



W.P.(MD).No.9400 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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ORDER RESERVED ON : 23.11.2022

ORDER PRONOUNCED ON : 01.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.9400 of 2014

and M.P(MD).No.1 of 2014

G.Srinivasan (died)

2.Anuradha Srinivasan

3.G.Sitharaman

4.G.Nagarajan

5.Soundaram

(Petitioners 2 to 5 are substituted of the deceased
sole petitioner vide Court order dated 27.07.2018)

....Petitioners

Vs

1.The Government of Tamil Nadu
Represented by its Principal Secretary
Housing and Urban Development Department
Fort St.George, Secretariat
Chennai 600 009

2.The District Collector
Madurai District
Madurai

3.The Executive Engineer Cum
Administrative Officer
Tamil Nadu Housing Board
Madurai 625 016



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4.The Special Tahsildhar
(Land Acquisition)
Ellis Nagar Scheme
Madurai

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 2nd respondent in Roc.No.29827/2013/B2, dated 24.02.2014, quash the same and direct the respondents 1 and 2 to handover the possession of the acquired property to the petitioner and in alternate direct the fourth respondent to pay the balance compensation amount as per the calculation memo, which has been arrived at following the judgment of this Court reported in 2014(2) L.W.520.

For Petitioner : Mr.R.Subramanian
For Mr.N.C.Ashokkumar

For R1, R2 & R4 : Mr.B.Saravanan
Additional Government Pleader

For R3 : Mr.R.Sivakumar
Standing Counsel

ORDER

The present writ petition was originally filed challenging the proceedings of the second respondent herein under which first respondent has expressed his inability to clarify with regard to the applicability of new Land Acquisition Act namely Central Act 30 of 2013. The petitioner has further prayed for a direction to the respondents 1 and 2 to hand over possession of the acquired property to the petitioner.



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2.While the writ petition was pending, the petitioner has filed an application seeking direction of the Court to amend the prayer in order to include the alternative prayer to the effect that the fourth respondent namely the Special Tahsildhar, land acquisition may be directed to pay the balance compensation amount as per the calculation memo which has been arrived at following the judgement of this Hon'ble Court reported in ***2014-3-L.W.520 (K.G.Krishnamoorthi & others .vs. The Sub Collector, Pollachi, represented by Tahsildar, Udumalpet and another).***

3.The learned counsel for the petitioner at the time of the argument has submitted that he is not pressing the original prayer and he will confine his submission with regard to the alternative prayer namely the payment of balance compensation.

4.The petitioner's land having an extent of 47 cents were acquired by the Government of Tamil Nadu for Ellis Nagar Project in Madakulam Village, Madurai. The petitioner was not satisfied with the award fixed by the Acquisition Officer and hence, he sought for a reference. The Acquisition Tribunal namely Subordinate Court, Madurai fixed the compensation at the rate of Rs.5000/- per cent in L.A.O.P.No.69 of 1986 on 23.02.1989. The said award was challenged by the Special Tahsildhar by filing A.S.No.758 of 1998 on the file of this Court challenging the enhancement made by the Acquisition Tribunal.



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5.The Hon'ble Division Bench of this Court by an order dated 19.06.2002 allowed the appeal and reduced the compensation to Rs.4166/- per cent. This Court also declared that the claimants are entitled to 30% solatium in the market value of interest for the additional amount at the rate of 12% per annum from the date of 4(1) Notification till the date of passing the award or delivery of possession, whichever is earlier. This Court also clarified that the interest is payable on the said amount as well. After the orders of the Hon'ble Division Bench of this Court, the petitioner has initiated execution proceedings before the Land Acquisition Tribunal/ the Subordinate Court, Madurai in E.P.No.240/1993. The fourth respondent had deposited a sum of Rs.12,34,687/- towards part satisfaction of the award amount.

6.According to the learned counsel for the petitioner, the Acquisition Officer had refused to pay interest on solatium and hence, they were constrained to file W.P(MD).No.595 of 2009 before this Court. This Court had passed an order on 12.03.2012 observing that the Division Bench order in A.S.No.758 of 1998 including the interest payable on the solatium as claimed by the petitioner has to be complied with by the Execution Court and the decree in its entirety has to be executed. With the above said observation, this Court has directed the writ petitioner to approach the Execution Court to execute the decree, in terms of the Division Bench judgement. The petitioner had further contended that the issue has arisen with



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regard to appropriation of the amount deposited by the first respondent herein. Whether the said amount has to be appropriated towards interest first or towards principal amount.

7.The learned counsel counsel for the petitioner had relied upon the Five Judge Bench Judgement of the Hon'ble Supreme Court reported in **2007 (3) CTC 170 in Civil Appeal No.4570 of 2006 (Gurpreet Singh Vs. Union of India)** and contended that the appropriation has to be first towards interest, then towards cost and only finally towards principal amount. However, the respondent authorities are refusing to adhere to the said Larger Bench decision of the Hon'ble Supreme Court and they have filed a calculation memo showing appropriation towards principal amount at the first instance. Unless the said legal issue is resolved by the High Court, it will cause delay before the Executing Court to decide the said issue.

8.The learned counsel for the petitioner further relied upon a judgement of this Court reported in **2014-3-LW.520 (K.G.Krishnamoorthi & others Vs. The Sub Collector, Pollachi, represented by Tahsildar, Udulmalpet)** in which the Larger Bench of the Hon'ble Supreme Court reported in **2007(3) CTC Page 170 (Gurpreet Singh Vs. Union of India)** has been followed. Hence, according to the learned counsel for the petitioner, unless the said legal issue is resolved, the respondent authorities would not deposit the amount before the Executing Court. Hence, he prayed for an



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alternative prayer, for a direction as against the fourth respondent to pay balance compensation as per the calculation memo of the writ petitioner.

9.Per contra, the learned counsel appearing for the official respondents have contended that while execution petition was pending, the petitioner had earlier approached the Land Acquisition Officer seeking some clarification and he had passed an order refusing to clarify the same. The said order was challenged by the writ petitioner in W.P(MD).No.595 of 2009. In the said writ petition, this Court has chided the writ petitioner for approaching the High Court without approaching the Executing Court for Execution of the decree in entirety. This Court has also clarified that the petitioner is entitled to receive interest on the solatium amount as per the orders of the Hon'ble Division Bench in A.S.No.758 of 1998 and the petitioner was directed to approach the Execution Court and work out his remedy in accordance with law.

10.The learned counsel for the official respondents had further contended that instead of approaching the Execution Court, the petitioner has again approached the District Collector on 11.02.2014. The said clarification that was sought for again related to the applicability of new Act namely Act 30 of 2013. The District Collector was constrained to inform the petitioner that such a clarification could not be issued by him. The said order has been challenged again by the writ petition in the present writ petition. Pending writ



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petition, the petitioner has chosen to amend the prayer so as to include the prayer for recovery of balance compensation amount from the fourth respondent herein.

11.The learned counsel for the respondents further contended that this Court has directed the writ petitioner by an order dated 12.03.2012 in W.P(MD).No.595 of 2009 to approach the Execution Court. Thereafter, the petitioner has approached the District Collector on 11.02.2014 seeking clarification which is clearly in violation of the order passed by this Court. The learned counsel had further contended that the award of the Land Acquisition Tribunal was modified by this Court and the modified award has to be executed by the Tribunal in E.P.No.240 of 1993 pending before the Subordinate Court, Madurai. The petitioner cannot time and again invoke the jurisdiction of this Court under Article 226 of Constitution of India for executing the said award. The learned counsel had relied upon a judgement of the Hon'ble Supreme Court in ***Civil Appeal No.5256 of 2022 (National Highways Authority of India Vs. Sheetal Jaidev Vade & others)*** dated 24.08.2022 and contended that the writ petition is not maintainable to execute the award passed by the Arbitral Tribunal /Court and the High Court should not entertain such a writ petition without relegating the judgement creditor to file execution proceedings before the competent Executing Court.



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12.The learned counsel appearing for the official respondents had further contended that even according to the learned counsel for the petitioner the issue relating to appropriation of amount deposited towards interest or the principal has already been decided by the Larger Bench of the Hon'ble Supreme Court reported in **2007 (3) CTC 170 in Civil Appeal No.4570 of 2006 (Gurpreet Singh Vs. Union of India)**. In such view of the matter, the legal issue is no longer *res integra* and the same can be decided by the Execution Court itself. Hence, the present writ petition alleging that there is a legal impediment for execution proceedings is not legally sustainable. Hence, he prayed for dismissal of the writ petition.

13.I have considered the submissions made on either side and perused the materials available on record.

14.This writ petition was originally filed with a prayer challenging a communication of the District Collector who had refused to clarify a doubt raised by the writ petitioner relating to the applicability of the new Land Acquisition Act namely Act 30 of 2013. However, pending writ petition, the prayer has been amended seeking an alternative prayer for dispersal of the balance compensation amount as per order of this Court reported in **2014-3-L.W.520 (K.G.Krishnamoorthi & others Vs. The Sub Collector, Udumalpet and another)**.



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15. Admittedly, the land owner/claimant is the judgment creditor in LAOP.No.69 of 1986 on the file of the First Additional Subordinate Court, Madurai. The said award has been modified by the Hon'ble Division Bench of this Court in A.S.No.758 of 1998 dated 09.06.2002. The Hon'ble Division Bench has clarified that the petitioner is entitled to interest on the solatium amount. Admittedly, the petitioner had filed E.P.No.240 of 1993 before the Subordinate Court, Madurai to execute the said award.

16. While the execution proceedings are pending, suddenly the petitioner had approached the Land Acquisition Officer seeking some clarification and the same was rejected by an order dated 18.11.2008. The said order was challenged by the writ petitioner in W.P.(MD).No.595 of 2009. The said writ petition was dismissed by this Court on 12.03.2012 directing the writ petitioner to work out his remedy before the Execution Court. However in violation of the order passed by this Court, the petitioner has again chosen to approach the District Collector with a similar request on 11.02.2014. As expected, the District Collector had refused to clarify the same and that is under challenge by way of original prayer in the present writ petition.

17. It is clear that the petitioner is not interested in prosecuting the executing proceedings but only interested in approaching the revenue authorities again and again seeking some clarification. Once an award is



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passed under the Land Acquisition Act, it has to be executed in a manner known to law. Thereafter, the revenue authorities have no role to play whatsoever.

18.The alternative prayer sought for by the writ petitioner relating to the payment of balance compensation clearly reveals that the petitioner is attempting to convert this Court into an Execution Court for executing the award passed by the Land Acquisition Tribunal. As rightly pointed out by the learned counsel appearing for the official respondents, the Hon'ble Supreme Court has deprecated the practice of entertaining a writ petition under Article 226 of the Constitution of India for executing the award passed by in the Arbitral Tribunal/ Court. Therefore, I find that the alternative prayer sought for in the writ petition by way of amendment is also not maintainable.

19.The learned counsel for the petitioner had tried to convince the Court that there is a legal issue relating to the appropriation of the amount deposited by the respondent authorities. Whether the amount deposited should be appropriated first towards interest or the principal amount has to be decided. Unless the said legal issue is decided, the Execution Court could not proceed further. Even according to the learned counsel for the petitioner, the said legal issue has already been decided by the Larger Bench of the Hon'ble Supreme Court reported in *2007 (3) CTC 170 in Civil Appeal No.4570 of*



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2006 (Gurpreet Singh Vs. Union of India) followed by this Court in a judgement reported in **2014-3-L.W.520 (K.G.Krishnamoorthi & others Vs.**

The Sub Collector, Udumalpet and another). When an issue has already been decided by the Larger Bench of the Hon'ble Supreme Court, the Execution Court is well within its jurisdiction to follow the said judgement and decide the issue relating to appropriation of the amount deposited by the respondent authorities. Hence, the said contention of the learned counsel for the petitioner does not call for any interference by this Court. The learned counsel for the petitioner further contended that the petitioner is not aware whether the said Execution proceedings in E.P.No.240 of 1993 is still pending or it has been closed for statistical purpose.

20.In case, if execution proceedings had been closed for statistical purpose, the learned Subordinate Judge, Madurai is directed to restore the said Execution proceedings on a memo to be filed by the writ petitioner. The execution proceedings shall be conducted on a day to day basis and it should be disposed of within a period of 12 weeks from the date of receipt of a copy of this order. The learned counsel appearing on either side are directed to co-operate with the Execution Court.



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21. With the above observations, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes/No

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To

1. The Principal Secretary
Government of Tamil Nadu
Housing and Urban Development Department
Fort St. George, Secretariat
Chennai 600 009

2. The District Collector
Madurai District
Madurai

3. The Special Tahsildhar
(Land Acquisition)
Ellis Nagar Scheme
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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