BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **07.12.2023**

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THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)Nos.12803 & 20504 of 2021

Mumtaj Begam ...Petitioner in WP(MD)No.12803/2021

1.Amutha

2.P.Ramesh

3.P.Suresh ...Petitioners in WP(MD)No.20504/2021

/Vs./

1.The Commissioner of Land Administration,
Chennai.

2.The District Collector,
Tiruchirappalli.

3.The Land Acquisition Officer Cum
District Revenue Officer,
Tiruchirappalli.

4.The Special Tahsildar,
Land Acquisition,
Rail Vikas Nigam Ltd.,
Unit-II, Tiruchirappalli.

5.The General Manager,
Southern Railway,
Chennai.

6.The Executive Engineer (Constructions),
Southern Railway,
Madurai-625016.

7.The Manager/civil,
Rail Vikas Nigam Ltd.,
Chennai-600 006. ....Respondents in both petitions

COMMON PRAYER:- Petitions - filed under Article 226 of the Constitution of India, to issue a Writ of Declaration declaring that the deduction of development charges of 33.33 percentage in Serial No.14 in the award dated 25.01.2021 in Award No.11/2020-2021 in Na.Ka.C5/14030/2018 for linear acquisition of land for doubling of broad gauge railway line from Vilupuram to Dindigul under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 as illegal and null and Void and Writ of Certiorarified Mandamus, to call for records relating to the individual award in Serial No.72, Serial No.69 dated 25.01.2021 passed by the 3rd respondent and quash the same so far as deduction of development charges of Rs.9,15,034-11p & Ea,26,96,450-89p respectively and consequentially, directing the respondents to disburse the above said amount with subsequent interest to the petitioners within a time limit that may be stipulated by this Court.

Appearance in both petitions:-

For Petitioners : Mr.J.Barathan
For Respondents : Mr.R.Baskaran
Addl. Advocate General
assisted by
Ms.S.Jeyapriya (R1 to R4)
Mr.A.Haja Mohideen (R5 to R7)

COMMON ORDER

The issue involved in both these writ petitions are common and hence, they were taken up together, heard and disposed of through this common order.

2. The petitioners in WP(MD)No.20504 of 2021 have challenged the award passed by the third respondent dated 25.01.2021, wherein the third respondent has deducted 1/3rd towards development charges from the total compensation payable to the petitioners. Similarly, the petitioner in WP(MD)No.12803 of 2021 has also questioned the deduction of 1/3rd towards development charges in the award that was passed by the third respondent dated 25.01.2021.

3. Heard Mr.J.Barathan, learned counsel appearing for the petitioners, Mr.R.Baskaran, learned Additional Advocate General for the respondents 1 to 4 and Mr.A.Haja Mohideen, learned counsel for the respondents 5 to 7.

4. In the instant case, the lands were acquired under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 for the purpose of laying and doubling a broad gauge railway line from Villupuram to Dindigul. While fixing the compensation by passing an award, 1/3rd was deducted towards development charges and the same has been put to challenge in these writ petitions.

5. The issue involved is no longer *res integra* and it is squarely covered by the judgments of the Hon'ble Apex Court and also the Division Bench of this Court.

6. The first judgment to be relied upon is ***Nelson Fernandes and Others*** vs**. *Special Land Acquisition Officer, South Goa and Others*** reported in ***2007 (9) SCC 447*** and the relevant portions are extracted hereunder:-

> *“We are not, however, oblivious of the fact that normally 1/3 deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways. This Court in Hasanali Khanbhai & Sons & Ors. Vs. State of Gujarat, 1995 2 SCC 422 and L.A.O. vs. Nookala Rajamallu, 2003 (10) Scale 307 had noticed that where lands are acquired for specific purposes deduction by way of development charges is permissible. In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise. Therefore, the order passed by the High Court is liable to be set aside and in view of the availability of basic civic amenities such as school, bank, police station, water supply, electricity, high way,*

transport, post, petrol pump, industry, telecommunication and other businesses, the claim of compensation should reasonably be fixed @ Rs. 250/- per sq. mtr. with the deduction of 20%. The appellant shall be entitled to all other statutory benefits such as solatium, interest etc. etc. The appellants also will be entitled to compensation for the trees standing on the said land in a sum of Rs. 59,192 as fixed. I.A. No. 1 of 2006 for substitution is ordered as prayed for."

7. The next judgment that can be taken note of is ***C.R.Nagaraja Shetty*** vs***. Special Land Acquisition Officer and Estate Officer and Another*** reported in ***2009 (5) LW 64*** and the relevant portions are extracted hereunder:-

"*We cannot ignore the fact that the land is acquired only for widening of the National Highway. There would, therefore, be no question of any such development or any costs therefor. In the reported judgment in Nelson Fernandes and Others Vs. Special Land Acquisition Officer, South Goa and Others in 2007(9) SCC 447, this Court has discussed the question of development charges. That was a case, where, the acquisition was for laying a Railway line. This Court found that the land under acquisition was situated in an area, which was adjacent to the land already acquired for the same purpose, i.e., for laying Railway line. In paragraph 29, the Court observed that the Land Acquisition Officer, the District Judge and the High Court had failed to notice that the purpose of acquisition was for Railways and that the purpose is a relevant factor to be taken into consideration for fixing the* *compensation. The Court relied on judgment in Viluben Jhalejar Contractor Vs. State of Gujarat reported in 2005(4) SCC 789, where it was held that the purpose for which the land is acquired, must also be taken into consideration in fixing the market value and the deduction of development charges. Further, in paragraph 30, the Court specifically referred to the deduction for the development charges and observed:-*

> *"30. We are not, however, oblivious of the fact that normally 1/3rd deduction of further amount of compensation has been directed in some cases. However, the purpose for which the land is acquired must also be taken into consideration. In the instant case, the land was acquired for the construction of new BG line for the Konkan Railways..................... In the instant case, acquisition is for laying a railway line. Therefore, the question of development thereof would not arise."*

The Court made a reference to two other cases, viz., Hasanali Khanbhai & Sons Vs. State of Gujarat and Land Acquisition Officer Vs. Nookala Rajamallu reported in 1995 (5) SCC 422 and 2003(12) SCC 334 respectively, where, the deduction by way development charges, was held permissible. The situation is no different in the present case. All that the acquiring body has to achieve is to widen the National Highway. There is no further question of any development. We again, even at the cost of repetition, reiterate that no evidence was shown before us in support of the plea of the proposed development. We, therefore, hold that the High Court has erred in directing the deduction on account of the developmental charges at the rate of Rs.25/- per square feet out of the ordered compensation at the rate of Rs.75/- per square feet. We set aside the judgment to that extent."

8. The judgment of the Division Bench of this Court in ***Project Director, National Highways Authority of India vs. M.Vijayalakshmi and Another*** reported in ***2020 SCC Online Mad 1119*** can also be relied upon and the relevant portions are extracted hereunder:-

> *"75.Deduction towards development charges from the compensation awarded to the land loser was held to be permissible when it was established by positive evidence that such development charges are justified. The expenditure to be incurred should come from the need of development contemplated and the expenditure which is likely/reasonably required for such development. In none of the cases before us, there was any positive evidence placed by NHAI to justify deduction towards development charges. Deduction towards development charges cannot be on ipse dixit, but required to be established by positive evidence. NHAI, by relying on the decisions to state that development charges can be as high as 70% can in no manner improve their case. As pointed out, no evidence was placed by NHAI to justify deduction of development charges.*
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> *76.In Nelson Fernandes And Ors. vs. Special Land Acquisition Officer, South Goa And Ors. reported in (2007) 9 SCC 447, the Hon'ble Supreme Court discussed the question of development charges. In the said case, lands were acquired for laying a Railway line. It was found that lands which were acquired were adjacent to the land which was already acquired for the same purpose, which fact was not noticed by the Land Acquisition Officer, District Court and the High Court and that*

the purpose of acquisition is a relevant factor to be taken into consideration while fixing compensation. Similar view was taken in Viluben Jhalejar Contractor vs. State of Gujarat reported in (2005) 4 SCC 789.

77.In C.R.Nagaraja Shetty (supra), the acquisition was for widening of the National Highway. The High Court deducted Rs.25/- per square feet for development charges. On appeal by the land loser, the Hon'ble Supreme Court pointed out that when lands are acquired for public purposes like setting up of industries, setting up of housing colonies or other such allied purposes, the acquiring body would be entitled to deduct some amount from the payable compensation on account of development charges, however it has to be established by positive evidence that such development charges are justified. With regard to acquisition of land for widening of the existing National Highway, it was held that land is acquired only for widening of the National Highway, there would, therefore be no question of any such development or any costs thereof. In the said case, there was no evidence placed by the acquiring body before the district Court that it would incur development charges. This decision would come to the aid and assistance of the land losers before us, which leads us to hold that deduction towards development charges is not sustainable and accordingly, the same are set aside."

9. It is clear from the above judgments that 1/3rd towards development charges cannot be deducted insofar as the linear projects are concerned and particularly, where the acquisition was made for laying and doubling of the broad gauge railway line from Villupuram to Dindigul. In view of the same, the deduction of 1/3rd towards development charges in the award passed by the third respondent dated 25.01.2021, in both the writ petitions is hereby set aside. There shall be a direction to the third respondent to re-work the compensation by adding 1/3rd development charges that was deducted and the total compensation shall be paid to the petitioners within a period of six weeks from the date of receipt of a copy of this order.

10. In the result, the writ petitions are allowed with the above directions. No costs.

07.12.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
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N.ANAND VENKATESH, J.

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TO:-

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Chennai.

2.The District Collector,
Tiruchirappalli.

3.The Land Acquisition Officer Cum
District Revenue Officer,
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4.The Special Tahsildar,
Land Acquisition,
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Unit-II, Tiruchirappalli.

Common Order made in
W.P.(MD)Nos.12803 & 20504 of 2021

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