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W.P. No.12262 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.12262 of 2009 &
M.P.No. 1 of 2009

1.V.Raji
2.V.Vinayagam
3.V.Nandakumar

.. Petitioners

Versus

1.Union of India,
Rep by Secretary,
Ministry of Road Transport and Highways
New Delhi.

2.The Project Director
National Highways Authority of India,
No.8, 29th Cross Street, Indira Nagar
Adyar, Chennai - 20

3.The Special District Revenue Officer
(Land Acquisition) NH4, NH5 & NH45
National Highways Project
Kancheepuram and Thiruvallur District
Kancheepuram

4.The Special Tahsildar (L.A.)
NH4, NH5 & NH45
National Highways Project
Poonammalle
Chennai - 56

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for
issuance of a Writ of Declaration, declaring the provision of section 3A, 3B,



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3D, 3-G, 3 H(5) and 3-J of the National Highways Act as amended under Act No.16/1997 to be unconstitutional, since it is hit by Article 14 of the Constitution of India, as the petitioners lands is deprived of the enhance compensation benefits under the Parent Act, Land Acquisition Act 1894 (1 of 1894) and individual notice under Section 5 and 9 of the Land Acquisition Act and just equivalent compensation which the petitioners are legally entitled in additional to the market value under Section 23(1-A), Solatium under Section 23(2) and interest as provided under Section 28 etc of the Land Acquisition Act 1894.

For Petitioner : M/s.David Tyagaraj

For R1 : Mr.J.Madhanagopal

For R2 : M/s.N.Kalaivani
for M/s. Wilson Associates

For R3 & R4 : Mr.D.Ravichander
Special Government Pleader

ORDER

This Writ Petition has been filed seeking for the issuance of a Writ of Declaration, declaring the provision of section 3A, 3B, 3D, 3-G, 3 H(5) and 3-J of the National Highways Act as amended under Act No.16/1997 to be unconstitutional, since it is hit by Article 14 of the Constitution of India, as the petitioners lands is deprived of the enhance compensation benefits under the Parent Act, Land Acquisition Act 1894 (1 of 1894) and individual



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notice under Section 5 and 9 of the Land Acquisition Act and just equivalent compensation which the petitioners are legally entitled in addition to the market value under Section 23(1-A), Solatium under Section 23(2) and interest as provided under Section 28 etc of the Land Acquisition Act 1894.

2. The learned counsel appearing for the petitioners submitted that the petitioners are the owners of the land and building in Survey Nos.14/4B2, 86/1A2, 14/4C2, 14/3A2, 14/4A1 at No.71, Vanagaram Village, Ambattur Taluk, Thiruvallur District. The said land were acquired under the provisions of National Highways Act 1956. After filing the due protest, an award was passed under Section 3G. However, the said award was not communicated to the petitioners. The grievance of the petitioners is that they have paid interest in terms of National Highways Act 1956, but the petitioners are entitled to receive the interest in terms of Land Acquisition Act 1894. Since, the interest was not paid in terms of Land Acquisition Act, the petitioners has filed this Writ Petition.

4. The learned counsel appearing for the petitioners would submit that the issue raised in the present case has already been settled. The Hon'ble Apex Court held that Section 3-J of the National Highways Act is invalid



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and issued a direction to the respective National Highways Authority to pay the compensation in terms of Land Acquisition Act 1984.

5. The learned counsel appearing on behalf of the National Highways Authority did not dispute the fact.

6. Heard the learned counsel appearing for the petitioners and the learned Counsel appearing on behalf of the National Highways Authority and perused the entire materials available on records.

7. The facts in the present case are not in dispute. Admittedly, the petitioners' lands were acquired under the National Highways Act 1956 and the award were also passed in terms Section 3G(1). The grievance of the petitioners in the present petition has already been considered by the Hon'ble Apex Court in **Union of India and Another vs. Tarsem Singh and others** reported in **(2019) 9 Supreme Court Cases 304**. The relevant portion of the order reads as follows:

52. There is no doubt that the learned Solicitor General, in the aforesaid two orders, has conceded the issue raised in these cases. This assumes importance in view of the



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plea of Shri Divan that the impugned judgments should be set aside on the ground that when the arbitral awards did not provide for solatium or interest, no Section 34 petition having been filed by the landowners on this score, the Division Bench judgments that are impugned before us ought not to have allowed solatium and/or interest. Ordinarily, we would have acceded to this plea but given the fact that the government itself is of the view that solatium and interest should be granted even in cases that arise between 1997 and 2015, in the interest of justice we decline to interfere with such orders, given our discretionary jurisdiction under Article 136 of the Constitution of India. We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Sections 23(1-A) and (2) and interest payable in terms of Section 28 Proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3-J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional. Accordingly, appeal arising out of SLP (C) No.9599 of 2019 is dismissed.



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8. A perusal of the above makes it clear that the Hon'ble Apex Court had declared that the provision of the Land Acquisition Act relating to Solatium under section 23(1)A and (2) and interest payable in terms of Section 28(3) will apply to the acquisition made under the National Highways Act and consequently, the provisions of 3-J was declared as unconstitutional, however, the other provisions which are challenged before this Court have not been dealt with. In view of the above, this Court is inclined to extend the benefits in terms of Hon'ble Apex Court order relating to payment of interest and solatium under the Sections 23(1-A), 23(2) and 28 of the Land Acquisition Act 1894 to the petitioners, within a period of twelve weeks from the date of receipt of a copy of this order.

9. With the above direction, this Writ Petition is disposed of. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking order / Nonspeaking order
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M. DHANDAPANI, J.

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To

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