



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2022

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.31778 of 2012
and
M.P. Nos.1 and 2 of 2012

1. S. Selvaraj
2. S. Kathirvel

.... Petitioners

Versus

1. The Authorised Officer / District Revenue Officer,
District Collectorate Office,
Namakkal District,
Namakkal.
2. The Special Tahsildar (Land Acquisition)
District Collectorate Office,
Namakkal District,
Namakkal.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus calling for the records of proceedings in Na.Ka. No.25776/06(H-4), dated 12.06.2006 and Na.Ka.No.25776/06 (H4), dated 06.08.2008 on the file of the first respondent and to quash the same insofar as it relates to the acquisition of a total extent of 1707 sq. m. of the petitioner's land situated in S.F. No.230/2B at Ward-D, Block-21, Komarapalayam Agraharam Village, Trichengode Taluk, Namakkal District and to quash the subsequent notification dated 5.7.12 in Na.Ka.No.39222/2008/H5 as arbitrary, illegal and without jurisdiction and to direct the respondents to receive a sum of Rs.33,61,548/- being the proportionate sum due for the un-acquired land.

For Petitioners : Mr.R. Marudhachalamurthy

For Respondents : Mr.G. Krishnaraja,
Addl. Govt. Pleader

ORDER

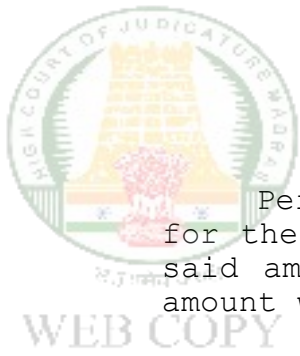
This writ petition has been filed to call for the records of proceedings in Na.Ka. No.25776/06(H-4), dated 12.06.2006 and



Na.Ka.No.25776/06 (H4), dated 06.08.2008 on the file of the first respondent and to quash the same insofar as it relates to the acquisition of a total extent of 1707 sq. m. of the petitioner's land situated in S.F. No.230/2B at Ward-D, Block-21, Komarapalayam Agraharam Village, Trichengode Taluk, Namakkal District and to quash the subsequent notification dated 5.7.12 in Na.Ka.No.39222/2008/H5 as arbitrary, illegal and without jurisdiction and to direct the respondents to receive a sum of Rs.33,61,548/- being the proportionate sum due for the un-acquired land.

The case of the petitioners is that they are the absolute owner of the land vide Document No.1734 of 2000, dated 09.08.2000 on the file of the Sub-Registrar at Komaralapalayam. It is averred that subsequently, revenue records have been mutated. That being so, the 1st respondent issued Notification, dated 12.06.2006 for acquisition of lands for the four way Highway project in the National Highway No.47. Subsequently, in the year 2008, the 1st respondent initiated proceedings for determination of compensation for the lands to a total extent of 1793.5sq.m. and the compensation was fixed at Rs.35,76,095/- In the year 2012, the 1st respondent stated that they have utilized only 86.5 sq m land alone out of the total extent 1793.5 sq.m. Hence, the petitioners submitted representation to the respondents to furnish particulars with regard to the de-notified area. It is the further case of the petitioners that the respondents had informed that only an area of 86.5 sq.m., has been used and, therefore, asked the petitioners to repay the amount in proportion to the extent of land that had remained unutilised. It is the grievance of the petitioners that subsequent to the said communication, the petitioners expressed their willingness to pay the amount towards with regard to the extent of 1707 sq.m., after deducting capital gains paid by the petitioners, but the petitioners denied their liability to pay interest at 12%, as claimed by the respondents Hence, this writ petition.

The learned counsel for the petitioners referring to the grounds, particularly to para V and 11 fairly submitted that though the respondents acquired the entire land as per notification, he fairly submitted that the land utilised by the respondents is only to an extent of 86.5 sq. meters and the petitioners are ready and willing to pay Rs.33,61,548, which has been paid by the respondents towards the excess area of land to the extent of 1707 sq.m. However, the petitioners vehemently opposed levy of interest, as the levy of interest, according to them is illegal as it is not due to any fault of them that excess payment was made to them.



Per contra, learned Additional Government Pleader appearing for the respondents submitted that they are ready to receive the said amount with interest @ 12%, as the period of holding such amount will carry interest.

Heard the learned counsel on either side and perused the materials placed on record.

The facts in the present case are not disputed. Though the respondents have filed counter, on perusal, it reveals nothing about the said impugned order. Admittedly, the petitioners lands were acquired for the purpose of four lane Highway project - NH - 47. On perusal of the impugned order, it reveals that initially notification has been issued for acquisition of 1793.5 sq. metres, hence, award has been passed to an extent of 1793.5 sq. metres and payment to the tune of Rs.35,76,096/- was paid to the petitioners. Later at the time of completion of the project, it came to light that the respondents have utilised only 86.5 sq. metres of land of the petitioners and thus, the petitioners have been directed to refund the excess amount paid by the respondents towards 1707 sq.m., of land. The petitioners have fairly conceded to make payment of Rs.33,61,548/- after deducting tax for their capital gains, i.e., Rs.35,76,095 - Rs.2,14,547). From the above, it is clear that the grievance of the petitioners is reasonable as the petitioners have not suppressed anything with regard to the said acquisition and also ready to pay the compensation pertaining to the lands returned to them. This Court is of the view that on the basis of the acquisition that took place, the Highways department paid the amount and such being the case, the payment made by the respondents for the acquisition made, which is on their own volition, cannot be put against the petitioners. The fact being that the petitioners are in no way the cause for the said payment made by the respondents, this Court is of the opinion that the respondents are entitled only to receive the amount of Rs.33,61,548/-, which has been paid in excess and the same would not attract any interest.

For the aforesaid reasons, the petitioners are directed to pay a sum of Rs.33,61,548/- (Rupees thirty three lakhs sixty one thousand and five hundred and forty eight only) being the payment received by the petitioners for the lands to the extent of 1707 sq.m. The said payment shall be made by way of Demand Draft in favour of the first respondent, within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the respondents are not entitled to receive any



interest from the petitioners on the aforesaid amount.

With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

vsi2

To

1. The Authorised Officer / District Revenue Officer,
District Collectorate Office,
Namakkal District,
Namakkal.
2. The Special Tahsildar (Land Acquisition)
District Collectorate Office,
Namakkal District,
Namakkal.

+1cc to M/s.R.Marudhachalamurthy, Advocate, S.R.No.12192

W.P. No.31778 of 2012

SU(24/02/2022)