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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No.21263 of 2011

and

W.M.P.No.1 of 2011

V.Kalyanasundaram

...Petitioner

Vs.

1. The National Highways Authority of India,  
Rep. by its project Director,  
Tiruvallur District, Tamilnadu.
2. The District Collector,  
Thiruvallur District,  
Thiruvallur.
3. The Competent Authority cum  
Special District Revenue Officer (L&A),  
National Highways,  
Kanchipuram & Thiruvallur Districts,  
Poonamallee,  
Thiruvallur District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to fix the compensation at enhanced rate after computing the Solatium and considering the market value in view of the order passed by this Court in W.P.No.15699/2010 etc batch dated 04.03.2011.

For Petitioner : Mr.M.Muthappan

For Respondents: Mr.Yogesh Kannadasan  
Special Government Pleader

O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Mandamus to direct the respondents to fix the compensation at enhanced rate, after computing the Solatium and considering the market value in view of the order passed by this Court in W.P.No.15699 of 2010 etc., batch dated 04.03.2011.



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2.The learned Special Government Pleader takes notice for the official respondents. In view of the limited relief sought for in this petition and on the consent of the learned counsel appearing on either side, this petition is taken up for final disposal.

3.The case of the petitioner is that the petitioner is the owner of the property in Survey No.96/5, New No.96/5A2, situated at Kizhmulalambedu-I Village, Gummidipoondi Taluk, Thiruvallur District, an extent of 258 Sq.meter. The said land comprises of a hulling Rice mill having a 40 H.P. Service connection, drying yard and the labourer's quarters and nearly about 10-15 persons were engaged in the business daily. The 3<sup>rd</sup> respondent decided to acquire the petitioner's land for widening of NH-5 into six lane. Accordingly, the 3<sup>rd</sup> respondent issued notice under Section 3(c) of the National Highways Laws (Amendment) Act, 1997. Thereafter, petitioner made objection and even then, the 3<sup>rd</sup> respondent decided to acquire the said land under the above said Act. Thereafter, the 3<sup>rd</sup> respondent has fixed the compensation without applying any yardstick formulated under the Land Acquisition Act and issued an order directing the petitioner to appear before him within a period of sixty days from the date of receipt of a copy of the said order, for receiving the compensation and directed to hand over the possession of the property in question. However, the higher compensation was not granted in favor of the petitioner as per the Land Acquisition Act. Hence, this writ petition is filed with the above said prayer.

4.The learned counsel appearing for the petitioner submitted that, already the Apex Court in the decision reported in Nagpur Improvement Trust case & anr Vs. Vithal Rao & Ors (Air 1973 Sc 689::1973(1) SCC 500), has held that the land owner is entitled to receive higher compensation as provided under the land Acquisition (Amendment) Act and the petitioner cannot be denied. the benefit of compensation under Land Acquisition (Amendment) Act.

5.On the above contention, this Court heard the learned Special Government Pleader appearing on behalf of the official respondents.

In Nagpur Improvement Trust case & anr Vs. Vithal Rao & Ors (Air 1973 Sc 689::1973(1) SCC 500), the purpose of payment of compensation for the lands acquired was dealt with and the determination of compensation for the lands acquired was one of the important issues, which was deliberated by the Hon'ble Supreme Court and in the said context, the Hon'ble Supreme Court held as under :-

"26. It is now well-settled that the State can make a reasonable classification for the purpose



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of legislation. It is equally well-settled that the classification in order to be reasonable must satisfy two tests: (i) the classification must be founded on intelligible differentia and (ii) the differentia must have a rational relation with the object sought to be achieved by the legislation in question. In this connection it must be borne in mind that the object itself should be lawful. The object itself cannot be discriminatory, for otherwise, for instance, if the object is to discriminate against one section of the minority the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved.

27. What can be reasonable classification for the purpose of determining compensation if the object of the legislation is to compulsorily acquire land for public purposes?

28. It would not be disputed that different principles of compensation cannot be formulated for lands acquired on the basis that the owner is old or young, healthy or ill, tall or short, or whether the owner has inherited the property or built it with his own efforts, or whether the owner is politician or an advocate. Why is this sort of classification not sustainable? Because the object being to compulsorily acquire for a public purpose, the object is equally achieved whether the land belongs to one type of owner or another type.

29. Can classification be made on the basis of the public purpose for the purpose of compensation for which land is acquired? In other words can the Legislature lay down different principles of compensation for lands acquired say for a hospital or a school or a Government building? Can the Legislature say that for a hospital land will be acquired at 50% of the market value, for a school at 60% of the value and for a Government building at 70% of the market value? All three objects are public purposes and as far as the owner is concerned it does not matter to him whether it is one public purpose or the other. Article 14 confers an individual right and in order to justify a classification there should be something which justifies a different treatment to this



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individual right. It seems to us that ordinarily a classification based on the public purpose is not permissible under Article 14 for the purpose of determining compensation. The position is different when the owner of the land himself is the recipient of benefits from an improvement scheme, and the benefit to him is taken into consideration in fixing compensation. Can classification be made on the basis of the authority acquiring the land? In other words can different principles of compensation be laid if the land is acquired for or by an Improvement Trust or Municipal Corporation or the Government? It seems to us that the answer is in the negative because as far as the owner is concerned it does not matter to him whether the land is acquired by one authority or the other.

30. It is equally immaterial whether it is one Acquisition Act or another Acquisition Act under which the land is acquired. If the existence of two Acts could enable the State to give one owner different treatment from another equally situated the owner who is discriminated against, can claim the protection of Article 14.

31. It was said that if this is the true position the State would find it impossible to clear slums, to do various other laudable things. If this argument were to be accepted it would be totally destructive of the protection given by Article 14. It would enable the State to have one law for acquiring lands for hospital, one law for acquiring lands for schools, one law acquiring lands for clearing slums, another for acquiring lands for Government buildings; one for acquiring lands in New Delhi and another for acquiring lands in Old Delhi. It was said that in many cases, the value of the land has increased not because of any effort by the owner but because of the general development of the city in which the land is situated. There is no doubt that this is so, but Article 14 prohibits the expropriation of the unearned increment of one owner while leaving his neighbour untouched. The neighbour could sell his land and reap the unearned increment. If the object of the legislation is to tax unearned increment it should be done throughout the State. The State cannot achieve this object piece meal by compulsory acquisition of land of some owners leaving others alone. If the object



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is to clear slums it cannot be done at the expense of the owners whose lands are acquired, unless as we have said the owners are directly benefited by the scheme. If the object is to build hospitals it cannot be done at the expense of the owners of the land which is acquired. The hospital, schools etc. must be built at the expense of the whole community.

32. It will not be denied that a statute cannot tax some owners of land leaving untaxed others equally situated. If the owners of the land cannot be taxed differently how can some owners be indirectly taxed by way of compulsory acquisition? It is urged that if this were the law it will tie the hands of the State in undertaking social reforms. We do not agree. There is nothing in the Constitution which debars the State from bettering the lot of millions of our citizens. For instance there is nothing to bar the State from taxing unearned increment if the object is to deny owners the full benefit of increase of value due to development of a town. It seems to us, as we have already said, that to accede to the contentions of the appellant and the States would be destructive of the protection afforded by Article 14 of the Constitution. The States would only have to constitute separate acquiring bodies for each city, or Division or indeed to achieve one special public purpose and lay down different principles of compensation.

\* \* \* \* \*

33. In *P. Vajravelu Mudaliar v. Special Deputy Collector Madras* there were two Acts under which the land of an owner could be acquired. The land could have been acquired for various schemes under the Land Acquisition Act, referred to as the Principal Act, in the judgment, and the Amending Act [The Land Acquisition (Madras Amendment) Act, 1961]. This Court observed:

"The land could have been acquired for all the said purposes under the Principal Act after paying the market value of the land. The Amending Act empowers the State to acquire land for housing scheme at a price lower than that the State has to pay if the same was acquired under the principal Act."

The Court examined various justifications for the classifications which were put forth



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by the State, and then concluded:

"From whatever aspect the matter is looked at, the alleged differences have no reasonable relation to the object sought to be achieved. It is said that the object of the Amending Act in itself may project the difference in the lands sought to be acquired under the two Acts. This argument puts the cart before the horse. It is one thing to say that the existing differences between persons and properties have a reasonable relation to the object sought to be achieved and it is totally a different thing to say that the object of the Act itself created the differences. Assuming that the said proposition is sound, we cannot discover any differences in the people owning lands or in the lands on the basis of the object. The object is to acquire lands for housing schemes at a low price. For achieving that object, any land falling in any of the said categories can be acquired under the Amending Act. So, too, for a public purpose any such land can be acquired under the Principal Act. We, therefore, hold that discrimination is writ large on the Amending Act and it cannot be sustained on the principle of reasonable classification. We, therefore, hold that the Amending Act clearly infringes Article 14 of the Constitution and is void."

(Emphasis Supplied)

6. From the above ratio laid down by the Constitution Bench of the Hon'ble Supreme Court, it is amply evident that it is immaterial whether the land is acquired under the Land Acquisition Act or any other Acquisition Act, but what is pertinent is the fact that even if there exists two Acts, it would not enable the State to give one owner whose lands are acquired under a particular Act, a different treatment from another equally situated owner whose lands are acquired under another Act. So long as the acquisition is concerned, irrespective of the Act, every owner is entitled to equal compensation and therefore, the mere fact that acquisition has been done under the National Highways Act would not disentitle the petitioner to receive higher compensation under the Land Acquisition (Amendment) Act.

7. The case on hand squarely falls within the parameters laid down by the Hon'ble Apex Court in Nagpur Improvement Trust case & anr Vs. Vithal Rao & Ors. and the petitioner is entitled



to have the compensation computed on the basis of the Land Acquisition (Amendment) Act.

8. In Such a backdrop of the legal position, learned Special Government Pleader appearing on behalf of the official respondents submitted that the petitioner's representation dated 29.07.2011, will be considered by the respondents within a particular time that may be fixed by this Court.

9. Considering the submissions of the learned counsel for the petitioner and the stand of the respondents, this Court is inclined to direct the 2<sup>nd</sup> respondent to consider the petitioner's representation, dated 29.07.2011, in the light of order passed by the Apex Court in Nagpur Improvement Trust case (supra), within a period of twelve weeks from the date of receipt of a copy of this order.

10. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar (CS VII)

//True Copy//

Sub Assistant Registrar

Psa

To

1. The project Director,  
The National Highways Authority of India,  
Tiruvallur District, Tamilnadu.
2. The District Collector,  
Thiruvallur District,  
Thiruvallur.
3. The Competent Authority cum  
Special District Revenue Officer (L&A),  
National Highways,  
Kanchipuram & Thiruvallur Districts,  
Poonamallee,  
Thiruvallur District.

+lcc to Mr. M. Muthappan, Advocate, S.R.No.18613

+lcc to the Government Pleader, S.R.No.19153

W.P. No.21263 of 2011

NMI (CO)

RGA(12/04/2022)