an opportunity to the petitioner and the 7th and 8th respondents before passing the award. The fresh award shall be communicated to the petitioner and a copy of the same shall also be sent to the first, 7th and 8th respondents. The first respondent, on receipt of the award, shall pass a fresh Government order within a period of six weeks from the date of receipt of the award from the 5th respondent.

20. This writ petition is accordingly allowed with the above directions. No costs. Consequently connected Miscellaneous Petitions are closed.

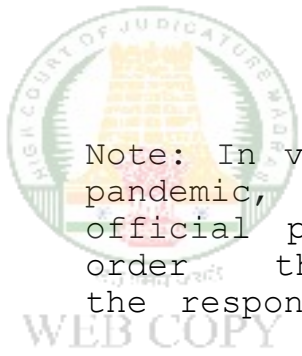
Sd/-

Assistant Registrar (CS-III)

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/ /2021

Sub Assistant Registrar(CS)



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 Principal Secretary to Government
Government of Tamil Nadu
Fort St. George,
Chennai 600 009.
 - 2.The Additional Chief Secretary/Commissioner of
Land Administration,
Ezhilagam
Chepauk, Chennai.
 - 3.The District Collector,
Dindigul District,
Dindigul
 - 4.The District Revenue Officer,
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Sub Collector Office Road,
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 - 6.The Special Tahsildar (Land Acquisition)
Karur-Dindigul Broadgauge line Unit No.III
Dindigul.
 - 7.The General Manager,
Southern Railway Headquarters,
Park Town, Chennai 600 003.
- +1 CC to M/s.S.MANO HAR, Advocate (SR-20066[F] dated 24/06/2021)
- +1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-20067[F] dated 24/06/2021)

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23.06.2021

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