IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-06-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP Nos.5973, 5986, 5983, 5977 of 2021, 8371 to 8377 of 2009, 6096 6699, 6703, 6780, 6798, 6837, 6981, 6983, 7226, 7228, 7506, 7513, 7509, 7534, 7537, 7540, 7655 and 7714 of 2021
And
WMP Nos.6638, 6631,6627, 6623, 6723, 7249, 7255, 7333, 7356, 7396, 7524, 7531, 7729, 7732, 8022, 8032, 8027, 8062, 8063, 8065, 8172, 8174 and 8265 of 2021
and MP Nos.1, 1, 1, 1, 1, 1 and 1 of 2009

WP No.5973 of 2021:

G.Lakshmipathy ... Petitioner

Vs.

1.The Collector of Thiruvallur District,
Office of the Collector of Thiruvallur,
Thiruvallur.

2.The Special Deputy Collector (L.A.),
Metropolitan Division,
Alandur,
Chennai-600 016.

3.The Special District Revenue Officer/
Land Acquisition Officer,
State Highways Department,
Metropolitan Division,
Alandur,
Chennai-600 016.

4.The Tahsildar,
Office of the Tahsildar,
Poonamallee,
Chennai-56.

5.The Chief Engineer,
Highways Department,
Chepauk,
Chennai-600 005. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the second respondent relating to passing of the Award No.5/2020 dated 31.12.2020, pertaining to Serial No.42, in proceedings bearing Na.Ka.No.1704/2010/Aa 1 dated 31.12.2010, issued as against the petitioner in respect of the property of the petitioner, comprised in Survey No.1357/6B land together with building of an extent of 46 square meters, situated in Door No.749, Trunk Road, Poonamallee, Trunk Road Poonamallee, Poonamallee Taluk and Thiruvallur District and quash the same and also incidentally nullify the entire previous notices issued by the second respondent under the provisions of the Tamil Nadu Highways Act, 2001 in this regard and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the petitioner in respect fo the aforesaid property.

For Petitioner in WPs.5973, 5986, 5983, 5977 of 2021, 8371 to 8377 of 2009, 6096, 6699, 6703, 6780, 6798, 6837, 6981, 6983, 7226, 7228, 7506, 7513, 7509, 7534, 7537, 7540 and 7655/2021 : Mr.A.Palaniappan

For Petitioner in WP 7714/2021 : Mr.A.Palaniappan for Ms.P.K.Vasuki

For Respondents in all WPs : Mr.D.Ravichander, Special Government Pleader.

C O M M O N   O R D E R

All the above writ petitions are filed questioning the Award passed on 31.12.2020 by the Land Acquisition Officer. The validity of the acquisition need not be gone into on account of the fact that the Project has already been implemented and halfway through.

2. The petitioners have raised several grounds questioning the validity of the acquisition and the learned counsel for the petitioners mainly contended that the deduction of 33.33% on the head of development charges is perverse and more-so the petitioners are entitled to get compensation under the provisions of the New Act i.e., Central Act No.30 of 2013.

3. In view of the fact that the Project has already been commenced and the Authorities are in the process of implementation in entirety, it may not be required for this Court to go into those grounds raised for quashing the acquisition proceedings. Such Public Welfare Projects, already commenced, need not be stalled and in such circumstances, the aggrieved persons are suitably compensated in accordance with the provisions of the Act.

4. The learned counsel for the petitioners also made a submission that the petitioners have no objection for implementing the Scheme for the welfare of the public at large and they are requesting the

Authorities to pay just compensation for the valuable lands, which they have lost.

5. The property right of citizen is the constitutional right under Article 300-A of the Constitution of India. No doubt, such right can be taken away by the Authority of Law. However, the Government must ensure that the landlosers are paid just compensation and in commensuration to the value of the land they lost. Thus Courts are also have to consider the principles for grant of just compensation.

6. The object of the provisions of the 2019 Act, has been considered by the Apex Court of India in the case of **G. Mohan Rao vs. State of Tamil Nadu [(2022) 12 SCC 696]**, wherein it has been held that "to tide over the situation, the Government have decided to revive the aforesaid three Tamil Nadu Acts and to apply the provisions relating to the determination of compensation, rehabilitation and resettlement and infrastructure amenities as in the Central Act 30 of 2013 to the land acquisitions made under the Tamil Nadu Acts and to validate the action

already taken under the said Acts and accordingly, the Government have decided to undertake legislation for the abovesaid purpose".

7. Pursuant to the judgment of the Apex Court of India, cited supra, the Government of Tamil Nadu also validated the repealed Acts and ensured that the landlosers will get compensation under the New Act i.e., Central Act 30 of 2013.

8. In the present cases, the land acquisition proceedings were initiated in the year 2011 and the Award was passed on 31.12.2020. More-so, the subject lands were acquired for expansion of State Highways and therefore, the development charges proposed to be recovered from the landlosers are unjustifiable. The development charges are required to be recovered only if there is a scope for such developments and in respect of all the existing roads, expansion cannot be considered as developments of such roads are already there and the adjacent lands are required for expansion of the roads.

9. These facts are not in dispute between the parties and thus this Court has no hesitation in forming an opinion that the development charges of 33.33% deducted from the landlosers are not in consonance with the principles and also the charges recovered are not required for the purpose of developments.

10. In this aspect, it is relevant to extract paragraph-10 of the judgment of the Apex Court of India in the case of **Bhagwathula Samanna vs. Special Tahsildar and Land Acquisition Officer (1991) 4 SCC 506**, wherein in paragraph-10 of the said judgment, it has been held as under:-

> *"10. This Court has in a recent decision in Special Tahsildar Land Acquisition, Vishakapatnam vs. Smt A. Mangala Gowri [(1991) 4 SCC 218 : (1991) 2 Scale 301] , following Tribeni Devi case [(1972) 1 SCC 480 : AIR 1972 SC 1417 : (1972) 3 SCR 208] pointed out as under: (SCC p. 223 b-d)*
>
> > *"It is to be noted that in building regulations, setting apart the*

> *lands for development of roads, drainage and other amenities like electricity etc. are condition precedent to approve layout for building colonies. Therefore, based upon the situation of the land and the need for development the deduction shall be made. Where acquired land is in the midst of already developed land with amenities of roads, drainage, electricity etc. then deduction of 1/3 would not be justified. In the rural areas housing schemes relating to weaker sections deduction of 1/4 may be justified."*

Thus the development charges deducted are untenable and it is beyond the scope of purpose for which it is recovered.

11. As far as the determination of compensation is concerned, undoubtedly, it is to be determined based on the New Act, i.e., Central Act 30 of 2013. In respect of all other criterias, the petitioners have no serious

objections and more-so, they have no further objections with reference to the grounds raised for quashing the acquisition proceedings.

12. In view of the facts and circumstances, this Court is inclined to pass the following orders:-

(1) The recovery of development charges of 33.33% deducted from the landlosers-petitioners are set aside.

(2) The compensation is to be determined in accordance with the provisions of the New Act, i.e., Central Act 30 of 2013. Accordingly, the respondents are directed to re-calculate the compensation as applicable to the respective petitioners and settle the compensation along with the admissible interest under the Act, within a period of twelve weeks from the date of receipt of a copy of this order. If at all the petitioners aggrieved from and out of the compensation determined by the Authorities, their cases are to be referred under Section 20 of the Act for determining the enhancement or otherwise by the appropriate Court of Law.

13. With the above directions, all the writ petitions are allowed in part. However, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

20-06-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

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S.M.SUBRAMANIAM, J.

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