



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P. No.6068 of 2009 &
W.M.P.No. 1 of 2009

S.Prakash

...Petitioner

Vs.

1. Union of India,
Rep by Secretary,
National Highways Department,
New Delhi.
2. The Secretary to Government,
Government of India,
Ministry of Shipping (Road Transport and Highways)
New Delhi.
3. National Highways Authority of India,
Rep. by its Project Director,
In charge of NH4,
Trivallur District,
Tamil Nadu.
4. The District Collector,
(Arbitrator Trivallur District)
Tamil Nadu.
5. The competent Authority (L.A),
NH-4, Viding for Nerkundram Village,
Poonamalle,
Trivallur District,
Chennai-600 056.
6. Special Tahsildar (L.A.)
NH 4,
Poonamallee,
Trivallur District,
Tamil Nadu.

...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 3-G, 3 H(5) and 3-J of the National Highways Act as amended under Act No.16/1997 to be



declared unconstitutional, since it is hit by Article 14 of the Constitution of India, as the petitioner lands are been deprived of the enhance compensation benefits under the Parent Act, Land Acquisition Act 1894, (1 of 1894) wherein just and equivalent compensation which the petitioner 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 & R2 : Mr.Karthikeyan
Senior Panel Counsel

For R3 : Mr.Adityaraj
for M/s. Wilson Associates

For R4 to R6 : Mr.D.Tamilselvi
Additional Government Pleader

O R D E R

This Writ Petition has been filed seeking for the issuance of a Writ of Declaration, declaring the provision of section 3-G, 3 H(5) and 3-J of the National Highways Act as amended under Act No.16/1997 to be declared unconstitutional, since it is hit by Article 14 of the Constitution of India, as the petitioner lands are being deprived of the enhanced compensation benefits under the Parent Act, Land Acquisition Act 1894, 91 of 1894, wherein just and equivalent compensation which the petitioner 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 are payable.

2.The learned counsel appearing for the petitioner submitted that the petitioner is the owner of the land and building in Old Survey No.22/2B1A part, New Survey No.22/2B1A2 at Nerkundram Village, abetting Poonamalle High Road, bearing Door.No.1/53, Poonamalle High Road, Nerkundram, Chennai. The said land was 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 petitioner. The grievance of the petitioner is that they have paid interest in terms of National Highways Act 1956, but the petitioner is 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 petitioner has filed this Writ Petition.



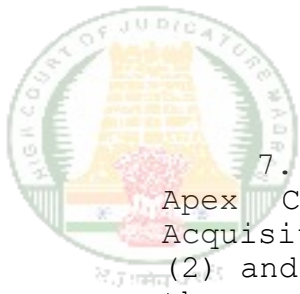
3.The learned counsel appearing for the petitioner would submit that the issue raised in the present case has already been settled. The Hon'ble Apex Court held that Section 3-J of the National Highways Act is invalid and issued a direction to the respective National Highways Authority to pay the compensation in terms of Land Acquisition Act 1984.

4.The learned Senior Panel Counsel appearing on behalf of the National Highways Authority did not dispute the fact.

5.Heard the learned counsel appearing for the petitioner and the learned Senior Panel Counsel appearing on behalf of the National Highways Authority and perused the entire materials available on records.

6.The facts in the present case are not in dispute. Admittedly, the petitioner's lands were acquired under the National Highways Act 1956 and the award was also passed in terms Section 3G(1). The grievance of the petitioner 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 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.



7. 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 petitioner, within a period of twelve weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

Psa/Anu

To

1. The Secretary,
Union of India,
National Highways Department,
New Delhi.
2. The Secretary to Government,
Government of India,
Ministry of Shipping (Road Transport and Highways)
New Delhi.
3. The Project Director,
National Highways Authority of India,
In charge of NH4,
Trivallur District,
Tamil Nadu.
4. The District Collector,
(Arbitrator Trivallur District)
Tamil Nadu.



5. The competent Authority (L.A),
NH-4, Viding for Nerkundram Village,
Poonamalle,
Trivallur District,
Chennai-600 056.

WEB COPY

6. Special Tahsildar (L.A.)
NH 4,
Poonamallee,
Trivallur District,
Tamil Nadu.

+1cc to M/s.P.Wilson Associates, Advocate, S.R.No.9136

+2cc to M/s.David Tyagaraj, Advocate, S.R.No.8860

W.P.No.6068 of 2009

JP-II (CO)
RGA (01/03/2022)