



W.P(MD)Nos.19772 & 14369 of 2021

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**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.19772 & 14369 of 2021

and

W.M.P(MD)No.16461 of 2021

W.P(MD)No.19772 of 2021:

C.Shanmuga Sundaram

... Petitioner

Vs.

1.The District Collector

Trichy District,

Trichy.

2.The District Revenue Officer,

(Regular),

Trichirapalli.



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3.The Special Tahsildar, (Land Acquisition),
Villupuram to Dindigul Double Track,
Collectorate,
Trichirapalli.

4.The Divisional Manager
Southern Railway,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for records pertaining to the impugned order dated 07.09.2021 in Na.Ka.C5/12428/2018 of the second respondent and the impugned order dated 24.09.2021 in Na.Ka.A1/53/2018 on the third respondent and quash the same and consequently direct the respondents 2 and 3 to re-do the exercise by following the judgement of the Hon'ble Supreme Court and this Court in respect of deduction of one third amount towards development charges.



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For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.A.K.Manikkam – for R1 to R3

Special Government Pleader

Mr.K.R.Laxman – for R4

W.P(MD)No.14369 of 2021

C.Shanmuga Sundaram

... Petitioner

Vs.

1.The District Collector

Trichy District,
Trichy.

2.The District Revenue Officer,
(Regular),
Trichirapalli.

3.The Special Tahsildar, (Land Acquisition),
Double of Broad Gauge,
Villupuram to Dindigul
Collectorate,
Trichirapalli.



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4.The Divisional Manager

Southern Railway,
Madurai.

5.The Chief Project Manager/Co-ordination,

Rail Vikas Nigam Limited,
Mezzanine Floor,
Thirumayilai Railway Station,
Mylapore,
Chennai – 600 004.

...Respondents

(R5 is impleaded vide order of this Court, dated
07.12.2023 made in W.M.P.(MD)No.1918 of 2022)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for records pertaining to the impugned order of the second respondent in Na.Ka.C5/12428/2018 dated 23.07.2021 which was received by me on 27.07.2021 and quash the same and consequently, direct the respondents to pay compensation to the petitioner forthwith.



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For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.A.K.Manikkam – for R1 to R3

Special Government Pleader

Mr.K.R.Laxman – for R4

Mr.A.Haja Mohideen – for R5

COMMON ORDER

W.P.(MD)No.14369 of 2021 has been filed challenging the impugned notice issued by the second respondent dated 23.07.2021.

2. W.P(MD)No.19772 of 2021 has been filed against the final order passed by the second respondent through proceedings dated 07.09.2021 and the subsequent order of the third respondent dated 24.09.2021 and for a consequential direction to the respondents 2 and 3 to refix the compensation by not deducting 1/3rd amount towards development charges.



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3. This is the second round of litigation initiated by the petitioner and the background facts of this case was dealt with in the earlier order passed by this Court in W.P.(MD)No.14533 of 2019 dated 26.04.2021 and the relevant portions are extracted hereunder:

“2. The case of the petitioner is that he was the owner of the subject property measuring an extent of 0.92 acres. Based on the requisition given by the railways, the acquisition proceedings were initiated under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, in the year 2013. The property was also acquired and it was handed over to the railways and it is stated that the laying of the total track for the route from Villupuram to Dindigul was also completed and is being put to use.

3. The petitioner has been running from pillar to post to get the compensation for the lands acquired from him and since the same was not paid to him, the present writ petition has been filed before this Court seeking for appropriate directions.

4. The first and third respondents have filed a counter affidavit in this case. The relevant portion in the counter affidavit is extracted hereunder:

“7. In order to acquire the said



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land for doubling of Broad Gauge Railway line between Villupuram and Dindigul, the Administration sanctioning order was issued in G.O.Ms.No.492 dated 8.12.2017 and the District Collector, Trichirappalli have also made the proposal regarding compensation in Na.Ka.C1/12428/2018 dated 11.6.2018 for the land acquired in several Taluks including the Manapparai Taluk where the petitioner's land is situated. Most of the land acquired in several Taluks, the compensation has been arrived and paid to the land owners. Regarding the above said petitioner's Taluk, the proposal order for the compensation to the land acquired is yet to be completed. Immediately after receiving of order from the Government the respondents herein will dispose the adequate compensation to the petitioner. Hence, there is no justifiable reason in favour of the petitioner and absolutely the writ petition is devoid of merits.”

5. Heard Mr.J.Anandkumar, learned counsel appearing for the petitioner, Mr.M.Muniasamy,



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learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.S.Manohar, learned counsel appearing for the respondents 2, 4 and 5.

6. There are no serious disputes with regard to the facts of the present case. It is a matter of fact that the property belonging to the petitioner was acquired and it has already been put to use from the year 2016 onwards. Insofar as the payment of compensation is concerned, the first respondent has taken a stand that already a proposal has been made in the year 2018 and insofar as the Taluk within which the petitioner's property was acquired, the Government is yet to pass orders and the same is awaited.

7. In the considered view of this Court, the petitioner has been deprived of his property for the last 7 years and the alacrity that was shown in acquiring the property was not shown when it came to payment of compensation. The petitioner need not stand with the begging bowl for getting the compensation and he is entitled for such a compensation as a matter of right and such a right is recognized under Article 300-A of the Constitution of India. Unfortunately, the petitioner is yet to see the



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colour of the coin.

8. In view of the above, there shall be a direction to the first respondent to pay the compensation to the petitioner pursuant to the representation made by the petitioner on 8.1.2019, within the period of eight (8) weeks from the date of receipt of a copy of this order. It is made clear that no further extension of time will be granted in this case and the compensation has to be paid within the time stipulated by this Court.”

4. Pursuant to the above order, the petitioner submitted a fresh representation dated 12.05.2021 and an enquiry was fixed by the third respondent. The petitioner appeared in person and produced all the relevant documents. During the enquiry, the petitioner was informed that 1/3rd of the amount is deducted towards development charges from the total compensation. The petitioner did not agree for the same and he made yet another representation on 28.06.2021 by objecting to the deduction towards development charges.



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5. The first respondent through the impugned notice dated 23.07.2021 informed the petitioner that since the petitioner was not willing for negotiation, steps will be taken to initiate proceedings under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. It is against this communication, W.P.(MD)No.14369 of 2021 has been filed.

6. The first respondent thereafter, issued a letter, dated 07.09.2021 by enclosing the draft award by fixing the compensation at Rs.16,45,322/- after deducting a sum of Rs.5,48,440/- which is 1/3rd towards development charges. Subsequently, the third respondent through proceedings dated 24.09.2021 informed the petitioner about the award passed and directed the petitioner to submit all the relevant documents. This has been put to challenge in W.P.(MD)No.19772 of 2021.

7. The District Revenue Officer has filed a common counter affidavit. The relevant portions in the common counter



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affidavit is extracted hereunder:

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“6.It is humbly submitted that the land of the petitioner land measuring Hec.0.03.50 nearly 8 cents though originally proposed for acquisition was already proposed for withdrawal under sec 4(1) of Tamil Nadu Industrial purposes Act 1997 as per the request of Southern Railways as the land was no longer required since the requirement of Disaster Management will be met with the available land. It is further submitted that the current running Broad-Gauge Railway Line was entirely laid in Railway Departments own land and not in the petitioner's land and the possession of the land in SF.No.312/ 12 was not taken and Land Transfer certificate was also not given to the Railway till date. Hence, at present the petitioner's land at Higher cost at Sq.Mt. rate is not needed to the fourth respondent. Hence the proposal is dropped hence the petitioner may take the land for his own use.

7.It is humbly submitted, without prejudice to the above contentions the classification of the land in SF.No.312/12 measuring 0.92 acres per revenue records and chitta is Agricultural Punja land. Whereas, the guideline value which should have been



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fixed at acre was fixed at Sq.mt./Sq.ft rate classifying it as Natham house site. But actually agricultural land and not a house site. In this connection it is submitted that when an agricultural land was plotted as layout 33 % of land will be handed over to the local body for laying of road and Open Space Reservation such as park and play field. Thus when the guide line value of agricultural land was fixed at Sq.mt./Sq.ft it becomes mandatory to deduct 1/3 amount as conversion of agricultural land to house site mandates 33% handing over of overall area. The procedure is accepted in many judgements of the APEX Court viz., in Civil Appeal Nos.4212--4223 of 2004 dated 30.09.2010 of the APEX Court of India. It has also been justified by the APEX Court in A.P. House Board versus K.Manohar Reddy and others in Civil Appeal Nos.4212-4223 of 2004 dated 30.09.2010.

8.....

9. At present the land is no more required for the purpose of Doubling of Broad-Gauge Railway Line Villuppuram - Dindigul and for purpose of Disaster Management. Process for withdrawal of 0.03.50 Hec of land in SF.No.312/12 from acquisition



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was already initiated under section 4(1) of the Tamil Nadu Acquisition of Land for industrial Purposes Act 1997. It is further submitted that the possession of the land in SF.No.312/12 was not taken till date and compensation amount was not paid to the petitioner, hence at this stage the land is no more required to the Railway.”

8. The short issue that arises for consideration in these Writ Petitions is as to whether the respondents are justified in deducting 1/3rd of the amount towards development charges from the final compensation that was fixed.

9. Before going into the issue that has been projected in these Writ Petitions, this Court has to necessarily deal with the stand that has been taken by the second respondent in the counter affidavit to the effect that the lands belonging to the petitioner is no longer required and it is proposed to be withdrawn from the acquisition proceedings and that the petitioner can very well use the lands for his own purposes.



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10. The above stand taken by the second respondent is unsustainable. Here is a case where the lands belonging to the petitioner were put to use even without undergoing a formal procedure under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. The petitioner was also not paid any compensation. It is under these circumstances, the petitioner filed W.P.(MD)No.14533 of 2019 and the stand that was taken by the District Revenue Officer and the Special Tahsildar was extracted in the earlier order at Paragraph No.4 of the order. This Court after hearing all the parties gave a finding at paragraph No.6 of the order to the effect that the property of the petitioner has been acquired and it has already been put to use from the year 2016 onwards. Therefore, this Court directed the payment of compensation to the petitioner. Hence, it is too late in the day for the District Revenue Officer to take a stand in the counter affidavit as if the lands belonging to the petitioner are not required and that the petitioner can utilise the said lands.



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11. The respondents have virtually attempted to put the cart before the horse. Instead of acquiring the lands and paying the compensation, the respondents have started the process of determining the compensation and thereafter, initiated proceedings for acquisition of the lands under the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997. By the time, this acquisition proceedings was initiated, it was a *fait accompli* since the lands have already been taken over and the petitioner has been struggling to get the compensation from the year 2016 onwards. In view of the same, this Court will not permit the second respondent to take a stand to the effect that the lands belonging to the petitioner are not required and there is a proposal for dropping the acquisition proceedings. By taking this stand, the petitioner will be virtually left in lurch. At least after the earlier order was passed by this Court in W.P.(MD)No.14533 of 2019 dated 26.04.2021, the petitioner was under the fond hope that he will at least receive compensation. However, in the year 2023, the petitioner is informed that his lands are not acquired and in view of



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this stand, the respondents are attempting to deprive the petitioner from payment of compensation. This Court finds that the stand taken by the second respondent is unreasonable and it causes great prejudice to the petitioner who has already lost his property. If this stand is entertained, the right that has been guaranteed under Article 300A of the Constitution of India will become a dead letter.

12. Having come to a conclusion regarding the stand taken by the second respondent, the next issue to be taken into consideration is with regard to the compensation that has been fixed by the respondents. The main grievance that was projected by the petitioner is that the respondents ought not to have deducted 1/3rd towards development charges from the total compensation.

13. The issue involved is no longer *res-integra* and it is now to well settled. Useful reference can be made to the judgment of the Apex Court in ***Nelson Fernandes and Others vs Special Land Acquisition Officer, South Goa and Others*** reported in **2007 (9) SCC**



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447. The relevant portion is extracted hereunder:

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“30. 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



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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.”

14. The next judgment to be taken into consideration is in the case of ***C.R.Nagaraja Shetty Vs. Special Land Acquisition Officer and Estate Officer and another in Civil Appeal No.1173 of 2009 dated 24.02.2009.*** 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



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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



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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.”



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15. The Division Bench of this Court has also considered this issue in C.M.A.(MD)No.560 of 2018 etc., dated 13.02.2020 and the relevant portion is 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.

76.In Nelson Fernandes And Ors. vs. Special Land Acquisition Officer, South Goa And Ors.



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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.



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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.”

16. It is clear from the above judgment that where the lands are acquired for laying a railway line, there is no scope for deducting 1/3rd amount towards development charges. In the instant case, while calculating the total compensation, a sum of Rs.5,48,440/- has been deducted towards development charges and accordingly, out of the total compensation of Rs.16,45,322/-, the petitioner is proposed to be paid a compensation of Rs.10,96,852/-. This deduction towards development charges is liable to be interfered by this Court.



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17. In the light of the above discussion, the impugned proceedings that have been put to challenge in these Writ Petitions is interfered and the 1/3rd deduction towards development charges is hereby set aside. There shall be a direction to the respondents 2 and 3 to re-do the exercise of fixing the compensation by not deducting 1/3rd towards development charges. The compensation, thus, fixed shall be paid to the petitioner within a period of six weeks from the date of receipt of a copy of this order. It is brought to the notice of this Court that the Railways has already deposited the requisite amount before the District Collector and therefore, the said amount can be utilised for the payment of compensation to the petitioner.

18. In the result these Writ Petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

07.12.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The District Collector
Trichy District,
Trichy.
- 2.The District Revenue Officer,
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RM

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