



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM

THE HON'BLE MR.JUSTICE T. S. SIVAGNANAM
and
THE HON'BLE MRS.JUSTICE S.ANANTHI

W.A. (MD) Nos.1338 to 1340 of 2019

Kamarajammal ... Appellant in
W.A. (MD) No.1338/2019

Suyambumarachan ... Appellant in
W.A. (MD) No.1339/2019

Murugan ... Appellant in
W.A. (MD) No.1340/2019

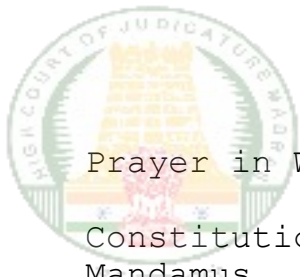
-Vs-

- 1.The District Collector,
Nagercoil, Kanyakumari District.
- 2.The Special District Revenue Officer,
Land Acquisition,
National Highways,
Nagercoil, Kanyakumari District.
- 3.The Project Director,
National Highways Authority of India,
Tirunelveli. ... Respondents in all W.As

Common Prayer: Writ Appeals filed under Clause 15 of Letter Patent against the order dated 04.07.2018 made in W.P.(MD) Nos.19008, 19025 and 19171 of 2017 respectively.

Prayer in WP(MD). 19008/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Mandamus directing the respondents to consider the petitioners representation dated 07.10.2017 and to provide the compensation for the acquisition of his land in Survey No.223/9, situated at Pothaiyadi, Thamaraikulam Village, Kanyakumari Dist for the formation of four lane road NH-47 (Kerala - Tamilnadu Border to Kanyakumari and NH-47B) (Nagercoil to Kavalkinaru) under the Right to Fair Compensation and rehabilitation of the Land Acquisition Act, 2013.



Prayer in WP(MD). 19025/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to consider the petitioners representation dated 09.05.2017 and to provide the compensation for the acquisition of his land in Survey No. 223/1A, Situated at Pothaiyadi, Thamaraikulam Village, Kanyakumari District for the formation of four lane road, NH -47 (Kerala -TamilNadu Border to Kanyakumari and NH- 47B (Nagercoil to Kavalkinaru) under the Right to Fair Compensation and rehabilitation of the Land Acquisition Act, 2013.

Prayer in WP(MD). 19171/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to consider the petitioners representation dated 07.10.2017 and to provide the compensation for the acquisition of his land in Survey NO.223/9, situated at pothaiyadi, Thamaraikulam Village, Kanyakumari District for the formation of four land Road NH- 47 (Kerala- Tamilnadu Border to Kanyakumari and NH- 47B (Nagercoil to Kavalkinaru) under the Right to Fair Compensation and rehabilitation of the Land Acquisition Act, 2013.

For Appellants : Mr.M.Ramu
(In all W.As)

For Respondents : Mr.K.P.Krishnadoss,
(In all W.As) Spl. Govt. Pleader for R1
Mr.Su.Srinivasan for R2 & R3

COMMON JUDGMENT

[Judgment of the Court was made by T. S. SIVAGNANAM, J.,]

These appeals by the Writ Petitioners are directed against the order dated 04.07.2018 made in W.P.(MD)Nos.19008, 19025 and 19171 of 2017 respectively.

2. The identical issue was considered by a Division Bench in W.A.(MD)No.1680 of 2018 [**Gandhimathi Vs The District Collector and others**] [to which one of us (TSSJ) was a party] and by judgment dated 24.10.2019, solatium and interest were granted. The operative portion of the judgment reads as follows:

"6.The question to be decided would be as to whether the respondent/ National Highways Authority of India can deny solatium, additional amount and interest to the appellant merely because the land acquisition was completed and award was passed on 25.02.2013, much prior



to 01.01.2015.

7.This issue is no longer res integra in view of the decision of the Hon'ble Supreme Court in **Union of India and another v. Tarsem Singh and other (Civil Appeal No.7064 of 2019)**. In the said decision it was pointed out that even in acquisitions that took place under the National Highways Act and the 1952 Act, the notification of 2015 under the new Acquisition Act of 2013 makes solatium and interest payable in cases covered by both Acts. The Hon'ble Apex Court referred to Section 113, which was inserted into Act 30 of 2013 and pointed out that the insertion of said provision and issuance of Ordinance was to apply the principles contained in **Nagpur Improvement Trust v. Vithal Rao [(1973) 1 SCC 500]** as the Central Government has considered it necessary to extend the benefits available to landowners generally under the 2013 Act to similarly placed landowners whose lands are acquired under the 13 enactments specified in the Fourth Schedule. Further, it is pointed out that the National Highways Act being one of the aforesaid enactments should flow to the persons, whose lands have been acquired. Further, it was pointed out that it is clear even the Government is of the view that it is not possible to discriminate between landowners covered by the Act 30 of 2013 and the landowners covered by the National Highways Act, when it comes to compensation to be paid for lands acquired under either of the enactments. After referring to the said decision as well as the judgment of the Division Bench of this Court in **T.Chakrapani v. Union of India (supra)**, which was quoted with approval, it was held that solatium and interest is payable even in cases that arise between 1997 and 2015. The above legal position has clearly set out the entitlement of the landowners to solatium and interest even though the acquisition was completed and notification was issued and award was passed under 3G(3) of the National Highways Act, 1956 on 25.02.2013 well before coming of Act 30 of 2013.

8.One more argument was put forth by the learned Standing Counsel appearing for the National Highways Authority of India that the Writ Court has granted liberty to the appellant to approach appropriate authority and it would be for the appellant to do so.

9.We do not accept the said contention. The landowner cannot be treated in such a fashion, especially when the land is taken away from landowner by way of compulsory acquisition. The Hon'ble Supreme Court having settled the legal position, we are of the clear view that appellant, the erstwhile landowner, need not be driven to any forum



and the National Highways Authority of India should disburse the solatium and interest on the compensation fixed by the arbitrator, who has enhanced the compensation determined by the Special District Revenue Officer, considering the prolonged litigation.

10. One more fact, which has weighed in our mind to take such a decision is because few of the landowners, whose lands were also acquired for the very same NH 47 and NH 47 B have been dealt with under Act 30 of 2013. Prima facie it appears to be a discrimination, though landowners have dragged the national highways Authority of India to litigation and the land acquisition proceedings were delayed and by then Act 30 of 2013 came into force and the benefits of Act 30 of 2013 have to be necessarily extended to them by the National Highways Authority of India. Therefore, this is a vital point to come to a conclusion that the appellant should not be driven to the authorities by making an application etc., but the National Highways Authority should voluntarily come forward to compute the solatium and interest and settle the same.

11. Obviously it goes without saying that the solatium will be calculated by applying the provisions under Land Acquisition Act, 1894 and the appellant cannot say the acquisition should be treated under Act 30 of 2013.

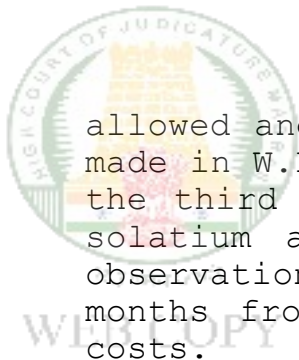
12. For the above reasons, the Writ Appeal is allowed and the order of the learned Single Judge dated 04.07.2018, made in W.P.(MD) No.16825 of 2017 is set aside and the third respondent National Highways is directed to disburse the solatium and interest in terms of the above observation and direction issued by us within a period of three months from the date of receipt of a copy of this order. No costs."

3. The learned counsel appearing for the respondent National Highways submitted that he would like to place certain arguments in these appeals. We are not inclined to accede to such a request because for the very same acquisition proceedings covered under the very same award, another land owner viz., Gandhimathi, was successful before this Court in the above appeal.

4. Though on earlier occasions, the respondent National Highways took a stand in the Contempt Petition that special leave petition has been filed as against the judgment, subsequently, solatium and interest have been disbursed to Gandhimathi.

5. Thus, we find that there is no distinguish in our view, for us to rehear this matter and take a different decision.

6. Thus, following the above decision, these Writ Appeals are



allowed and the orders of the learned Single Judge dated 04.07.2018 made in W.P.(MD)Nos.19008, 19025 and 19171 of 2017 are set aside and the third respondent National Highways is directed to disburse the solatium and interest to the appellants, in terms of the above observations and direction issued by us, within a period of three months from the date of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS I)

// True Copy //

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Sub Assistant Registrar(CS)

vsm

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 District Collector,
Nagercoil, Kanyakumari District.
- 2.The Special District Revenue Officer,
Land Acquisition,
National Highways,
Nagercoil, Kanyakumari District.
- 3.The Project Director,
National Highways Authority of India,
Tirunelveli.

+1 CC to M/s.SPL GP (SR-18281[F] dated 30/04/2021)

W.A. (MD) Nos.1338 to 1340 of 2019

29.04.2021

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