IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2022

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

W.P.No.26216 of 2022
and
WMP.No.25302 of 2022

V.Kattappan ...Petitioner

Vs.

1. The District Collector,
Tiruvallur,
Tiruvallur District - 602 001.

2. The Competent Authority &
Special District Revenue Officer (LA),
National Highways-716B,
Thiruvallur, Thiruvallur District - 602 001.

3. The Project Director,
The National Highways Authority of India,
Chittoor, Andhra Pradesh. ...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in Award No.17/2021 in Rc.No.1432021/LA/NH716B, Unit-III, dated 14.09.2021 on the file of the second respondent and quash the same and consequently direct the second respondent to pass award afresh after following the prescribed procedure under the National Highways Act and Rules and guidelines made thereunder.

For Petitioner : Mr.Ayyadurai, Senior Counsel
for K.Magesh

For Respondents : Mr.R.Neelakandan, AAG,
Assisted by Mr.K.M.D.Muhilan, GA,
for R1 & R2
: Mrs.S.R.Sumathy, for R3

ORDER

The petitioner has filed this Writ petition seeking issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent in respect of the Award No.17/2021 in Rc.No.1432021/LA/ NH716B, Unit-III, dated 14.09.2021, quash the same and to consequently, direct the 2nd respondent to pass award afresh after following the prescribed procedure under the National Highways Act and Rules and guidelines made thereunder.

2. The case of the petitioner is that, he claims to be the owner of the agricultural lands comprised in S.Nos.171/1A, 174/1B, 172/2B and 172/2A1, measuring an extent of 3 acres 33 cents situated at Perandur

Village, Uthukottai Taluk, Thiruvallur District. The 2nd respondent sought to acquire vast extent of lands for the purpose of formation of new National Highways 716-B and notification under Section 3A(1) of the National Highways Act (for short 'Act') to that effect was issued in S.O.No.5253(E) dated 10.10.2018, however, there was no subsequent proceedings within the prescribed period of one year. Thereafter, again the notification under Section 3A(1) of the said Act was issued in S.O.No.966(E) dated 03.03.2020, wherein the petitioner's lands to an extent of 1634 sq. metres in respect of S.No.174/1B and 293 sq. metres in respect of S.No.172/2B was sought to be acquired. Immediately, the petitioner made an objection dated 04.04.2020 before the 4th respondent, however, the same was rejected, vide order dated 07.09.2020. Thereafter, the declaration under Section 3D(1) of the Act was issued in S.O.No.599(E) dated 09.02.2021 and subsequent notifications under Section 3G(3) & (4) of the said Act was issued on 14.07.2021. Challenging the above said Notifications issued under Section 3A(1), 3G(3) & (4) and rejection order dated 07.09.2020, the petitioner filed a Writ petition in W.P.No.18497 of 2021 and this Court, vide order dated 06.09.2021 granted interim order not to disturb the petitioner's possession till the filing of counter affidavit by the concerned authorities in the above said petition. While such being the case, the 2nd respondent issued individual notice dated 20.07.2021, calling for award enquiry to be held on 04.08.2021, and as the petitioner was handicapped with certain documents, he made an objection dated 02.08.2021 and subsequently, made an application dated 18.08.2021 under RTI Act seeking certain documents, however, the same was not furnished by the 2nd respondent. Aggrieved by the same, the petitioner sent a detailed communication dated 19.08.2021, explaining all his grievances, however, the same was not considered by the 2nd respondent. While so, the petitioner came to know about the public notice issued under Section 3E(1) of the said Act, from the publication made in the news edition of The Hindu dated 29.05.2022 and he came to know about the common Award in Award No.17 of 2021 dated 14.09.2021 only from the said publication. It is pertinent to note that, though the petitioner's land comprised in S.Nos.172/2B & 174/1B were sought to be acquired, however, no individual award enquiry notice in respect of the land in S.No.174/1B has bee served to the petitioner and even the said Award dated 14.09.2021 was served to the petitioner only on 17.08.2022 through RPAD, which was after a period of 11 months. Thereby, the petitioner filed another Writ petition in W.P.No.17148 of 2022, challenging the entire acquisition proceedings, however, this Court, vide order dated 15.09.2022 closed the above said Writ petition. Hence, in order to avoid necessary technicalities, the petitioner has come up with this Writ petition, challenging the award dated 14.09.2021.

3. Learned Senior counsel appearing for the petitioner submitted that, though the respondents claim that the Market price has been decided by considering the average of the highest guideline value of the sales taken place in the said locality, however, even on a bare perusal of the counter filed by the 4th respondent, it is clear that though 107 sales have taken place, the Land Acquisition Officer has considered only 68 sales and out of the above said 68 sales, based on the classification of the lands, the CALA has taken into consideration only 18 sales and out of which, they have taken up only nine sales randomly, after neglecting the maximum values and the fancy sales, according to their convenience and passed the present Award under challenge, fixing the value as Rs.246.08/- per sq. mtr., and that too the said Award was passed, without conducting enquiry and without considering the representations and objections made by the petitioner and no opportunity of personal hearing was afforded to the petitioner and the petitioner came to know about the Award only from the news edition of The

Hindu dated 29.05.2022, which is not sustainable. Hence, he prayed for allowing this Writ petition.

4. Learned Additional Advocate General appearing for the 1st and 2nd respondents submitted that, totally an extent of 80382 Sq. meters of lands in Perandur Village were requisitioned by the National Highways Authority of India for the purpose of building/widening four/six lane, maintenance, management and operation of Highways-716B and subsequently, necessary notifications were issued, as per the procedures prescribed under the National Highways Act 1956. Further, the petitioner submitted the necessary documents through RPAD, however, he has not appeared for the 3G(3) & (4) enquiry conducted on 04.08.2021. It is further submitted on behalf of the respondent that with regard to fixation of market value for the petitioner's land, the lands acquired falls under two classification namely Wet Lake Irrigation Single Crop Type-I and Dry Well Irrigation Type-I. The guideline value in respect of the Wet Lands is Rs.13,25,000/- per Hectare i.e., Rs.132.50/- per sq. mtr., and Dry Well Irrigation Type-I is Rs.16,56,000/- per hectare i.e., Rs.165.60/- per sq. mtr., Further, with effect from 01.01.2015, the compensation payable for the lands acquired under the

National Highways Act, 1956, is determined as per the applicable provisions under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short 'RFCTLARR Act') and the compensation payable under the said Act consists of (a)Basic Market Value, (b)Multiplication factor, (c)100% solatium on basic market and multiplication factor and (d)Additional amount at 12% from the date of 3A(1) notification to the date of Award under the RFCTLARR Act. While so, the basic Market value of the acquired lands will be determined with reference to the Guideline value prescribed under the Indian Stamp Act, 1899 and the Average sale price calculated based on 50% of the sale having the highest sale price and whichever is higher of these two values will be determined as the basic market value. As per the RFCTLARR Act, the average sale price under each category of lands with the guideline value of the acquired lands has to be compared and the higher rate among the two has to be adopted and the same has to be fixed as market value of the acquired lands.

5. Accordingly, for fixing the market value of the lands under acquisition in 42. Perandur Village, sales statistics for a period of 3 years

prior to the date of publication of 3A(1) notification i.e., from 25.02.2017 to 02.03.2020 were gathered by the 4th respondent from the Sub-Registrar's Office, Uthukottai. There were 107 sales which had taken place in the village during the above check period and no sale has been leftover during the check period. Further, the 4th respondent has discarded 39 sales on the grounds that, the type of sale is not similar to the type of land under acquisition, Mixed sales, Government related sales and Fancy sales. After discarding the above 39 sales out of the 107 sales, the 50 sales in respect of Wet Lake Irrigation Single Crop Type-I and 18 sales in respect of Dry Well Irrigation Type-I, totally 68 sales have been taken into consideration for fixing the basic market value.

6. It is pertinent to note that, the petitioner's lands falls in the category of Dry Well Irrigation Type-I with a guideline value of Rs.16,50,000/-. Hence, out of the 18 sales of the lands classified as the Dry Well Irrigation Type-I, 50% of highest i.e., 9 sales were taken into account and they have been arranged in descending order (i.e., from highest to lowest value) and the 4th respondent and the erstwhile Special District Revenue Officer calculated the average sale value of Rs.246.08/- per sq. mtr., and fixed the

same as the basic market value for the petitioner's land, since it is higher than the guideline value, which is Rs.165.60/- per sq. mtr., for the lands with the classification as Dry Well Irrigation Type-I. Further, the multiplication factor for the lands acquired in 42.Perandur, including the petitioner's lands is fixed as 1.25, as the said village is located within 30 Kms from the Urban Limit of Tiruvallur. It is pertinent to note that 100% solatium and additional amount at 12% p.a. from the date of 3A(1) notification to the date of Award as per Section 30(1) & 30(3) have been awarded by the 4th respondent. On the whole, the total compensation payable to the petitioner for the Dry Well Irrigation Type-I land acquired from the petitioner is arrived at Rs.8,54,139/- . He further submitted that, once the award is passed, the functions of the Special District Officer / CALA in respect of the acquisition comes to an end and he becomes "Functus officio" and he has no legal authority to review or modify his own order under the provisions of National Highways Act, 1956 and the 2nd respondent and the erstwhile Special District Revenue Officer have rightly determined the basic market value and the same cannot be found fault with. If the petitioner is aggrieved by the said award passed by the 2nd respondent, the remedy available to the petitioner is to approach the District Collector / Arbitrator by way of making appropriate application under Section 3G(5) of the National Highways Act, 1956 within a stipulated period of limitation, while so, without making appropriate application, the petitioner has filed these Writ petitions, which is not sustainable. Hence, he prayed for dismissal of these Writ petitions.

7. Learned Standing counsel appearing for the 3rd respondent adopted the submissions advanced by the learned Additional Advocate General.

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

9. This Court earlier summoned all the records and perused the same and a perusal of which, particularly the sales data for 3 years period to the date of 3A(1) Notification from 22.04.2017 to 24.04.2020 makes it clear that 107 sales took place among which, the highest sales value fixed was Rs.2224.42/- per sq. mtr., and the lowest sales value fixed was Rs.112.61/- per sq. mtr., While so, the Land Acquisition Officer himself took up only nine sales among the said 107 sales, after omitting the fancy sales and arrived at the present basic market value of Rs.246.08/- per sq. mtr.

10. In this regard, the sales made, which have not been considered by the respondents are quoted hereunder for better clarity :-

Sl. No.	Survey No. / T.S.No	GLV Classification	Sales Value Rupees / Sq. meter	Guide Line Value / Circle Rate register per Rs. / Sqm
1	268/12, 268/10, 268/10A	Dry Well Irrigation Type-I	294.85	165.6
2	268/10, 268/10A	Dry Well Irrigation Type-I	709.09	165.6
3	268/11A	Dry Well Irrigation Type-I	721.19	165.6
4	272/12	Residential Class III Type-I	365.98	365
5	273/31	Not Found	1271.41	-
6	272/12, 272/31	Residential Class III Type-I	365.98	365
7	272/12, 272/31	Residential Class III Type-I	365.98	365
8	272/12, 272/31	Residential Class III Type-I	365.98	365
9	272/12, 272/31	Residential Class III Type-I	365.98	365
10	122/7A1A, 122/7D	Wet Lake Irrigation Single Crop Type-I Residential Class I Type I	721.19	-
11	283/10B	Dry Well Irrigation Type-I	496.79	165.6
12	257/8	Residential Class I Type-I	722	725
13	39/2	Residential Class II Type-I	538.99	545
14	272/30	Not Found	538.2	-
15	125/1A	Wet Lake Irrigation Single	2224.42	132.5

		Crop Type-I		
16	28/41	Not Found	530.05	-
17	276/5	Not Found	413.99	-
18	39/18, 39/2	Residential Class II Type-I	538.2	545
19	128/5	Wet Lake Irrigation Single Crop Type-I	471.58	132.5
20	128/6	Wet Lake Irrigation Single Crop Type-I	282.95	132.5
21	114/6B	Wet Abutting Other Roads and Railway Lines Type-I	331.19	331.15
22	268/30	Residential Class II Type-I	714.02	545
23	214/2C2	Wet Lake Irrigation Single Crop Type-I	565	132.5
24	258/13	Residential Class I Type-I	1076.4	725
25	257/15	Dry Well Irrigation Type-I	1076.4	165.6
26	257/15	Dry Well Irrigation Type-I	2036.53	165.6
27	253/18	Dry Well Irrigation Type-I	721.29	165.6
28	253/18	Dry Well Irrigation Type-I	721.19	165.6
29	61/1A, 61/1A2	Wet Abutting Other Roads and Railway Lines Type-I	331.35	331.15
30	27/7B	Residential Class II Type-I	538.2	545
31	253/19	Dry Well Irrigation Type-I	722	165.6
32	253/19	Dry Well Irrigation Type-I	722	165.6
33	272/17A	Residential Class I Type-I	721.19	132.5

11. Though it is the contention of the respondents that the

classification of lands have been taken into consideration and the fancy sales have been omitted to be considered, as it cannot form the basis for quantification of the compensation, however, this Court is at a loss to understand as to the basis on which the sale of lands yielding higher amounts have been categorised to be fancy sales. Merely because certain lands have fetched higher amounts, the said sales cannot be termed to be fancy sales unless it is shown that the said sales have been effected for the purpose of obtaining higher compensation.

12. Further, the submission of the respondents that the classification of the land is the guiding factor for determination of the sales, that have to be taken for the purpose of computing the compensation also does not seem justified. All the lands are contiguous lands, which have been acquired for the purpose of National Highways. That being the case, there cannot be different classification between the adjacent lands and such being the case, the manner in which the said classification has been arrived at has also not been shown. Further, even according to the respondents, the lands of the petitioner are agricultural lands and that being the case, merely because it is classified as Dry Well Irrigation Type-I, cannot alter the character of the

lands.

13. Further, the Section 26 of the RFCTLARR Act, particularly Explanation 1 & 2 clearly shows the procedure to determine the market value of land by Collector. For better appreciation, the relevant portion is extracted hereunder:-

26. **Determination of market value of land by Collector:**

....

> *Explanation 1.* - The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.
>
> *Explanation 2.* - For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

14. In such view of the matter, this Court is of the considered view that the basis on which the compensation has been quantified is wholly unjustified and it is not a properly reasoned fixation of compensation. In the aforesaid circumstances, necessarily the matter has to be remanded to the

respondents for redetermination of compensation.

15. With the above observations and directions, this Writ petition is allowed by setting aside the award insofar as the petitioner is concerned and the matter is remanded to 2nd respondent for recomputation of compensation keeping in mind the discussion of this Court above. No costs. Consequently, connected Miscellaneous petition is closed.

01.11.2022
(3/3)

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Speaking Order : Yes/ No
Index : Yes/ No

To

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   Tiruvallur District - 602 001.

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   Special District Revenue Officer (LA),
   National Highways-716B,
   Thiruvallur, Thiruvallur District - 602 001.

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   The National Highways Authority of India,

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<u>M.DHANDAPANI, J.</u>

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