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W.P.No.26433 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2022

CORAM

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.26433 of 2022

and

WMP.No.25511 of 2022

1. T.V.Amshalingam
2. D.Suresh Babu
3. S.Kirthiga
4. S.Parthiban
5. G.Rajesh
6. G.Balaji

...Petitioners

Vs.

1. The District Collector,
Thiruvallur District.
2. The Competent Authority/
Special District Revenue Officer LA,
National Highway Schemes,
Thiruvallur District, Thiruvallur.
3. The Project Director,
National Highways Authority of India,
PIU, Kancheepuram,
No.7, 16 Govindarajan Street,
Tambaram West - 600 045.

...Respondents



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WEB COURT

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 1st respondent to conduct an enquiry for redetermination of compensation under Section 3(G)(5) of the National Highways Act, 1956 in the light of the judgment passed by the Honourable Supreme Court in the case of *Union of India Vs. Tarsem Singh, reported in [(2019) 9 SCC 304]* and grant the solatium and interest within a stipulated time in respect of petitioner's land of an extent of 19120 sq.ft in S.Nos.146/1B, 146/2B, 146/9B, 146/1A part, 146/2A part, 146/9A part, 146/10 part, 148/13A situated Chembarambakkam Village, Poonamallee Taluk, Tiruvellore District acquired for the purpose of widening four lane of National Highways 4 by considering the petitioner's representation dated 09.02.2022, 09.03.2022 and 06.08.2022 respectively.

For Petitioners : Mr.N.Krishna Kumar

For Respondents : Mr.K.M.D.Muhilan, GA, for R1 & R2
: Mr.Su.Srinivasan, SC, for R3

ORDER

The petitioners have filed this writ petition seeking issuance of a Writ of Mandamus to direct the 1st respondent to conduct an enquiry for redetermination of compensation under Section 3(G)(5) of the National Highways Act, 1956 in the light of the judgment passed by the Hon'ble Supreme Court in the case of *Union of India Vs. Tarsem Singh, reported in [(2019) 9 SCC 304]* and grant solatium and interest to the petitioners by considering their representations dated 09.02.2022, 09.03.2022 and



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06.08.2022 respectively.

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2. The case of the petitioners is that the subject properties were originally owned by one Late P.Vadivel Mudaliar, who is none other than the father of the 1st petitioner and grandfather of the other petitioners herein. After the demise of the said Vadivel Mudaliar, his legal heirs namely, T.V.Durai, T.V.Ganesan, T.V.Amshalingam/the 1st petitioner herein, T.V.Sundaramurthy, T.V.Subramanian and Rajini entered into partition, vide partition deed dated 31.01.2008 registered as Doc.No.399 of 2008 in which the subject properties were allotted and later it devolved on the petitioners herein and they are in joint possession and enjoyment of the same and have also obtained patta in their favour in Patta No.1537. While so, the 3rd respondent sought to acquire the subject lands for the purpose of widening of four lane National Highways 4 and the acquisition proceedings was conducted in two phases and the Award for the 1st phase of acquisition was passed in Rc.No.298/2001A/NH4/TVR dated 26.07.2004 and for the 2nd phase of acquisition in Rc.No.59/2005A/ NH-4/TVR dated 29.03.2006. It is the further stand of the petitioners that they came to know about the above said acquisition proceedings during the 2nd week of December 2021,



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when the officials of the 3rd respondent inspected the subject property and directed the 1st petitioner to remove the constructions. Aggrieved by the same, the petitioners approached the respondents herein, however, there was no response. While such being the case, the petitioners received the notice dated 04.02.2022, directing the petitioners to remove the encroachments, pursuant to which, the petitioners attended the personal hearing on 18.02.2022 and the enquiry on 28.02.2022 and submitted the necessary documents showing that the petitioners are owners of the subject properties and they are not encroachers, however, the same evoked no response. While so, once again the petitioners received a notice dated 26.07.2022, directing the petitioners to remove the encroachments, despite the detailed representations dated 09.02.2022 and 09.03.2022 made by the petitioners. Aggrieved by the inaction on the part of the respondents in considering the above said representations, the petitioners made another representation dated 06.08.2022, which also did not yield any result. Hence, this writ petition.

3. Learned counsel for the petitioners submitted that, though the petitioners approached the respondents and submitted the necessary



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documents to show their ownership over the subject properties, till date, compensation was not paid in their favour. He further pressed into service the decision made by the Hon'ble Apex Court in the case of ***Union of India and another Vs Tarsem singh and others*** reported in ***(2019 (9) SCC 304)***, in which the Hon'ble Supreme Court had declared Section 3J of the National Highways Act as unconstitutional and reiterated the enhancement of compensation with regard to acquisition and the statutory entitlements available to the land losers.

4. He further more submitted that, the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 (hereinafter referred as "new Act") came into force on 01.01.2014 and the same is applicable to the National Highways Act, 1956 with effect from 01.01.2015. Though the award has been passed much prior to the new Act, since the compensation was not paid till 31.12.2014, the petitioners are entitled for solatium and interest in terms of Section 23 (1-A) & (2) and interest payable in terms of proviso to Section 28 in terms of the decision of the Hon'ble Apex Court. However, till date no orders have been passed on



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the petitioners' representations, so as to enable the petitioners to relish the benefit of the new Act in terms of the decision in *Tarsem Singh's case* and, accordingly prayed for appropriate orders.

5. Learned counsel for the 3rd respondent submitted that, at the relevant point of time, the benefit under Section 23 (1-A) & (2) and interest payable under Section 28 is not available to the land owners, hence, the solatium and other benefits awarded were not extended to the petitioners. However, the major contention laid by the respondents is that, the petitioners made representation beyond the period of three years, which is not sustainable. He further more submitted that, though the learned counsel for the petitioners relied upon the decision made by the Hon'ble Apex Court in the case of *Tarsem singh (supra)*, however, it is pertinent to note that, as against the said order, there is a clarification petition pending consideration. Hence, he prayed for dismissal of this Writ petition.

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



7. In *Tarsem Singh's case (supra)*, the Hon'ble Apex Court had considered the validity of Section 3-J and the statutory entitlements available to the land losers under the new Act. In the said context, the Hon'ble Supreme Court 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-A) 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."

8. Admittedly, the petitioners' lands were acquired under the National



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Highways Act, 1956, which is not disputed, which has resulted in the passing of the awards, but for which compensation has not been paid to the petitioners as per the new Act. Learned counsel for the petitioners rightly pointed out that the benefit of proviso to Section 28 of the Land Acquisition Act, 1894 was not extended to the petitioners and the awards were passed only in terms of National Highways Act, 1956 and not in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which fact is not disputed by the respondents.

9. In effect, it clearly shows that the ratio laid down by the Hon'ble Supreme Court in *Tarsem singh's case (supra)* wherein it has been held that even if the lands are acquired between 1997-2015, the land owners are entitled to receive solatium and interest. In the present case, the acquisition of petitioners' lands also falls within the said period, viz., 1997-2015 and thereby, the petitioners are also entitled to the benefit as ordered by the Hon'ble Apex Court in the case of *Tarsem singh (supra)*.

10. In view of the above, this Court directs the 1st respondent to consider the representation dated 06.08.2022 in the light of the order passed



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by the Hon'ble Apex Court in *Tarsem Singh's case (supra)* and extend the benefit of solatium and interest on solatium to the petitioners and pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order.

11. With the above observations and directions, this Writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2022
(1/2)

skt

Speaking Order : Yes/ No

Index : Yes/ No

To

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Thiruvallur District.

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M.DHANDAPANI, J.

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