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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
03.03.2022	09.03.2022

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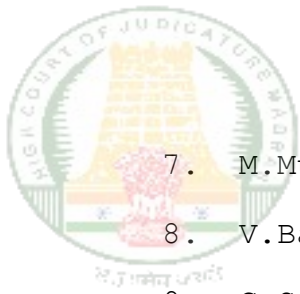
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 28573 OF 2008

1. N.Indrani
2. N.Sreenivasan
3. Dr. N.Subramaniam
4. N.Rajasekaran
5. N.Jayachitra .. Petitioners

- Vs -

1. The Union of India
rep. by Secretary to Government of India
Shipping, Road Transport and Highways Dept.
New Delhi.
2. The State of Tamil Nadu
rep. by the District Collector
Salem District, Salem.
3. The Special D.R.O. (L.A.) &
Competent Authority
NH7 & 46, Salem, Krishnagiri Districts
26, Co-operative Colony, first Cross
Near Manimegalai Hospital
Krishnagiri 635 001.
4. The Special Tahsildar (L.A.), N.H.T.
Salem Unit I, Jagir Ammapalayam
(Vennangudi Munniappan Koil Back Side)
Salem 636 005.
5. The Project Director, Salem
National Highways Authority of India
V.S.A. Vaniga Valagam, Omalur Main Road
Near New Bus Stand, Salem 636 004.
6. The District Superintendent of Police
Salem District, Komarasamy Patty
Salem.



7. M.Murthy
8. V.Bala Gurumurthy
9. G.Subramani
10. I.Ponniah

.. Respondents

(R7 to R10 impleaded as per order dated 08.04.2011
in MP.No.1 of 2010 in W.P.No.28573 of 2008)

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing respondents 1 to 6 to initiate departmental enquiry against all the officials involved in the illegal demolition and dispossession of the lands of the petitioners on 4.11.2008 and direct the 6th respondent to register the FIR based on the complaint lodged by the petitioner in CSR No.239 of 2008 dated 6.11.2008 by the Inspector of Police, Mallur and investigate the complaint within a stipulated time and direct the respondents to pay an adequate compensation of Rs.25 Lakhs to the first petitioner and Rs.5 Lakhs to each of the petitioners 2 to 5.

For Petitioner : Mr. A.Arulmozhi

For Respondents : Mr. M.Karthikeyan for R-1
Mr. G.Krishnaraja for RR-2 to 6
Additional Government Pleader

Mr. Richardson Wilson for
M/s.P.Wilson Associates for R-10

ORDER

The present petition has been filed by the petitioners not only questioning the illegal demolition and dispossession of the petitioners from the lands belonging to the petitioner, but also for initiating departmental action against the officials involved in the said act.

2. It is the case of the petitioners that the lands, including the building, in possession of the petitioners, were acquired by the National Highways for expansion of NH-7 and acquisition proceedings culminated in the passing of the award in favour of the petitioner. It is the further averment of the petitioners that though they have not objected for the



acquisition of the said lands, however, the petitioners had requested the authorities to furnish the valuation of amounts fixed towards the assessment of structures, trees and other amenities along with break-up details. However, the respondents 1 to 4 have not furnished the valuation and assessment requested for by the petitioner, but instead resorted to demolition and dispossession of the superstructure, without following Section 3 (E) of the National Highways Act.

3. It is the further averment of the petitioners that around 4.00 p.m. on 4.11.08, when the 1st petitioner, an aged lady about 58 years and the 2nd petitioner, a deaf and dumb person, were alone in the house, the officials of the Revenue Department had called upon the petitioners at their house along with police personnel and had informed the petitioners that they are going to proceed with the demolition of the house. Though the petitioners informed that no intimation was given regarding the demolition by the respondents by means of a prior notice and that the amount of compensation was also not given to them, without heeding to the wailing cry of the petitioners, they were dragged by brute force by the police personnel, headed by one Sub-Inspector of Police Amsavalli and three other police constables and taken outside the house and lodged in a van, which was driven from the said place. It is the further averment of the petitioners that they were not even allowed to communicate with their family members, let alone have a word with any other persons. It is the further averment of the petitioners that after an hour later, on receipt of a call from the Village Administrative Officer, the petitioners were brought back to the place of stay, only to find that the whole superstructure had been razed down. Except for a few stray things which were scattered around in the mud, much of the valuable belongings of the petitioners were not available, which have been tabulated in the Annexure filed along with the petition. In spite of the petitioners lamentings, the respondents had ridiculed the petitioners that she could make one more complaint about the illegal and inhuman acts and get information under the Right to Information Act. Though the petitioners lodged a complaint, it was registered belatedly on 6.11.08 in CSR No.239/08. It is the further averment of the petitioners that the act of the petitioners in obtaining information under the Right to Information Act had invited the wrath of the officials of the respondents, in and by which the petitioners have been brought to street due to the vengeful execution of power by the respondents. Therefore, left with no efficacious remedy, the present petition has been filed by the petitioners invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.



4. Learned counsel appearing for the petitioners submit that the whole act of the respondents is nothing but an undemocratic act orchestrated against the petitioners, who were helpless women folk at the particular point of time, by the respondent officials, only to wreak vengeance against the petitioners. It is the further submission of the learned counsel for the petitioners that Section 3-E of the Highways Act mandate a particular procedure to be followed before forcible eviction of persons from the premises. However, in the case on hand, there is no compliance of Section 3-E, which fact has been elucidated from the 2nd respondent under the Right to Information Act, where the 2nd respondent has clearly stated that no communication had emanated from the 5th respondent for forcible eviction of the petitioners from the premises.

5. It is the further submission of the learned counsel for the petitioner that the time mandated under the Highways Act for taking forcible possession of the property has not been provided to the petitioner. It is the further submission of the learned counsel that within three days from the date of alleged deposit of the compensation amount, forcible eviction was taken against the petitioners and the above fact is even evident from the counter filed by the 5th respondent. In view of the above, there being non-compliance of the statutory provisions and the petitioners having not been paid the compensation amount and that the belongings of the petitioners were ransacked by the respondents without any regard to its value and necessity, the concerned officers, who had supervised the illegal act should be proceeded with departmentally and suitable relief should be granted to the petitioners.

6. Per contra, learned counsel for the 5th respondent, placing reliance on the counter affidavit, submitted that only on the expiry of the time limit and after obtaining appropriate permission from the 2nd respondent, the superstructure was demolished on 4.11.08 after removing the household articles of the petitioners, as the petitioners refused to remove the household articles and also move out of the house. It is the further submission of the learned counsel that all the items which were removed from the household are in the safe custody of the Village Administrative Officer.

7. It is the further submission of the learned counsel that the petitioners did not cooperate in the valuation process which took place on 1.8.08. Notices were issued on 17.10.08 and 18.10.08 to the petitioners to come and receive the compensation within a period of two days and failure of the petitioners to receive the compensation, in view of the power u/s 3 H(4) of the National Highways Act, the cheque was deposited in the Sub Court



on 31.10.08 and, thereafter, action was taken by the 5th respondent.

8. It is the further submission of the learned counsel that the land acquisition proceedings were proceeded with only on the basis of the consent of the petitioners, but after determination of compensation, the same was refused to be accepted by the petitioners, which clearly shows that the petitioners were only trying to stall the whole proceedings.

9. It is the further submission of the learned counsel that there has been due compliance of the provisions of Section 3-E of the National Highways Act and the case of the petitioner that no permission was obtained from the District Collector for forcible eviction of the petitioners is wholly misconceived and to that end, as sought for by this Court, it is submitted by the learned counsel, that additional counter has been filed detailing the acts done by the 5th respondent in obtaining the requisite permission. Therefore, it is prayed that this Court may dismiss the writ petition.

10. This Court gave its anxious consideration to the submissions advanced on behalf of the learned counsel on either side and also perused the materials available on record.

11. There is no quarrel even from the petitioners relating to the acquisition of their lands by the 5th respondent. The whole crux of the issue raised by the petitioners is only relating to the fact that before forcible eviction of the petitioners, the mandatory provision prescribed u/s 3-E (2) of the National Highways Act has not been followed. For better appreciation of the issue, Section 3-E (2) of the National Highways Act is quoted hereunder :-

"3E - Power to take possession :

(1) Where any land has vested in the central Government under sub section (2) of Section 3D, and the amount determined by the competent authority under Section 3G with respect to such land has been deposited under sub section (1) of Section 3H with the competent authority by the Central Government, the competent authority may, by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of notice.

(2) If any person refuses or fails to comply with any direction made under subsection



receive the compensation amount within two days on receipt of the notice. This is even evident from the counter affidavit filed by the 5th respondent. It is the mandate u/s 3-E (1) that a period of sixty days be given from the date of notice to the person, whose lands have been acquired for the purpose of receiving the compensation, whereinafter, the acquisitioning body is permitted to take possession of the lands in accordance with law. When Section 3-E (1) of the Act had mandated a period of sixty days to the persons, whose lands were acquired, to receive the compensation amount, in the case on hand, the 5th respondent has given only two days time to the petitioners to come and receive the compensation. It is not the case of the 5th respondent that sixty days time was granted to the petitioners to come and receive the compensation amount. That being the case, this Court is at a loss to understand as to the power under which the 5th respondent had shrunk the period to two days from the one provided u/s 3-E (1) of the Act. Further, it is also the stand of the respondents in the counter and that the petitioners did not turn up to receive the compensation amount, which resulted in the amount being deposited in the Sub Court, Salem, on 31.10.08.

15. The 5th respondent relies on the communication of the District Revenue Officer to the District Collector about the non-inclination of the petitioners to receive the amount and the deposit of the amount in the Sub Court, Salem. However, what is curious to note is the fact that the said letter is dated 29.10.08, addressed to the District Collector. But therein, in the said letter, it is found that the amount has been deposited by the 5th respondent with the Sub Court, Salem, on 31.10.08, though the said letter itself has been written on 29.10.08. Two days prior to the date on which compensation has been deposited, the District Revenue Officer was aware of the said fact, which clearly reveals the ingenious act perpetrated by the respondents to deceive and cause harm to the petitioners for reasons best known to them.

16. Further, the letter dated 29.10.08, alleged to have been written by the District Revenue Officer to the District Collector can be deemed only to be a spurious letter, fabricated for the purpose of the present case, or at best, to create records for a later point of time, would be evident from the fact that the District Collector, in the reply to the query made by the petitioners under the Right to Information Act, has categorically stated that he has not received any request for permission for forcible eviction from any of the authorities under his control. The letter obtained by the petitioners under the Right to Information Act stares writ large on the face of the respondents to negate their contention that only after obtaining proper permission from the District Collector as



17. From the abovesaid discussion is it clear that the act of the 5th respondent is wholly illegal and smacks of mala fide intent, for reasons best known to the 5th respondent and such act of the 5th respondent has caused grave harm and prejudice to the petitioners as they have been robbed of the statutory protection granted to them under Section 3-E of the National Highways Act. The high-handed act of the 5th respondent requires to be adequately compensated, else the petitioners cannot be said to have received substantial justice.

19. Pursuant to the order of this Court, the valuables/articles, that were kept in the custody of the Village Administrative Officer by the respondents have been directed to be handed over to the petitioners under due acknowledgment. Further, in case any of the articles/valuables, as shown in the list annexed with the petition is not received by the petitioner, liberty is granted to the petitioner to file appropriate application/petition/representation before the 2nd respondent/District Collector, who shall adjudicate on the same in accordance with law after affording an opportunity of hearing to the petitioners.

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21. The writ petition is disposed of with the aforesaid observations and directions. There shall be no order as to costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

GLN

To

1. Secretary to Government
Shipping, Road Transport and Highways Dept.
Government of India
New Delhi.
2. The District Collector
Salem District, Salem.
3. The Special D.R.O. (L.A.) &
Competent Authority
NH7 & 46, Salem, Krishnagiri Districts
26, Co-operative Colony, first Cross
Near Manimegalai Hospital
Krishnagiri 635 001.
4. The Special Tahsildar (L.A.), N.H.T.
Salem Unit I, Jagir Ammapalayam
(Vennangudi Munniappan Koil Back Side)
Salem 636 005.
5. The Project Director, Salem
National Highways Authority of India
V.S.A. Vaniga Valagam, Omalur Main Road
Near New Bus Stand, Salem 636 004.
6. The District Superintendent of Police
Salem District, Komarasamy Patty
Salem.

+1cc to M/s.A.Arulmozhi, Advocate, S.R.No.15209
+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.15949
+1cc to the Government Pleader, S.R.No.16651

W.P. NO.28573 OF 2008

SS (CO)
SU(23/03/2022)