



WP(MD)No.17347 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.12.2023**

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

W.P.(MD)No.17347 of 2020

and

W.M.P.(MD)No.14503 of 2020

P.Ramamoorthy

...Petitioner

/Vs./

- 1.The Sole Arbitrator/ District Collector,
National Highways 744-A,
Collectorate, Madurai.
- 2.The Competent Authority Cum District
Special Revenue Divisional Officer (Land Acquisition),
National Highways 744-A,
Door.No.5A, Baskar Complex,
Besant Road, Chinnachokkikulam,
Madurai.
- 3.Marikanpandian (Died)
- 4.Ramaraja
- 5.Lakshmanaraja
- 6.Anandaraja (Died)
- 7.Inbavalli
- 8.Kalavathy
- 9.Thilagarani



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10.M.Vimala

11.M.Nirmala

12.M.Sakeesh

...Respondents

(R9 to R12 are brought on record as Lrs of the deceased R3 vide Court order dated 04.03.2021 in WMP(MD)No.3210 of 2021.)

PRAYER:- 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 passed by the 2nd respondent in his proceedings in Na.Ka.No. 1086/2020/A1 dated 28.10.2020 and to quash the same as illegal consequently direct the 2nd respondent to withhold the amount deposited in favour of the respondents 3 to 8 pursuant to the award passed by the 2nd respondent in Award No.13/2019 dated 16.04.2019 and to determine the apportionment to the amount payable to the petitioner under Section 3-H of the National Highways Act, 1956 within the time frame as fixed by this Court.

For Petitioner : Mr.K.Rajeshwaran

For Respondents : Ms.D.Farjana Ghoushia (R1 & R2)

Special Government Pleader

Mr.D.P.Sundararaj (R4, R5, R7 to R12)

ORDER

This writ petition has been filed challenging the impugned proceedings of the second respondent in Na.Ka.No.1086/2020/A1 dated 23.10.2020 and to direct the second respondent to withhold the amount deposited in favour of the respondents 3 to 8 pursuant to the award passed by the second respondent in



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Award No.13/2019 dated 16.04.2019 and to determine the apportionment of the compensation amount payable under Section 3H of the National Highways Act, 1956 (hereinafter referred to as 'Act' for brevity).

2. The case of the petitioner is that he and his family became cultivating tenants with respect to subject property in S.No.45/2A and 44/3 at Chinna Elanthaikulam Village, Vadipatti Taluk, Madurai District, in the year 1960. Subsequently, the petitioner was allotted 2.80 cents towards his share in the subject property and he is cultivating the lands till date. On 20.09.2019, the petitioner received a notice from the second respondent, wherein the petitioner was informed that the land was acquired by the National Highways Authority of India and the compensation amount has also been determined by the second respondent.

3. The petitioner submitted representations to the second respondent to determine his share in the property in line with Section 3G(2) of the Act. Since no action was forthcoming, the petitioner also filed a writ petition before this Court in WP(MD)No.7800 of 2020 seeking for appropriate directions and the said writ petition was disposed by order dated 24.07.2020 directing the second respondent to furnish a copy of the award.



4. The petitioner was not satisfied with the compensation that was fixed by the second respondent and hence, an appeal was filed before the first respondent seeking for enhancement of the compensation. In the meantime, the petitioner also made a representation to the second respondent to withhold the compensation amount that was deposited in favour of the respondents 3 to 8. On such representation made by the petitioner, the impugned proceedings came to be issued by the second respondent dated 23.10.2020 rejecting the claim made by the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

5. During the pendency of this writ petition, the third respondent died and his legal representatives were impleaded as R9 to R12. The respondents 4, 5, 7 to 12 have filed a common counter affidavit. They have taken a stand that the original lease was granted in favour of Aladi Thevar in the year 1960 by virtue of a registered lease agreement dated 06.06.1960 by Parimala Pandian and his brother Selva Maharaja, for a period of three years upto 30.04.1963. Thereafter, no extension of lease was granted and the lease was also not renewed by the predecessors of the respondents 3 to 8. Subsequently, the land owners partitioned the properties among themselves in the year 1977.



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6. The private respondents have taken a very specific stand that the petitioner has absolutely no right over the subject property and hence, is not entitled for any apportionment in the compensation. That apart, the petitioner has also not taken any steps to get a declaration from the competent authority as a cultivating tenant. Accordingly, the private respondents have sought for dismissal of this writ petition.

7. The learned Special Government Pleader appearing on behalf of the official respondents produced written instructions received from the Special Tahsildar. On going through the same, it is seen that the compensation has been determined for the properties in S.No.44/3B, 45/2B, 45/2A2, 44/3C and 45/2A3. Insofar as S.Nos.44/3B, 45/2B and 45/2A2, a total compensation of Rs.7,37,533/- was determined and this compensation was also paid on 29.07.2020 in favour of the third respondent and one Karuppaiah. Insofar as the compensation that was determined for S.Nos.44/3C and 45/2A3 for a sum of Rs.95,447/-, the payment was not made in view of the pendency of this writ petition and in view of the pendency of the suit in O.S.No.54 of 2022 before the District Munsif Court, Vadipatti.



8. The learned Special Government Pleader further submitted that the authorities have paid the compensation only to those persons, whose names were found in the revenue records and therefore, even insofar as the balance amount of Rs.95,447/-, it will be paid or deposited in accordance with the directions issued by this Court.

9. The short issue that arises for consideration in the present case is as to whether the petitioner will be entitled for any apportionment of compensation in the light of Section 3G(2) of the Act.

10. For proper appreciation, Section 3G(2) of the Act is extracted hereunder:-

“3G. Determination of amount payable as compensation.

.....

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent, of the amount determined under sub-section (1), for that land.”



11. A careful reading of this Section shows that where the property is in possession of a person, and is enjoying the same and is affected in any manner by reason of such acquisition, the amount calculated at 10% of the amount determined under Section 3G(1) of the Act should be paid to such person. It is this 10%, which the petitioner is claiming in the present writ petition. That apart, the petitioner also claims that an appeal has been filed before the first respondent seeking for enhancement of compensation and even in that enhanced compensation, the petitioner will be entitled for 10%, since his livelihood is being affected due to the acquisition of the land.

12. If the petitioner is to claim compensation under Section 3G(2) of the Act, the petitioner has to show some legal right to occupy the lands and to cultivate the same. In the instant case, there is no material to show that there was any subsisting lease deed beyond the year 1963. The original lease itself was given for the period from 1960 to 1963. Thereafter, if anyone was in possession of the lands, it will be more in the nature of tenant by sufferance.

13. That apart, no steps were taken right through to get a declaration as a cultivating tenant under the relevant enactment. It is not that everyone who is in possession of the land will be entitled for apportionment of compensation.



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There must be some legal status for the person, who is claiming to be cultivating the lands, failing which the claim made will be based more on mercy than based on any legal right. It must be borne in mind that Section 3G(2) of the Act is handled by authorities before whom the apportionment is sought for. Hence, the authorities will have to satisfy themselves that there is some legal right for the person claiming for apportionment of compensation. Therefore, the petitioner must be able to produce some documents to prove that the lease is in subsistence or that the petitioner has been declared as cultivating tenant in the property. In the absence of the same, such apportionment cannot be claimed by the petitioner.

14. The authorities are bound to pay the compensation only based on the name that is found in the revenue records. In the instant case, the second respondent found that the revenue records stood in the name of the third respondent and one Karuppaiah. On the demise of the third respondent, legal representatives were identified and the compensation of a sum of Rs.7,37,533/- has been paid to them and Karuppaiah.

15. The learned counsel appearing for the contesting private respondents submitted that the private respondents have not sought for any enhancement of compensation before the District Collector under Section 3G(5) of the Act.



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16. There is a private dispute between the petitioner and the private respondents and there is a suit pending in O.S.No.54 of 2022 before the District Munsif Court, Vadipatti. This suit was filed seeking for permanent injunction restraining the private respondents from interfering with the possession and enjoyment of the property. Therefore, this suit is more based on possession and it has nothing to do with the payment of compensation.

17. In the light of the above discussion, this Court does not find any ground to interfere with the impugned proceedings of the second respondent dated 23.10.2020 and hence, no consequential direction can be given to the second respondent to hold an enquiry and to apportion the compensation in favour of the petitioner.

18. In the result, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

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

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- 2.The Competent Authority Cum District
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Order made in
W.P.(MD)No.17347 of 2020

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