



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	PRONOUNCED ON
01.03.2022	07.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.4149 OF 2004
AND
W.M.P.NO.31520 OF 2019

Tmt.R.Pushpa

... Petitioner

.Vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Social Welfare Department,
Fort St. George,
Chennai - 600 009.

2. The State of Tamil Nadu,
Rep. by Secretary to Government,
Law Department, Fort St. George,
Chennai - 600 009.

3. The District Collector,
Tirunelveli.

4. The Special Tahsildar (ADW),
Sankarankoil.

5. The Secretary to Government,
Adi Dravidar Welfare Department,
Fort St. George,
Chennai - 600 009.

... Respondents

(R-5 impleaded vide order of Court
dated 13.08.14 in W.M.P.No.176 of 2014)

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of declaration declaring the payment of solatium and interest provided under Sections 7 (2) and 12 of Tamil Nadu Act 31/1978 as illegal, unconstitutional, discriminative and violative of Articles 14 and 19 of the Constitution of



India and, consequently, direct the respondents to provide solatium at 30%, additional amount of compensation at 12% and interest at 9% for the first year from the date of Section 4 (1) Notification and thereafter at 15% till date of payment as provided under Sections 23 (1A), 23 (2) and 28 of the Land Acquisition Act 1 of 1984 insofar as it relates to the petitioner's land in S. No.201/6A and 217/1A of Appaneri Village, Sankarankoil Taluk are concerned.

For Petitioner : Mr.A.Sivaji

For Respondents : M/s.D.Tamilselvi
Additional Government Pleader

ORDER

The present petition has been filed by the petitioner to provide solatium at 30%, additional amount of compensation at 12% and interest at 9% for the first year from the date of Section 4 (1) Notification and thereafter at 15% till date of payment as provided under Sections 23 (1A), 23 (2) and 28 of the Land Acquisition Act 1 of 1984 insofar as it relates to the petitioner's land in S. No.201/6A and 217/1A of Appaneri Village, Sankarankoil Taluk by declaring the payment of solatium and interest provided under Sections 7 (2) and 12 of Tamil Nadu Act 31/1978 as illegal, unconstitutional, discriminative and violative of Articles 14 and 19 of the Constitution of India.

2. It is the case of the petitioner that pursuant to the Notification u/s 4 (1) of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (for short 'State Act') issued in the gazette on 25.1.2000, award was passed on 6.3.2000 in Award No.12/99-2000. The land acquisition officer fixed the compensation at Rs.25,000/- per acre, which was challenged by way of appeal in CMA No.14/2000, wherein the Sub Court, Sankarankoil, enhanced the compensation to Rs.7,000/- per cent together with solatium and 6% interest, though the petitioner sought for awarding compensation on the basis of Central Act 1 of 1984, as amended by Act 68/1984. However, the said prayer was not acceded to by the court below. However, being aggrieved by the said order, the Government filed appeal in S.A.No.1904/2002, which is still pending and the land owners were permitted to withdraw the amount deposited by the Government.

3. It is the further averment of the petitioner that the procedure providing for statutory benefits under the State Act is not valid in law and the same is violative of Article 14 and other provisions of the Constitutions, as the State Act do not



provide for statutory benefits as provided under the Central Act, which had provided for higher solatium and interest at 30% and 12% respectively. Therefore, the present petition is filed by the petitioner challenging Section 7 (2) and 12 of Act 31/1978.

4. Learned counsel appearing for the petitioner submitted that the benefits provided under the State Act cannot be below the statutory benefits provided under the Central Act. It is the submission of the learned counsel that only for the purpose of speeding up the acquisition, the State Act has been enacted and other than the same, there is no other requirement for enacting the State Act. That being the case, the statutory benefits provided under the Central Act ought to be provided under the State Act as well. However, the benevolent legislation, insofar as the land owners were not taken note of by the State Government, which has deprived the land owners of their rightful compensation.

5. Learned counsel for the petitioner, however, fairly conceded that while the Division Bench of this Court had held the State Act ultra vires the Constitution, which on challenge before the Hon'ble Supreme Court, was reversed and the Hon'ble Supreme Court upheld the State Act in the case of State of T.N. - Vs - Ananthi Ammal (1995 (1) SCC 519). However, it is the submission of the learned counsel for the petitioner that while deciding the validity of the State Act, the provisions of the State Act were not specifically considered by the Hon'ble Apex Court.

6. It is the further submission of the learned counsel that the enhanced solatium and interest came into force by enactment of the Central Act on 24.9.1984. However, the Division Bench held the State Act ultra vires prior to the amendment made to the Central Act and, therefore, the present plea has to be decided afresh, as in the appeal before the Hon'ble Supreme Court as well, which was filed prior to the amendment to the Central Act, this plea was not raised and, definitely, the same warrants reconsideration by this Court.

7. It is the further submission of the learned counsel for the petitioner that the decision of the Larger Bench of the Hon'ble Apex Court in Nagpur Improvement Trust & anr. - Vs - Vithal Rao & Ors. (AIR 1973 SC 689 :: 1973 (1) SCC 500) was not placed for consideration before the Hon'ble Supreme Court while deciding the validity of the State Act.

8. Learned counsel for the petitioner also highlighted that the Hon'ble Supreme Court in Savitri Cairae - Vs - U.P. Avas Evam Vikas Parishad & Anr. (2003 (6) SCC 25), has followed the



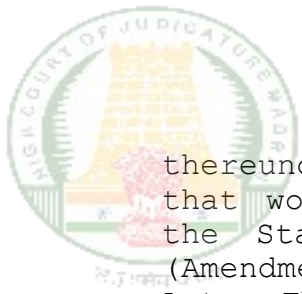
ratio laid down in Nagpur Improvement Trust case (supra) and accordingly held that the land owners are entitled for solatium as provided under the Land Acquisition (Amendment) Act. It is therefore the submission of the learned counsel for the petitioner that the petitioner is entitled to the statutory benefits provided under the Central Act and to that extent the decision of the Hon'ble Supreme Court in the aforesaid decisions would aid the case of the petitioners for getting enhanced compensation.

9. It is the further submission of the learned counsel for the petitioner that pursuant to the acquisition proceedings, till date the possession has not been taken by the respondents and there are no beneficiaries and the acquisition proceedings was sheer misuse of power. It is the further submission of the learned counsel that mere paper possession will not save the acquisition proceedings in the absence of physical possession being taken by the respondents. In the absence of physical possession being taken, the entire land acquisition proceedings gets lapsed.

10. In the above backdrop, it is the submission of the learned counsel for the petitioner that not only Section 7 (2) and 12 of the State Act is challenged as ultra vires, but it is also submitted that the acquisition proceedings has lapsed in the absence of physical possession being taken and if the Court is not inclined to accede to the aforesaid submissions, it is alternatively submitted that the petitioner is entitled for higher compensation in terms of the Central Act on the basis of the decisions of the Hon'ble Apex Court supra.

11. Per contra, learned Addl. Government Pleader appearing for the respondents, relying upon the counter filed on behalf of respondents 3 and 4, submitted that though the lands were allotted to the beneficiaries, however, the beneficiaries have not put the land to use inspite of grant of patta and, therefore, necessary action has been initiated against the beneficiaries. It is the further submission of the learned Addl. Government Pleader that though it is the stand of the petitioners that they have claimed for higher statutory benefits before the Sub Court in the LAOP proceedings, which, it is averred, has not been considered affirmatively, then the course open to the petitioner is to file the counter claim in the pending S.A.No.1904/02 and the petitioner cannot claim the enhanced statutory compensation by filing the present writ petition.

12. It is the further submission of the learned Addl. Government Pleader that the validity of the State Act has been upheld by the Hon'ble Supreme Court, including the Rules made



thereunder and that being the undisputed position, the benefits that would be available to the petitioner would be only under the State Act and the benefits under the Land Acquisition (Amendment) Act as the Special Act will prevail over the General Act. Therefore, the learned Addl. Government Pleader prays this Court to dismiss the petition.

13. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

14. It is not in dispute that the lands of the petitioner were acquired under Tamil Nadu Act 31/1978. It is also not in dispute that the Hon'ble Supreme Court had upheld the validity of the said enactment. However, it is to be pointed out that the provision of law, which has been put in issue before this Court was not deliberated by the Hon'ble Supreme Court. Only the State Act, in its overall form, had been upheld by the Hon'ble Supreme Court and specific provisions therein were not the subject matter in issue before the Hon'ble Supreme Court. In the above backdrop, the contention of the respondents that the State Act had been upheld by the Hon'ble Supreme Court and, therefore, the petitioners cannot claim the relief of higher compensation under the Central Act does not merit acceptance.

15. It is the admitted case of the parties that the lands were acquired by the respondents for which compensation was paid under the State Act. It is the specific contention of the petitioner that even before the Sub Court, the petitioner had claimed for compensation to be computed under the Central Act, which would be beneficial to the petitioner, however, the Sub Court had not considered the said contention. Appeal against the enhanced award is pending consideration before the Madurai Bench of this Court. Though it is the case of the respondents that the relief to the petitioner lies before the Madurai Bench and not before this Court and, therefore, this petition does not deserve consideration, however, the said contention cannot be appreciated for the simple reason that the writ petition has been filed in February, 2004 and the Madurai Bench had been functional only from 24th July, 2004. Merely because the file has not been transferred from the principal seat to the Madurai Bench would not render the writ petition bad for consideration before this Court as it is to be pointed out that the Principal Bench can consider matters, which fall within the jurisdiction of the Madurai Bench. Further, on the date when the petition was filed, the Madurai Bench was not functional and that being the case, the error on the part of the Registry in not transferring the matter to Madurai Bench cannot be put against the petitioner.



16. Though the present writ petition has been filed challenging the validity of Sections 7 (2) and 12 of the State Act, which necessitates this Court to place the matter before a Bench of larger composition, however, in view of the fact that the issue pertains to payment of compensation under the State Act vis-a-vis the Central Act stands covered by the decision of the Hon'ble Supreme Court in Nagpur Improvement Trust case (supra), this Court is of the considered view that reference to a Larger Bench is not warranted on the facts and circumstances of this case and in appropriate case, this Court would consider the prayer of vires of the aforesaid provisions that have been put in issue in the present case.

17. In Nagpur Improvement Trust case (supra), 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 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.

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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 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



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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 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.



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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 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)

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18. 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 one Acquisition Act or another 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 different treatment from another equally situated owner who is discriminated against, as otherwise the same would disentitle protection to the aggrieved person guaranteed under Article 14 of the Constitution.

19. The case on hand squarely falls within the four corners of the aforesaid decision. The Hon'ble Supreme Court had upheld the validity of the State Act only insofar as acquisition for the purpose of Harijan Welfare Schemes. But that would not give protection to the State to acquire it under different terms, from the one provided under the Land Acquisition Act, as acquisition is common, be it for one purpose or other purpose, so long as it is for a public purpose. That being the undisputed position, the grievance of the petitioner that she is entitled for the statutory benefits as provided under the Central Act, on the basis of the decision of the Hon'ble Supreme Court in Nagpur Improvement Trust case (supra) is well founded and the aforesaid decision and the relief granted therein squarely stands attracted to the case of the petitioner herein.

20. For the reasons aforesaid, this Court, without touching upon the declaratory relief as sought for by the petitioner, in exercise of its extraordinary and inherent jurisdiction under Article 226 of the Constitution of India, moulds the relief and directs the respondents 3 to 5 to give the benefit of higher compensation as provided under the Land Acquisition (Amendment) Act to the petitioner as per the decision of the Hon'ble Supreme Court in Nagpur Improvement Trust case (supra).

21. The writ petition is disposed of with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar



1. The Secretary to Government,
Social Welfare Department,
Fort St. George,
Chennai - 600 009.
2. The Secretary to Government,
Law Department,
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Adi Dravidar Welfare Department,
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Chennai - 600 009.

+1cc to Mr.A.Sivaji, Advocate, S.R.No.15726
+1cc to the Government Pleader, S.R.No.15844

W.P.NO.4149 OF 2004

KV(CO)
PBS/18/03/2022