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W.P(MD)Nos.18081 of 2020 and 19497 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :01.03.2021

PRONOUNCED ON : 23 .03.2021

CORAM

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

W.P(MD) No.18081 of 2020 and 19497 of 2019

and

W.M.P(MD)Nos.12498, 15074 &15075 of 2020

and 15935 of 2019

W.P(MD)No.18081 of 2020

K.Kavitha

.. Petitioner

Vs

1.The Special District Revenue Officer,
(Land Acquisition National Highways),
Madurai.

2.The Project Director,
The Department of National Highways,
Surya Towers, 2nd Floor,
K.K.Nagar, Madurai.

3.P.Pandi

4.V.Elango

.. Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, calling for the records relating to the ipmugned order of the 1st respondent in Na.Ka.No.946/2020/A1, dated 23.09.2020 and quash the same and pay the entire compensation amount for acquisition of land in S.No.47/5A & 47/5B at Thamaraipatti village, Madurai district to the petitioner.

For Petitioner

: Mr.H.Arumugam

For R1

: Mr.M.Raja Rajan

Additional Government Pleader

For R2

: Mr.C.Arul Vadivel @ Sekar

Standing Counsel

For R3

: Mr.S.Vijayasethupathi

For R4

: Mr.R.Anand

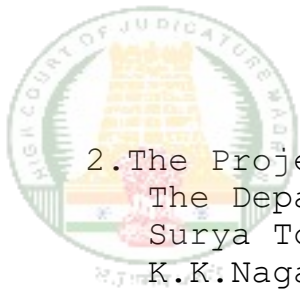
W.P(MD)No.19497 of 2019

P.Pandi

.. Petitioner

Vs

1.The District Collector,
Madurai district,
Madurai.



2.The Project Director,
The Department of National Highways,
Surya Tower 2nd Floor,
K.K.Nagar, Madurai.

3.The District Revenue Officer (Land Acquisition)
Madurai district,
Madurai.

4.K.Kavitha

5.Janab R.Raja Mohamed

6.S.Ramu

7.V.Ilango

.. Respondents

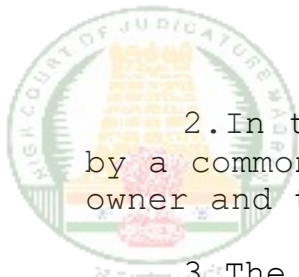
(R7 is impleaded vide order of this court
dated 10.11.2020 in WMP(MD)No.23624 of 2019)

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the official respondents to pass award and to provide adequate compensation to the petitioner on par with the 4th to 6th respondents from the acquisition of land situated in new S.No.47/5(A), 47/5(B) situated in Tamaraipatti village, Madurai district.

For Petitioner	:Mr.S.Vijayasethupathy for Mr.K.K.Mahesh Raja
For R1 & R3	: Mr.M.Raja Rajan Additional Government Pleader
For R2	: Mr.C.Arul Vadivel @ Sekar Standing Counsel
For R4	: Mr.H.Arumugam
For R7	: Mr.R.Anand
For R5 and R6	: No appearance

COMMON ORDER

The above two writ petitions are in relation to the subject property claiming ownership and tenancy rights respectively. As far as the writ petition in W.P(MD)No.18081 of 2020 is concerned, the writ petitioner is the owner of the subject property and according to her that she is rightly entitled to be paid compensation pursuant to the acquisition proceedings of the authority and as far as the other writ petition in W.P(MD)No.19497 of 2019 is concerned it is filed by the cultivating tenant claiming separate compensation as person interested in the property.



2. In the said circumstances both writ petitions are disposed of by a common order in consideration of *inter se* claims as between the owner and the cultivating tenant.

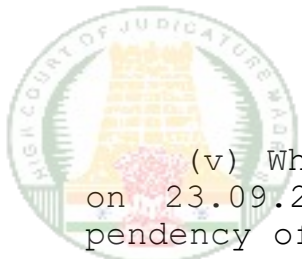
3. The facts as stated in W.P(MD)No.18081 of 2020 are briefly narrated herein under:

(i) The land measuring an extent to 2.17 Acres situated in Survey No.47/5A and 47/5B at Thamaraipatti Village, Madurai District, originally belonged to one Rajalakshmi Ammal, who sold the same to one Janab A.Raja Mohammed and his son Ramu by way of registered sale deed dated 15.12.2015. As purchaser of the property they in turn had sold the same to the petitioner and her son one K.Balakumar through five registered sale deeds dated 29.12.2015. After the purchase of the property the petitioner and her son have been in peaceful possession and enjoyment of the property and the revenue records have also been mutated in their favour correspondingly.

(ii) According to the petitioner that Rajalakshmi Ammal through whom the vendor of the petitioner had purchased, had been cultivating the land on her own for several years and the adangal would also confirm the same. After the purchase of the property by the vendor of the petitioner, there was factually no cultivation in the property due to shortage of water. The land was also classified in adangal as 'Tharisu'. In the year 2018 there was initiation of acquisition proceedings under the National Highways Act and at that point of time, the 3rd respondent approached the petitioner claiming himself to be a cultivating tenant of the land and requested the petitioner not to dispute his tenancy to enable him to receive a percentage of the compensation from the Government. According to the petitioner that since there was factually no cultivating tenancy at all, the request of the 3rd respondent was not acceded to by her.

(iii) Apart from the 3rd respondent, the 4th respondent has also approached the petitioner stating that he had entered into an agreement for making over the lands by the 3rd respondent in his favour through an unregistered deed dated 08.07.2010 for a whopping consideration of Rs.46,00,000/-. According to the petitioner that the unregistered document had been created to make a claim against the Government and to illegally enrich themselves by demanding payment of compensation as cultivating tenant.

(iv) The 3rd respondent in furtherance of his fraudulent claim has approached this Court in W.P(MD)No.19497 of 2019, seeking to issue a writ of mandamus directing the official respondents to pass an award and provide compensation to him by recognising him as a cultivating tenant. The said writ petition (WP(MD)No.19497 of 1997) is a part of this common order, as stated in the preamble to this order.



(v) While matters stood thus, the 1st respondent passed an order on 23.09.2020 informing the petitioner herein that due to the pendency of the above writ petition filed by the cultivating tenant, namely, the 3rd respondent raising a dispute as to the payment of compensation, the amount so determined towards the compensation would be deposited in the District Court. Challenging the said order dated 23.09.2020 passed by the 1st respondent, the petitioner is before this Court.

4.Mr.H.Arumugam, learned Counsel appearing for the petitioner would vehemently submit that the claim of respondents 3 and 4 is absolutely without any basis and unfounded. The claim of these respondents that they have been cultivating tenants at some of point time had not been supported by any revenue records. In any case, it is open to them to prove the case of tenancy before the official respondents and at the same time, they cannot prevent the authority from disbursing the compensation payable to the petitioner, who is admittedly the owner of the acquired property.

5.According to the learned Counsel, even assuming that the private respondents are entitled to be considered as cultivating tenants in terms of Section 3(G)(2) of the National Highways Act, wherein 10% compensation is provided for the cultivating tenant but the earmarked percentage is independent of the compensation payable to the owner of the property under the provisions of the National Highways Act. Therefore, under no circumstances, the claim of the petitioner can be entangled with the claim of the tenant and on that account it is not open to the authority to refuse to pay the compensation.

6.The learned Counsel would also draw attention of this Court to the rule in position in this regard which reads under:

3G. Determination of amount payable as compensation :-

(1)

(2) Where the right of user or any right in the nature of easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section(1) of or that land."

7.According to the learned Counsel that withholding of the compensation payable in view of the above provision is completely without any justification. The so-called tenant the 3rd respondent herein had deliberately instituted the above writ petition with malicious intention to stop the payment of compensation to the petitioner and to force a kind of settlement on the petitioner for his illegal enrichment. Unfortunately, the authority fell prey to



the machinations of the 3rd and 4th respondents and unjustly withheld the compensation amount payable to the petitioner as on date.

8.The learned Counsel would also submit that the authority on mistaken notion without proper application of mind as to the nature of dispute has deposited the amount with the Principal District Court as if the dispute relating to the apportionment of compensation amount between the petitioner and the 3rd respondent.

9.The learned Counsel in this regard clarified that the so-called dispute is not apportionment of the compensation amount. The controversy is only whether the respondents 3 and 4 have any right to receive compensation as cultivating tenants or not. As far as the claim of the petitioner herein is concerned, it is completely independent of the claim of the private respondents and despite that unfortunately, the authority without proper appreciation of the fact situation has deposited the amount with the Civil Court, needlessly.

10.Mr.S.Vijaya Sethupathi, learned Counsel appearing for the 3rd respondent has also in equal vehemence argued that the 3rd respondent, who is the writ petitioner in W.P(MD)No.19497 of 2019 had been cultivating the subject land for several years and his entire family and forefathers were involved in the cultivation of the subject property. Therefore, the authority is under a legal obligation to consider his claim also along with the claim of the writ petitioner in W.P(MD)No.18081 of 2020 and if any settlement of compensation to the writ petitioner, without considering the tenant's claim alongside, the 3rd respondent herein would be left in lurch, denied of compensation. In any event, the authority has not passed any orders in respect of the representation submitted by the 3rd respondent and therefore, the 3rd respondent was constrained to file independent writ petition in W.P(MD)No.19497 of 2019 and a direction may be issued to consider his claim along with the claim of this writ petitioner.

11.As far as the official respondents are concerned, a counter affidavit has been filed and the only objection of the authority as reflected in the counter affidavit is the pendency of W.P(MD) No.19497 of 2019. It is also mentioned in the counter affidavit that there is a *status quo* order passed on 10.12.2020 and therefore, no further action has been initiated in the subject matter. It is also stated in the counter affidavit that in view of the pendency of the dispute, the 1st respondent has ordered to deposit the compensation and the same has been deposited in the Principal District Court, Madurai in LOP.No.136 of 2020

12.Mr.C.Arul Vadivel @ Sekar appeared on behalf of respondent No.2 in both the writ petitions and R.Anand, learned Counsel appeared for respondent No.4 in W.P(MD)No.18081 of 2020 and



respondent No.7 in W.P(MD)No.19497 of 2019 and there is no representation for respondent Nos.5 and 6 in W.P(MD)No.19497 of 2019.

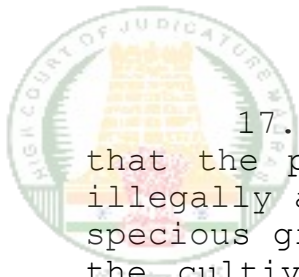
13.This Court considered the submission of the learned Counsel appearing for the respective parties.

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14.As far as the issues in the writ petitions are concerned, two independent rights and claims are the subject matter of adjudication before this Court.

15.As far as W.P(MD)No.18081 of 2020 is concerned, the writ petitioner is the owner of the land, which has not been disputed at all. In fact, the 3rd respondent, who is the writ petitioner in other writ petition has been claiming his right only as cultivating tenant and he has nowhere in the affidavit disputed the ownership of the petitioner and her son in respect of the subject property. Therefore, there is no confusion or dispute or controversy in regard to the ownership of the property.

16.As far as the claim of the 3rd respondent, who is the writ petitioner in other writ petition Mr.Pandi is concerned, his entire claim has been premised on the status of he being the cultivating tenant of the property for several decades through his forefathers and hence, he is entitled to be treated as a cultivating tenant and paid admissible compensation in terms of the provisions of the National Highways Act. Subsequent claim by the 4th respondent is due to the fact that the leasehold agreement right enjoyed by the 3rd respondent has been made over to him and therefore, arrayed as 4th respondent in W.P(MD)No.18081 of 2020. In consideration of these two claims, what this Court fails to understand is that as to why the authority needlessly mixed up the claim of the cultivating tenants with that of the claim of the owner claiming compensation payable to her. As rightly contended by the learned Counsel for the owner, her right is independent of the claim of the cultivating tenant and therefore, there was no legal compulsion or obligation for the 1st respondent to deposit the amount in the Principal District Court, as if the dispute was in relation to the apportionment of compensation in terms of Section 3H (4) of the National Highways Act, 1956. As distinguished by the learned Counsel for the petitioner, there is a clear difference between claiming compensation as a cultivating tenant and claiming compensation as co-owners. In this case, the authority miserably failed to appreciate the claim of the petitioner namely, owner of the property as her claim stands completely independent of the claim of the cultivating tenant and in that circumstances, the compensation ought to have been paid to her without the same being withheld. Unfortunately both the claims have been treated as if one dependant on other. The authorities in this regard have completely fell into error on misconception of the scope and nature of the claims



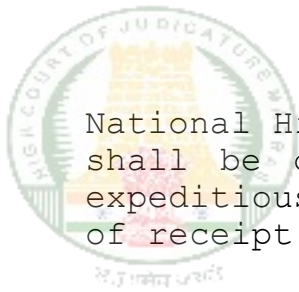
17. In the said circumstances, this Court is of the clear view that the petitioner in W.P(MD)No.18081 of 2020 has been unjustly, illegally and unreasonably denied the payment of compensation on the specious ground that there was a claim pending with the authority by the cultivating tenant. In respect of the cultivating tenancy, the same has been seriously disputed for the reason that the claim of the tenancy has not been supported by any material what soever. This Court, however does not wish to enter into the controversy in that regard. It is always open to the cultivating tenants namely the 3rd and 4th respondents herein to establish their status and pursue their remedies with the authority independently and separately. At the same time, the cultivating tenants cannot misuse the pendency of their writ petition, which has been filed for an innocuous mandamus prayer and prevent the owner from claiming compensation due to her or prevail upon the authority to withhold the compensation payable to the owner.

18. The attempt by the tenants to interlink their claim with that of the claim of the writ petitioner in W.P(MD)No.18081 of 2020 intended to achieve a collateral purpose in furtherance of their personal agenda. The attempt by the so-called cultivating tenants to prevent the authority from disbursement of the compensation payable to the writ petitioner, namely the owner of the property, amounted to illegitimate arm-twisting method employed by the tenants in order to achieve their malicious and vicious ends. This Court does not wish to make any other comments on their claims, as this Court would leave it to the authority to consider the claim of the tenancy independently for the purpose of compliance of Section 3G(2) of the National Highways Act.

19. As far as the claim of the owner herein is concerned, she is entitled for payment of the compensation and therefore, the impugned order passed by the 1st respondent is liable to be interfered with as being illegal and void.

20. For the above said reasons, the writ petition in W.P(MD) No.18081 of 2020 is allowed and the order of the 1st respondent impugned herein in Na.Ka.No.946/2020/A1, dated 23.09.2020 is hereby set aside and the 1st respondent is directed to withdraw the amount deposited in Principal District Court in LAOPNo.136 of 2020 to make the payment to the petitioner forthwith without any further delay. The 1st respondent in this regard is directed to comply with the above direction within a period of four weeks from the date of receipt of a copy of this common order.

21. As far as the writ petition in W.P(MD)No.19497 of 2019 is concerned, the same is disposed of, leaving it open the petitioner to approach the 1st respondent in W.P(MD)No.18081 of 2020 for establishing his right as cultivating tenant for the purpose of compensation payable to him, in terms of the provisions of the



National Highways Act and on such representation being made the same shall be considered by the authority and orders to be passed as expeditiously as possible, not later than three months from the date of receipt of a copy of this common order.

22.In the result,

(i) W.P(MD)No.18081 of 2020 is allowed in full; and

(ii) W.P(MD)No.19497 of 2019 is disposed on the above terms.

No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

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/ /2021

Sub Assistant Registrar(CS)

To

1.The District Collector,
Madurai district,
Madurai.

2.The Special District Revenue Officer,
(Land Acquisition National Highways),
Madurai.

3.The Project Director,
Department of National Highways,
Surya Towers, 2nd Floor,
K.K.Nagar, Madurai.

4.The District Revenue Officer(LA)
Madurai District, Madurai

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-8060[F] dated 02/03/2021)

+1 CC to M/s.SPL GP (SR-13310[F] dated 24/03/2021)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-13469[F] dated 24/03/2021)

W.P(MD) No.18081 of 2020
and 19497 of 2019
. 03.2021

NA(CO)

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