



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 11.11.2019**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**Rev.Apl.W.(MD)No.92 of 2019**

**in**

**W.P.(MD)No.24818 of 2018**

1.The Commissioner of Land Administration,  
Chennai.

2.The District Collector,  
Tirunelveli District.

3.The Special Tahsildar (Land Acquisition),  
River Linking Project,  
Unit III River Linking,  
Palayamkottai,  
Tirunelveli District.

... Petitioners/Respondents

Vs

1.G.Jebakumar Jebamani

2.G.Jeba Rajan

3.G.John Samuel

... Respondents/Petitioners

**Prayer:** Review Application is filed under Order XLVII, Rule 1 r/w. Section 114 of C.P.C., to review the order dated 02.01.2019 in W.P (MD)No.24818 of 2018, passed by this Court.

Prayer in WP(MD). 24818/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus directing the respondents herein to pay the arrears of compensation calculated as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (Central Act 30 of 2013) as assured by the 2nd respondent in his proceedings dated 02/09/2015 with applicable interest .



For Petitioners

: Mrs.Narmadha Sampath  
Additional Advocate General  
Assisted by Mr.M.Rajarajan  
Government Advocate.

For Respondents

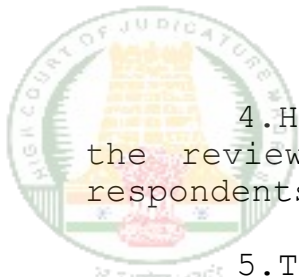
: Mrs.Lakshmi Gopinathan  
For M/s.Polax Legal Solutions for R1  
  
: Mr.R.Vijaya Kumar for R2 and R3

**O R D E R**

This review application is directed against the order dated 02.01.2019 passed by this Court in W.P.(MD)No.24818 of 2018. The said writ petition was filed by the respondents herein. The case of the respondents is that their land measuring 4.45.0 Hectares comprised in Ponnakudi Village, Palayamkottai Taluk, Tirunelveli District was taken possession in the year 2010-2011. The writ petitioners/respondents herein appear to have given their consent for such taking over of their land. Neither the review applicant nor the original writ petitioners have produced the terms of consent. Be that as it may, it is not in dispute that the notification under Section 4(1) of Land Acquisition Act, 1894 was issued. Since enquiry under Section 5(A) of the earlier Act was dispensed with, declaration under Section 6 of the Act was issued on 10.07.2013. Thereafter, there was negotiation between the land owners on the one hand and the administration on the other. Pursuant to the same, the District Collector, Tirunelveli, issued proceedings bearing Na.Ka.J3/15533/2012, dated 02.09.2015. In terms of the said proceedings, a sum Rs.2,88,15,875/- was paid. The land owners thereafter submitted a representation stating that some more amount will have to be paid as compensation by applying the formula set out in the new Act i.e., Central Act 30 of 2013. Since the representation was not acted upon, the instant writ petition came to filed.

2.This Court after putting the Administration on notice and after hearing the learned Government Advocate appearing for the respondents, by order dated 02.01.2019 allowed the writ petition and directed the authorities to determine the compensation payable to the writ petitioners in terms of the new Act i.e., Central Act 30 of 2013 and pay the same after deducting the interim compensation already paid to the writ petitioners. The entire exercise was directed to concluded within a certain time limit.

3.Alleging that the direction given by this Court has not been complied with Cont.P.(MD)No.835 of 2019 was filed. At that stage, the respondents in the original writ petition filed this review application.



4.Heard the learned Additional Advocate General appearing for the review applicants and the learned counsel appearing for the respondents.

5.The learned Additional Advocate General primarily contended that this Court erred in not noticing that the writ petition filed by the respondents was not maintainable. She submitted that the proceedings dated 02.09.2015 will have to be read a little carefully. She drew my attention to paragraph 3 of the said proceedings. She highlighted the fact that the said proceedings of the District Collector contemplated payment of a further sum only if there was scope for the same under the new Act i.e., Central Act 30 of 2013. Under the new Act i.e., Central Act 30 of 2013, there was provision for payment of interim compensation and final award. But in the case on hand, the land owners were paid a handsome amount of nearly Rs.3,00,00,000/- as a part of private negotiation package. She compared the statutory scheme with regard to the determination of the compensation under the new Act with the one under the old Act. Section 11 of the 1894 Act dealt with passing of award by the Collector. Section 11(1) of the old Act talks about passing of a regular award. Section 11(2) of the old Act gives scope for passing of an award in terms of private negotiation between the parties. Section 11(2) of the 1894 Act reads as under:-

*''Notwithstanding anything contained in Sub-Section (1), if any stage of the proceedings the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry make an award according to the terms of such agreement.''*

6.She specifically contended that under the new Act, there is no scope for such private negotiation at all. Of course, the Government of Tamilnadu has issued G.O.(Ms)No.281, Revenue & Disaster Management Department, Land Administration Wing, LA-I(1) Section, dated 07.09.2017 revising the procedure for private negotiation. But then, that would be de-hors and outside statute. Either a person goes for private negotiation and takes the amount given by the Government or for its statutory determination under the Act. One cannot have both. The learned Additional Advocate General pointed out that the land owners in the case are wanting to have the cake and eat it too. The learned Additional Advocate General further submitted G.O. dated 07.09.2017 had to be issued because the earlier G.O.(Ms) No.103 Revenue (LA-1(1) Department) dated 28.02.2011 could not longer be put to use in view of the repeal of the Old Act.

7.I carefully considered the rival contentions.



8.I do not want to be caught in the legal cobwebs sought to be woven by the learned Additional Advocate General.

9.It is said that the devil is in the details. Therefore, let me focus on the facts first. The undisputed facts are as under:-

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(a) possession of the petitioners' lands was taken over by the department as early as in the year 2010.

(b) it is true that the land owners had given their consent.

(c) the terms of consent have not been made known to the Court either by the land owners or by the Administration.

(d) notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 19.06.2013.

(e) declaration under Section 6 of the Act was issued on 10.07.2013.

(f) on 01.01.2014 Central Act 30 of 2013 came into force.

(g) The proceedings of the District Collector, Tirunelveli embodying the terms of private negotiation between the parties was issued on 02.09.2015.

10.The key to the entire issue lies in Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resttlement Act, 2013. It reads as under:-

*''(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply;''*

11.It is not in dispute that the acquisition proceedings were initiated under the 1894 Act. Equally beyond dispute is the fact that no award under Section 11 of the Act was passed when the new Act came into force. Therefore, in the very nature of things all the provisions of the new Act relating to the determination of compensation shall apply.

12.The learned Additional Advocate General contended that the land owners cannot gain double benefit. While I would certainly concur with the said submission, I must also categorically observe that when the proceeding dated 02.09.2015 was issued, the new Act had already come into force. The learned Additional Advocate General now harps on the fact that the new Act does not provide for private negotiation. If that be so, the District Collector, Tirunelveli ought to have clearly and categorically and in unambiguous terms put the land owners on notice that the amount of Rs.2,88,15,875/- was the full and final settlement, which they will be getting and that they will not be getting any further amount. Not doing so is clearly unfair.

13.As rightly pointed out by the learned counsel appearing for the land owners, the District Collector, Tirunelveli appears to have drawn inspiration from the earlier letter dated 17.04.2014



issued by the Commissioner of Land Administration. The said letter contains the following directives:-

Now, based on the provisions laid down under Section 24(1)(a) of the RFECTLARR Act, 2013, the Government in their G.O.Ms.No.88, Revenue [LA-I(1)], Department dated 21.2.2014 have issued an Executive Order for taking following action as specified U/s.24 (1)(a) of The Right to Fair Compensation Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

i) Process initiated under the Land Acquisition Act, 1894 where notification U/s.4 (1) has been issued, should be allowed to continue and declaration under Section 6 of the Land Acquisition Act, 1894, if not made, should be issued. However, the interim compensation should be determined based on the procedure already in vogue subject to additional compensation being paid as per the right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act.

ii) Process initiated under the Land Acquisition Act 1894, where the declaration U/s.6 of the Land Acquisition Act 1894 has been made, should be allowed to continue and the interim compensation should be determined as specified in para 3(i) above.

6.The District Collector is instructed that the draft award proposal may be sent as per the executive instructions issued in the Government order in G.O.Ms.No.88, Revenue [LA(1)] Department dated 21.02.2014, an interim award may be prepared as per the first proviso of Section 11(1) of Land Acquisition Act 1894 subject to additional compensation being paid as per the new Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.

14.When the statute governs the field, no executive instruction can run to the contrary. Therefore, the rights of the parties stand crystallized by the terms of 24(1)(a) of Central Act 30 of 2013. In this case, no such enquiry has been conducted so far. But then, sale deeds have been executed by the land owners in favour of the State.

15.I do not find any substance in the stand of the learned Additional Advocate General that when once the land owners have



chosen to accept the benefits in terms of Section 11(2) of old Act, they cannot now turn around and seek further benefit in terms of the new Act.

16.The question is whether Section 11(2) of the Old Act survived after the new Act came into force. Obviously, Section 11(2) of old Act could not have survived or had any effect whatsoever post 01.01.2014. The repealing provision in the new Act reads as under:-

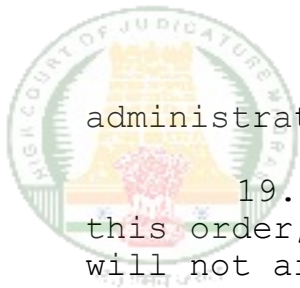
***''23. Enquiry and land acquisition award by Collector.-***

*On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under section 21, to the measurements made under section 20, and into the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of-*

- (a) the true area of the land;*
- (b) the compensation as determined under section 27 along with Rehabilitation and Resettlement Award as determined under section 31 and which in his opinion should be allowed for the land; and*
- (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.''*

17.The learned Additional Advocate General would once again drew my attention to the fact that in this case the land owners had executed registered sale deed in favour of the administration. But that cannot obliterate the rights of the land owners. The only point is the quantum of compensation payable to them. As already held, it has to be determined in terms of Section 24(1)(a) of the new Act.

18.Therefore, the third review applicant is directed to conduct the enquiry and conclude the same within a period of 60 days from the date of receipt of a copy of this order, by applying the provisions relating to determination of compensation set out in Central Act 30 of 2013. After the compensation amount is quantified, the rights of the parties can be adjusted. If the award amount is more than the amount already paid to the land owners in terms of the private negotiation, the review applicants are bound to pay the same within a period of four weeks thereafter. If the award amount is lesser than what was already paid to the land owners, then of course the land owners will have to refund the said amount to the



administration.

19.If both the parties stick to the time-line mentioned in this order, the question of paying interest by either of the parties will not arise.

20.With these directions, the review application is disposed of.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Land Administration,  
Chennai.

2.The District Collector,  
Tirunelveli District.

3.The Special Tahsildar (Land Acquisition),  
River Linking Project,  
Unit III River Linking,  
Palayamkottai,  
Tirunelveli District.

+1cc to M/s.Polax Legal Solutions, SR.No.97658

+1cc to Mr.G.Mohan Kumar,Advocate, SR.No.97458

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**11.11.2019**

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