



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.18697 & 18699 of 2021
and
W.M.P.Nos.19960 & 19965 of 2021

T.D.Tataji ...Petitioner in W.P.No.18697 of 2021

T.D.Naidu ...Petitioner in W.P.No.18699 of 2021

Vs.

1. The Collector,
Thiruvallur District,
Thiruvallur - 602 001.
2. The Project Director,
National Highways Authority of India,
Project Implementation Unit,
"Sri Tower" 3rd Floor, DP-34(SP), Industrial Estate,
Guindy, Chennai - 600 032.
3. The Special District Revenue Officer
(Land Acquisition), NH-205,
No.3 & 4 Lal Bagadthur Sasthri Street,
Periyakuppam Railway Station,
(Near) Thulasi Theatre,
Thiruvallur - 602 001. ...Respondents in both W.Ps.

Prayer in W.P.No.18697 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the proceedings pursuant to the impugned order passed in Rc.No.79/2021/NH-205 by the 3rd respondent dated 22.07.2021 and quash the same and further direct the respondents to disburse the statutory entitlements namely 30% solatium per annum on the market value of the land and 12% on the additional amount under Section 23(1-A) of the Act from the date of notification issued under the Act to the date of making of the award and on the enhanced market value under Section 28 of the Act @ 9% per annum from the date of issuance of notification for the first year



ending and thereafter, @ 15% per annum till the date of tender of compensation along with interest on the additional 12% amount on market value (Section 23(1-A) and solatium in the light of the Judgment, passed by the Hon'ble Supreme Court of India in the matter of Union of India and another Vs Tarsem singh and others in Civil Appeal No.7064 of 2019 dated 19.09.2019 for the petitioner's property measuring an extent of 1570 Sq. mts which is 16899.34 square feet situated at Ramancheri Revenue Village, Thiruvallur Taluk and District acquired by the 2nd and 3rd respondent.

Prayer in W.P.No.18699 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the proceedings pursuant to the impugned order passed in Rc.No.78/2021/NH-205 by the 3rd respondent dated 22.07.2021 and quash the same and further direct the respondents to disburse the statutory entitlements namely 30% solatium per annum on the market value of the land and 12% on the additional amount under Section 23(1-A) of the Act from the date of notification issued under the Act to the date of making of the award and on the enhanced market value under Section 28 of the Act @ 9% per annum from the date of issuance of notification for the first year ending and thereafter, @ 15% per annum till the date of tender of compensation along with interest on solatium and on the additional 12% amount on market value (Section 23(1-A) in the light of the Judgment, passed by the Hon'ble Supreme Court of India in the matter of Union of India and another Vs Tarsem singh and others in Civil Appeal No.7064 of 2019 dated 19.09.2019 for the petitioner's property measuring an extent of 17,259 Sq. mts which is 185774.33 square feet situated at Ramancheri Revenue Village, Thiruvallur Taluk and District acquired by the 2nd and 3rd respondent.

For Petitioners: Mr.A.Saravanan
in both W.Ps

For Respondents: Mr.P.Sathish, AGP, for R1 & R3
in both W.Ps : Mr.Su.Srinivasan, NHAI, for R2

O R D E R

The petitioners have filed these writ petitions seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the proceedings of the 3rd respondent passed in Rc.No.79/2021/NH-205 and Rc.No.78/2021/NH-205 dated 22.07.2021, quash the same and consequently, direct the respondents to



disburse the statutory entitlements namely 30% solatium per annum on the market value of the land and 12% on the additional amount under Section 23(1-A) of the Act from the date of notification issued under the Act to the date of making of the award and on the enhanced market value under Section 28 of the Act @ 9% per annum from the date of issuance of notification for the first year ending and thereafter, @ 15% per annum till the date of tender of compensation along with interest on the additional 12% amount on market value (Section 23(1-A) and solatium in the light of the Judgment, passed by the Hon'ble Supreme Court of India in the matter of Union of India and another Vs Tarsem singh and others in Civil Appeal No.7064 of 2019 dated 19.09.2019 for the petitioners' property measuring an extent of 1570 Sq. mts which is 16899.34 square feet situated at Ramancheri Revenue Village, Thiruvallur Taluk and District acquired by the 2nd and 3rd respondent.

2. The case of the petitioners is that their properties measuring an extent of 1570 sq.mtrs., and 17,259 sq.mtrs., respectively situated at Ramancheri Revenue Village, Thiruvallur Taluk and District were acquired by the respondents for the purpose of widening the National Highways-205 from Alamelumangapuram to Pakkam Village and the Award for the same was passed by fixing a value of Rs.247/- per Sq.Mtr. Aggrieved by the same, the petitioners preferred an appeal before the 1st respondent for enhancement of the compensation and the 1st respondent, after conducting enquiry, enhanced the compensation fixed to Rs.781/- per Sq.Mtr along with 9% interest per annum after deducting development charges on the difference amount of land value from the date of taking possession under Section 3-D till the date of actual deposit thereof, as contemplated under Section 3-H(5) of National Highways Act, 1956 and passed an Award in R.C.No.21899-2/ 2011/ F2(Arbit) and R.C.No.21899-1/ 2011/ F2 (Arbit) dated 16.02.2021 respectively. In order to avail the benefit of the order passed by the Hon'ble Supreme Court of India in the matter of Union of India and another Vs Tarsem singh and others in Civil Appeal No.7064 of 2019 dated 19.09.2019 and for the payment of statutory entitlements, the petitioners made representations dated 26.03.2021 and 23.03.2021 respectively, before the respondents for grant of statutory entitlements, however, there was no response from the respondents. Therefore, the petitioners filed Writ petitions before this Court in W.P.Nos.10220 & 10219 of 2021 respectively, and this Court, vide order dated 29.04.2021 disposed of the same and directed the petitioners to file a fresh representation before the Acquisition Officer / 3rd respondent. Pursuant to the order of this Court, the petitioners made representations dated



08.05.2021 before the 3rd respondent, however, the same were rejected by the 3rd respondent, vide proceedings dated 22.07.2021 in Rc.No.79/ 2021/ NH-205 and Rc.No.78/ 2021/ NH-205 respectively, on the ground that, the 3rd respondent is "FUNCTUS OFFICIO". Hence, challenging the same, the present Writ petitions are filed.

3. Learned counsel for the petitioners submitted that the petitioners have filed these Writ petitions challenging the order dated 22.07.2021 passed by the 3rd respondent and contended that without appreciating the order of the Hon'ble Apex Court, the 3rd respondent has passed the impugned order, which reveals total non-application of mind on the part of the 3rd respondent to the order passed by the Hon'ble Apex Court. Therefore, he prays that the impugned orders be set aside and the 3rd respondent be directed to pass orders considering the orders of the Hon'ble Supreme Court in Tarsem Singh's case (supra).

4. Learned Additional Government Pleader appearing on behalf of the 1st and 3rd respondent and learned Standing Counsel appearing on behalf of the National Highways however submitted that as against the order dated 22.07.2021 passed by the 3rd respondent, there is an effective appeal remedy available before District Collector / Arbitrator and the petitioners have to avail the alternative remedy and it is impermissible for the petitioners to come before this Court without availing the said remedy. It is therefore submitted that the petitioners can very well canvass all the points in the appeal before the District Collector in order to avail the benefit of the order passed by the Hon'ble Apex Court in Tarsem Singh's case (supra).

5. Heard the arguments advanced on either side and perused the materials available on record.

6. Facts in the present case are not in dispute. Admittedly, the petitioners lands were acquired for the purpose of widening the National Highways-205 from Alamelumangapuram to Pakkam Village and the Award was passed and against the low quantification, the petitioners claimed enhancement, which was accordingly ordered vide the aforesaid arbitral award by the 1st respondent.

7. In the case of Union of India and another Vs Tarsem singh and others (2019 (9) SCC 304), the Hon'ble Supreme Court had considered the enhancement of compensation with regard to



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acquisition and the statutory entitlements available to the land losers and in that context, held as under :-

"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(1-1) 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."

In the earlier round of litigation in W.P.Nos.10220 & 10219 of 2021, this Court, vide order dated 29.04.2021 disposed of the said Writ petitions and directed the petitioners to file a fresh representation before the Acquisition Officer / 3rd respondent and complying with the aforesaid directions, the petitioners made representations dated 08.05.2021 before the 3rd respondent, which were rejected citing that the 3rd respondent is "functus officio". Therefore, the petitioners have come before this Court by filing the present writ petition.

8. However, as pointed out by the learned Additional Government Pleader, there is a remedy of appeal available before the 1st respondent, which the petitioners have not exhausted. In such circumstances, this Court is of the considered view that



it would suffice if this Court issues direction to the petitioners to file Appeal petitions before the Arbitrator / District Collector.

9. Accordingly, these writ petitions are disposed of and the petitioners are directed to file appeal petitions before the Arbitrator / District Collector as against the order dated 22.07.2021 passed by the 3rd respondent within a period of four weeks from the date of receipt of a copy of this order. On receipt of such Appeal petitions, the District Collector is directed to dispose of the same on merits and pass appropriate orders in the light of the order passed by the Hon'ble Supreme Court of India in Tarsem Singh's case (supra) within a period of six weeks thereafter. Pursuant to the order, that may be passed by the 1st respondent, if the petitioners are still aggrieved, the petitioners are at liberty to workout their remedy in the manner known to law by invoking the provisions of Section 34 of the Arbitration Conciliation Act.

10. Accordingly, these Writ Petitions are disposed of with the aforesaid directions. No costs. Consequently, connected Miscellaneous petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1. The Collector,
Thiruvallur District,
Thiruvallur - 602 001.
2. The Project Director,
National Highways Authority of India,
Project Implementation Unit,
"Sri Tower" 3rd Floor, DP-34(SP), Industrial Estate,
Guindy, Chennai - 600 032.



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3. The Special District Revenue Officer
(Land Acquisition), NH-205,
No.3 & 4 Lal Bagadthur Sasthri Street,
Periyakuppam Railway Station,
(Near) Thulasi Theatre,
Thiruvallur - 602 001.

+3cc to Mr.A.Saravanan, Advocate Sr.28733
+2cc to Mr.Su.Srinivasan, Advocate Sr.28308, 28305
+1cc to the Government Pleader Sr.28378 and 28383

W.P.Nos.18697 & 18699 of 2021
and
W.M.P.Nos.19960 & 19965 of 2021

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