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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.34565 of 2012

1. K.Ramanathan
2. R.Suganalatha

...Petitioner

Vs.

1. The National Highways Authority of India,  
Rep by the Chairman,  
Corporate Office,  
G5 & 6, Sector 10,  
Dwarka, New Delhi-110 075.
2. The Chief General Manager,  
Chennai Region,  
1/54-28, Butt Road,  
St. Thomas Mount, Chennai-600 016.
3. The Project Director,  
NHAI,  
No.51/2, 50 feet road,  
Krishnaswamy Nagar, Ramanathapuram,  
Coimbatore.
4. The Competent Authority and  
Spl. District Revenue Officer (L.A)  
NH-47 & 67,  
Coimbatore.

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pay to the petitioners the compensation amount of Rs.21,50,933/- (Rupees Twenty one Lakhs and fifty thousand and nine hundred and thirty three) with interest as per the proceedings of the 4<sup>th</sup> respondent in Ref.No.84/2010 (NH-47) Award No.48/2011 dated 09.03.2012 forth with as per the representation dated 09.05.2012 of the petitioners.

For Petitioners : Mrs.Hema Sampath, SC  
for M/s.R.Meenal

For Respondents R1 to R3 : Mr.Adithyaraj  
for P.Wilson Associates



For Respondent R4

: M/s.D.Tamilselvi  
Additional Government Pleader

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O R D E R

The petitioners have filed this writ petition seeking issuance of Writ of Mandamus to direct the respondents to consider the petitioners' representation dated 09.05.2012 and pay the compensation amount of Rs.21,50,933/- with interest as per the proceedings of the 4<sup>th</sup> respondent dated 09.03.2012 within stipulated period of time granted by this Court.

2. The case of the petitioners is that, the petitioners are the owner of the land in Survey No.117 in Velayuthampalayam Village, Avinasi Taluk, Tirupur District. The respondents proposed to acquire the petitioners' land for laying NH 47 and passed an award 3/2010 dated 31.12.2010 and the compensation of Rs.97,98,791/- was also paid to the petitioners. Further there was a Well adjacent to the acquired land and the compensation for the same was evaluated as Rs.21,50,933/- by the 3<sup>rd</sup> respondent and the same has to be paid to the petitioners as per the proceedings of the 4<sup>th</sup> respondent dated 09.03.2012 in Ref.No.84/2010 (NH-47), however till date the amount was not disbursed in favour of the petitioners. Thereafter, the petitioners made a representation dated 09.05.2012 before the respondents requesting to disburse the compensation amount for the Well with interest, however, till date no order has been passed. Hence, the present Writ petition.

3. The learned Senior counsel appearing on behalf of the petitioners submitted that, originally the petitioners' land was acquired by the National Highways for laying road, due to which the Well situated adjacent to the land was disconnected from the land and the petitioners are unable to use the said Well for irrigation purpose. Further, the 3<sup>rd</sup> respondent appointed a road safety consultant named HAKS and they had submitted a detailed report dated 22.05.2012 and recommended that the open Well near the road is necessarily be closed for the safety of the road users and though the 4<sup>th</sup> respondent passed an award of Rs.21,50,933/- for the Well, vide proceedings dated 09.03.2012 and pursuant to which, the said amount was deposited by the 1<sup>st</sup> respondent in the current account, the same was not disbursed in favour of the petitioners, even after considering the expert's opinion. She further submitted that the request of the 4<sup>th</sup> respondent was rejected by the 3<sup>rd</sup> respondent on the ground that the Well is not included in the acquired ROW and in the absence of notification of National Highways, passing the order for compensation is not sustainable. Hence, this Court may issue direction to the respondents to consider the petitioners'



representation dated 09.05.2012 and disburse the compensation amount in respect of the Well, in favour of the petitioners within a particular time frame that may be fixed by this Court.

4. The learned counsel appearing on behalf of the respondents 1 to 3 submitted that, admittedly, the disputed Well is situated in S.F.No.117/1 in the above said village and the same was not notified for acquisition by the Central Government by way Notification under section 3A(1) of the NH Act, dated 26.03.2010 or the notification under section 3D(1) of the NH Act, dated 19.07.2010 and the same was not included in the original Award published by the Competent Authority dated 31.12.2010. Hence, there is no question of paying compensation for the same and only the Central Government can acquire the land under the procedures established by the National Highways Act and after acquisition only, NHAI will be vested with the land. Hence, in the present case, as the land itself was not notified for acquisition, there is no provision in law to provide any compensation for any land by the NHAI.

4.1 The learned counsel appearing for the respondents 1 to 3 further submitted that the estimate of the Well was evaluated only in the event the said land is acquired for the purpose of constructing the service road. Further, as safety is concerned, the technical team of the NHAI, which inspected the Well, suggested safety measures for protection of the Well by providing RCC/Metal Beam Crash Barrier by blocking the utility corridor with sufficient advance warning-signs. He furthermore submitted that the CGM&RO, Chennai vide Lr.No.2833/13.08.2012 has issued instructions directing the 3<sup>rd</sup> respondent to barricade along the Well with "W" beam etc., to ensure the safety of the road users and pursuant to the same, the Crash Barrier was also erected with due warning signs and the same was monitored by the concessionaire regularly. Further, the Well is situated adjacent to the service road and the road is used for moving of local public vehicles at slow speed and is not used by the heavy vehicles. Hence, the NHAI is of the technical view that the Well need not be acquired for any safety purpose and he prays this Court for dismissal of the present Writ petition.

5. The learned Additional Government Pleader appearing on behalf of the 4<sup>th</sup> respondent submitted that, subsequent to the enquiry conducted u/s 3G(3) of the National Highways Act, 1956, there is a dispute in the 40 feet pathway running over the land and hence, an award in Award No.16/2010(N.H.47) dated 29.06.2011 was passed and a compensation amount of Rs.97,98,791/- was paid to the petitioners, however, insofar as the Well is concerned, it was ascertained through the field staff that, since part of the Well was affected, no compensation was worked out. Thereafter, in pursuance of the representation made by the petitioners, the 3<sup>rd</sup> respondent, vide his letter dated



14.10.2011, requested to evaluate the payment of compensation for the Well, as it may be acquired for safety reasons, as it was located very close to the main carriageway and part of the Well portion falls with the acquired ROW.

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5.1 Further, based on the request made by the 3<sup>rd</sup> respondent, the compensation for the Well was fixed as Rs.21,50,933/- vide office order No.84/2010 in Award No.48/2010 dated 09.03.2012 based on the estimate report received from the Executive Engineer, PWD., (WRO). The requisition body was requested to deposit the compensation amount of Rs.21,50,933/- in the Current Account and two cheques were also drawn and sent along with office order dated 31.12.2010 for countersignature. However, the said cheques were returned by the 3<sup>rd</sup> respondent, vide his letter No.NHAI/ DGM&PD/ N.H.47/ T.N.08/ 2012/ 2590 dated 17.08.2012, stating that the Chief General Manager and Regional Officer has not approved the proposal of acquiring the open Well.

6. Heard the arguments advanced by the learned counsel appearing on either side and perused the materials available on record.

7. Facts in the present case are not in dispute. Admittedly, the major part of the petitioners' property was acquired for the purpose of National Highways Project and an Award in No.3/2010 dated 31.12.2010 was passed and the compensation of Rs.97,98,791/- was also paid to the petitioners. However, the issue that arises in the present Writ petition is as to whether the Well adjacent to the land acquired and which is also just abutting the Highways, has to be acquired or not, for the safety purpose of the road users. In view of the submission made by the learned Senior Counsel appearing on behalf of the petitioners, it is pertinent to note that the National Highways Authority of India, vide its letter to the 4<sup>th</sup> respondent dated 14.10.2011 informed that, after taking inputs from IE & Concessionaire, as the Well is located very close to the main carriageway and part of the Well portion falls within the acquired ROW, compensation for the Well may be evaluated and proceedings may be forwarded for further action. Further, as per the consultant's report dated 17.10.2011, it is confirmed that, to complete full width of service road, a portion of the Well is required and the Well, being deep and close to the service road, acquisition of the Well is necessary for safety reasons. Further, pursuant to the request of the 3<sup>rd</sup> respondent, the same was complied with by the 4<sup>th</sup> respondent after adjudication and a compensation of Rs.21,50,933/- was fixed on 09.03.2012.

8. While such being the position, filing counter stating that Well was not notified for acquisition and the necessary compensation amount for the Well was not paid, is not



sustainable. The award was passed based on the letter of the 3<sup>rd</sup> respondent dated 14.10.2011. In view of the same, and on a close perusal of the photographs submitted by the petitioners and the expert's opinion, this Court is of the opinion that, the Well is just abutting the Highways and if the Well is not acquired, it will cause great danger to the road users, especially in the night time and therefore, it is very essential to acquire the Well also. Hence, this Court directs the respondents to pay the compensation amount to the petitioners within a period of six weeks from the date of receipt of a copy of this order and also to take the possession of the Well for the safety of the road users.

9. This writ petition is accordingly disposed of. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,  
The National Highways Authority of India,  
Corporate Office, G5 & 6, Sector 10,  
Dwarka, New Delhi-110 075.
2. The Chief General Manager,  
Chennai Region, 1/54-28, Butt Road,  
St. Thomas Mount, Chennai-600 016.
3. The Project Director,  
NHAI, No.51/2, 50 feet road,  
Krishnaswamy Nagar, Ramanathapuram,  
Coimbatore.
4. The Competent Authority and  
Spl. District Revenue Officer (L.A)  
NH-47 & 67, Coimbatore.

+1cc to Mr.P.Wilson Associates, Advocate SR. No. 7991  
+1cc to M/s.R.Meenal, Advocate SR. No. 8164  
+1cc to Government Pleader SR. No.8673

W.P.No.34565 of 2012

MT (CO)

NSK (30/03/2022)