



W.P.No.6001 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2022

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.6001 of 2020

and

W.M.P.No.7177 of 2017 & W.M.P.No.6759 of 2022

1. K.Elangovan
2. A.Kalichami
3. M.Mahalakshmi
4. R.Shanmugapriya
5. L.Subitha

. . . Petitioners

Vs.

1. The Secretary to Government
State Highways Department,
Secretariat,
Fort St.George
Chennai
2. The Chief Engineer (Highways)
The Chief Engineer office,
Chennai



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3. The Superintending Engineer (Highways)

The Superintending Engineer Office,
Projects Circle,
Coimbatore

4. The Assistant Divisional Engineer,
Highways, Projects Sub Division,
Tiruppur.

5. The Chief Engineer,
The Chief Engineer Office,
Southern Railway,
Chennai.

6. The District Collector,
Tiruppur,
Tiruppur District.

7. The Land Acquisition officer/The District Revenue Officer,
Tiruppur,
Tiruppur District.

. . . Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration or any other writ or order or direction in the nature of Writ of Declaration declaring the notice issued by 7th respondent under Section 19(2) of Tamil Nadu Highways Act dated 04.12.2019 vide proceedings in No.Ka.8608/2016/Uu1 on the filed of 7th respondent is unconstitutional, null, void.



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For Petitioner : Mr.R.Nilakandan,
Additional Advocate General
assisted by Mr.Yogesh Kannadasan,
Special Government Pleader R1, R6 & R7
: Mr. P.T.Ramkumar for R5.

ORDER

The present petition has been seeking to declare the impugned notice dated 04.12.2019 issued by the 7th respondent under Section 19(2) of Tamil Nadu Highways Act vide impugned proceedings in No.Na.Ka.8608/2016/Uu1 on the file of 7th respondent as null and void.

2. It is the case of the petitioners that they are the land owners of the land and building situated at No.15, Velampalayam Village, Tiruppur, Tiruppur District and they are in possession of the said property, wherein the cultivation is being carried out by them. The above said property was acquired by the respondents under Tamil Nadu Highways Act 2001 pursuant to which, the 7th respondent had issued the impugned notice dated 04.12.2019



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to the petitioners under Section 19(2) of the Act for determining compensation amount. Challenging the said notice, the present petition has been filed.

3. Learned counsel for the petitioners submits that though the above said lands were acquired under the Tamil Nadu Highways Act, 2001, however, the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 had come into force on 01.01.2014 and the Section 105-A, which was inserted to preclude its application to Tamil Nadu State Highways Act was declared unconstitutional by the Division Bench of this Court. The impugned notice was issued under Section 19(2) of the Highways Act and even after a lapse of five years from the date of commencement of the Act, 2013, the award having not been passed, the acquisition stands lapsed. Therefore, the notice impugned in this Writ Petition is not sustainable and the same is liable to be quashed.

4. Learned Additional Advocate General appearing for the official respondents relying upon the Counter Affidavit submits that initially, notice



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under 15(2) of the Act was issued to the land owners, pursuant to which, few of the land owners filed their objections and subsequently, notice under Section 19(2) of the Act was issued to the petitioners. Without challenging the earlier notice issued under Section 15(2) of the Act, challenging the subsequent notice issued under Section 19(2) of the Act is not sustainable and therefore no interference is called for.

5. This Court gave its anxious consideration to the arguments advanced on the either side and perused the materials available on record.

6. It is borne out by record that the subject lands were acquired under the Tamil Nadu Highways Act. However, pending the acquisition, Act, 2013 came into force. Though Section 105-A was inserted to make Act, 2013 inapplicable to the Tamil Nadu Highways Act, however, the said section was struck down by the Division Bench of this Court and, thereafter, provisions and benefits provided under Act, 2013 was made applicable to Tamil Nadu Highways Act as well.



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7. Though the learned Additional Advocate General submits that without challenging the notice u/s 15 (2) challenging the notice u/s 19 (2) is not sustainable, however, it is to be pointed out that later amendment was made to Section 105-A to the effect that the benevolent provisions of Act, 2013 would be applicable to the Tamil Nadu State Highways Act. Such being the case, the acquisition though relates to the year 1992, however, Act, 2013 having come into force on 01.01.2014, the petitioner would be entitled to receive compensation in terms of Act, 2013. Further, the petitioner having been served with notice u/s 15 (2) and pursuant to the issuance of notification u/s 15 (1) of the Tamil Nadu Highways Act, the lands having been vested with the Government, for quantification of compensation, it is for the petitioner to partake in the enquiry and challenging the notice issued u/s 19 (2) for determination of compensation cannot be entertained. That being the resultant position, this Court is of the view that it would be in the interest of justice to direct the respondents to conclude the award enquiry for payment of compensation in terms of Act, 2013 and pay the same to the petitioner within a particular time frame.



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8. In view of the aforesaid, the petitioners are directed to appear for the enquiry and the respondents are directed to pass appropriate orders in terms of Act 30 of 2013 after affording an opportunity of personal hearing to the petitioners, within a period of Six weeks from the date of receipt of a copy of this order.

9. Accordingly, this Writ Petition is disposed of with the aforesaid direction. No Costs. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No

Internet : Yes / No



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M.DHANDAPANI, J.

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