2024:MHC:3463

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.20972 of 2024

R.Sreedher ... Petitioner

vs.

1.Special District Revenue Officer,
Land Acquisition and Management, Highways
Chennai District,
Rajaji Salai, Chennai – 600 001

2.District Collector,
Chennai District,
Rajaji Salai, Chennai – 600 001

3.Additional Chief Secretary and
Commissioner of Land Administration,
Ezhilagam, Chennai – 600 005

4.The Secretary,
State Highways and Minor Port Department,
Secretariat, Chennai-600 009. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the Notice No.Na.Ka.250/2022/A1 dated 06.10.2022 issued by 1st respondent under section 15(2) of the Tamil Nadu Highways Act, 2001, published in Tamil daily "Thinathanthi" dated 08.10.2022 read with final award No.21/2023 in Sl. Nos. 1 and 2 dated 31.10.2023 in so far as the fixing of compensation at Rs.4000/- per sq.ft. and calculating interest from 08.10.2022 and consequently, direct the 1st respondent to pass final award by fixing Rs.5,000/- as compensation per sq.ft for the subject lands in survey numbers 432/1C and 452/1A1B under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by calculating interest from 31.12.2014 on the same basis as compensation and solatium paid for lands of the Petitioner in other survey numbers that were acquired.

For Petitioner : Mr.R.Yashod Vardhan
Senior Counsel
for M/s.R.Sunil Kumar

For Respondents : Mr.R.Ramanlal
Additional Advocate General
Assisted by Mr.A.Selvendran
Special Government Pleader

<u>O R D E R</u>

The Writ Petition is filed by the land owner affected by Land Acquisition Proceedings, challenging the Notification in Na.Ka.No.250/2022/A1, dated 06.10.2022 issued by the 1st respondent under Section 15(2) of Tamil Nadu Highways Act, 2001 and final award passed in Award No.21/2023 in Sl.Nos.1 and 2 dated 31.10.2023 fixing compensation at the rate of Rs.4,000/- per sq.ft., and calculating interest from 08.10.2022 and consequently, to direct the 1st respondent to pass final award by fixing compensation at the rate of Rs.5,000/- per sq.ft., in respect of subject lands in Survey Nos.432/1C and 452/1A1B with interest from 31.12.2014.

2. The petitioner is the owner of the subject lands having purchased the same under a Sale Deed dated 29.12.2006 registered as Document No.6327/2007. For the purpose of widening Maduravoyal- Valasarawakkam Road, the respondents had acquired 50.30 cents of petitioner's land situated in the above mentioned survey numbers. At the time of issuing Section 15(2) notification in the year 2014, only the land of the petitioner with an extent of 33.57 cents was covered by the notification. The remaining extent of petitioner's land namely 16.73 cents (8.65 cents in S.No.432/1C and 8.08 cents in S.No.452/1A1B) was utilised by the respondents even though it was not covered by the Land Acquisition Notification. Later, it was found by the respondents that the above said land, subject matter of the present writ

petition, was not covered by the earlier Land Acquisition Notification issued in the year 2014. Therefore, a fresh notification was issued under Section 15(2) of the Tamil Nadu Highways Act, 2001 on 06.10.2022 for acquisition of subject land, which was already taken possession by the respondents as early as 2018. Thereafter, the award was passed fixing compensation to subject land at the rate of Rs.4,000/- per sq.ft. However, in respect of the remaining extent of the petitioner's land, which was acquired even in the year 2014, compensation was fixed at Rs.5,000/- per sq.ft. Aggrieved by the same, the petitioner has come by way of this writ petition.

3. Mr.R.Yashod Vardhan, learned Senior Counsel appearing for the petitioner submitted that petitioner's land covered by the 2014 notification and impugned notification issued on 06.10.2022 are situated adjacent to each other and therefore, fixing Rs.4,000/- per sq.ft., as the compensation amount for the lands acquired in the year 2022 as against the compensation of Rs.5,000/- per sq.ft., fixed for adjacent land acquired in the year 2014 is highly inequitable. The learned Senior Counsel further submitted that the respondents calculated interest only from the date of fresh notification issued under Section 15(2) (i.e., from 06.10.2022). However, respondents have

been in possession of the land even from 01.06.2018. In support of his contention, the learned Senior Counsel relied on the following judgments:-

(i) ***Chitrabai and another vs. Deputy Chief Engineer (Constructions) and another*** reported in ***(2021) 18 SCC 528***.

(ii) ***Noida Industrial Development Authority vs. Ravindra Kumar and others*** reported in ***(2022) 13 SCC 468***.

4. Mr.R.Ramanlal, learned Additional Advocate General appearing for the respondents submitted that if the petitioner is not satisfied with the compensation fixed in the award passed by the Competent Authority, he has alternative remedy of seeking reference under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 30 of 2013 and therefore, the writ petition filed by the petitioner is not maintainable. The learned Additional Advocate General further submitted that the preliminary notification under Section 15(2) of the Tamil Nadu Highways Act, 2001, was issued only on 08.10.2022 and therefore, the 1st respondent was justified in taking 08.10.2022 as a base date for the purpose of calculating market value of the land. It was further

submitted that in respect of adjacent lands of the petitioner, which were acquired in the year 2014, the relevant date of 2014 notification was taken as the base date for the purpose of fixing compensation. It was further submitted that in the year 2014, the guideline value was Rs.5,000/- per sq.ft., and therefore, the compensation was fixed at the rate of Rs.5,000/- per sq.ft. Thereafter, the Tamil Nadu Government revised the guideline value based on the recommendation of the High Level Committee and guideline value for the relevant land in the year 2022 was only Rs.4,000/- per sq.ft. Therefore, treating the guideline value as market value as per the provisions of Act 30 of 2013, the 1st respondent rightly fixed the compensation at the rate of Rs.4,000/- per sq.ft.

5. In the case on hand, the petitioner raised two points, firstly, his grievance was with regard to fixing of compensation at Rs.4,000/- per sq.ft., for the lands covered by the acquisition notification issued in the year 2022 as against the compensation of Rs.5,000/- per sq.ft., for the lands covered by 2014 notification. Secondly, though the subject land was taken possession by the respondents as early as 01.06.2018, interest was ordered to be paid only from 08.10.2022 (date of 15(2) notification).

6. As far as fixation of Rs.4,000/- per sq.ft., by the 1st respondent is concerned, the same was fixed based on the guideline value of the year 2022. Section 26 of Act 30 of 2013 deals with determination of the market value by the Collector, which reads as follows:-

*"**26. Determination of market value of land by Collector.**–(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:-*

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.—The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.—For determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in Explanation 1 or Explanation 2, any price paid, which in the opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First

Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the market value has not been specified under the Indian Stamp Act, 1899 (2 of 1899) by the appropriate authority, the State Government concerned shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent, of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no *case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1):*

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice."

7. In view of Section 26(1)(a) of Act 30 of 2013, the 1st respondent is legally justified in adopting Rs.4,000/-, which was the guideline value (value specified under the provisions of Indian Stamp Act for the purpose of registration of Sale Deeds) as market value of the acquired land.

8. The 15(2) notification for the subject lands was issued only on 08.10.2022, therefore, guideline value prevailed on 08.10.2022 was treated as market value by virtue of Statutory Mandate under Section 26(1)(a) of

Act 30 of 2013. The petitioner cannot find fault with the 1st respondent in following said Statutory mandate. It was argued by the learned Senior Counsel appearing for the petitioner that when the adjacent lands which were covered by 2014 notification were given compensation at the rate of Rs.5,000/- per sq.ft., fixing compensation in respect of the subject land covered by 2022 notification at the rate of Rs.4,000/- is highly inequitable.

9. In view of explanation 3 to Section 26 of Act 30 of 2013, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion, shall not be taken into consideration while determining the market value of the fresh acquisition. Therefore, the submission made by the learned Senior Counsel appearing for the petitioner cannot be accepted.

10. The second point urged by the petitioner is with regard to the calculation of interest. In the award passed by the 1st respondent, 12% interest was ordered to be paid from the date of notification to date of award (i.e., 08.10.2022 to 31.10.2023). The said interest calculation was made by the 1st respondent as per the mandate of Section 30 (3) of Act 30 of 2013, which shall be treated as part of the compensation. The interest calculated as

per the mandate under Section 30(3) of Act 30 of 2013, has nothing to do with date of taking possession and date of actual payment of compensation amount. Just like a solatium amount, the calculation of interest from the date of social impact assessment to the date of award is a statutory addition to the amount of compensation.

11. In the case on hand, since the preliminary notification was issued under Section 15(2) of the Tamil Nadu Highways Act, 2001, the date of preliminary notification has been taken as the date of publication of notification of social impact assessment. Therefore, the petitioner is not correct in submitting that 1st respondent shall calculate interest from the date of actual taking possession, such submission will go against Section 30 of Act 30 of 2013. In the case on hand, the subject land was taken possession by the respondent as early as 01.06.2018, it was so asserted by the petitioner in the affidavit filed in support of the writ petition and the same has not been specifically denied in the counter affidavit filed by the 1st resopndent. Infact, the possession of the respondent even prior to Section 15(2) notification is admitted in the counter affidavit. The relevant averment in Paragraph No.14 of the counter affidavit filed by the 1st respondent dated

16.08.2024, reads as follows:-

> *"14. With regard to grounds (b) and (c) of the affidavit, it is respectfully submitted that the Requisitioning body had already entered upon the said land. As the petitioner had pointed out about the entering upon by the Highways Department in an extent of 16.73 cents (677 Sq.Metres), without passing of any award, it was decided subsequently to issue notice to the parties concerned and to acquire the remaining portion by invoking Tamil Nadu Highways Act, 2001."*

12. Therefore, it is admitted by the respondents themselves, requisition body had already entered possession of the subject land and when they acquired the knowledge about the same, they decided to issue fresh notification and admittedly, it was issued only on 08.10.2022. Therefore, in the peculiar facts of this case, the respondents entered possession of the property on 01.06.2018 itself, much thereafter on 08.10.2022 preliminary notification under Section 15(2) of Highways Act was issued for acquiring lands. In this regard, it would be appropriate to refer to Section 80 of Act 30 of 2013, which deals with payment of interest on compensation amount:-

*"**80. Payment of interest**.–When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of so taking possession until it shall have been so paid or deposited:*

Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry."

13. Therefore, there is a Statutory Mandate, the respondents shall pay interest on the compensation amount at the rate of 9% per annum from the date of taking possession upto the period of one year and thereafter, the respondents shall pay interest at the rate of 15% per annum upto the date of actual payment or deposit. The compensation amount is already determined by the 1st respondent, which includes market value of the land + 100% solatium calculated under Section 30(1) + 12% interest from the date of preliminary notification to the date of award calculated under Section 30 (3).

The interest payable under Section 80 is on the total compensation amount which consists of three components namely market value + solatium + interest under Section 30(3). Therefore, in view of the admitted position, the respondents have been in possession and enjoyment of the subject land from 01.06.2018, it is clarified that the petitioner is entitled to payment of interest as per the statutory mandate under Section 80 of Act 30 of 2013 from 01.06.2018 to till the date of payment or deposit of compensation amount fixed in the impugned award. The interest payable under Section 80 of Act 30 of 2013 is in addition to the interest payable under Section 30(3) of the said Act. Infact, interest calculated under Section 30(3) of the Act, forms part of compensation amount or award amount and interest payable under Section 80, is on the entire award amount, which includes small interest component.

14. The learned Additional Advocate General also raised availability of alternative remedy of reference under Section 64 of Act 30/2013 as a bar to this writ petition. This Court is not impressed with the said statement. In the peculiar facts and circumstances of the case, as discussed earlier, the subject land belongs to the petitioner was taken over by the respondents

along with lands covered by the earlier notification even in the year 2018. However, 4 years after taking possession, the impugned Land Acquisition Proceedings were initiated for acquiring land of the petitioner by following due process of law. In view of omission committed by the respondents, in their failure to include the survey number of the subject land in the earlier notification, the property of the petitioner was taken over without compensation. The respondents issued fresh notification in the year 2022 to regularise acquisition of subject land. In the meantime, there was downgrade revision of guideline value and as a consequence, the petitioner is facing a strange situation of getting lesser compensation. In these circumstances, this Court wants to balance the rights of parties by directing the respondents to pay interest as per the statutory mandate under Section 80 of Act 30 of 2013.

15. As discussed earlier, in view of the earlier explanation 3 to Section 26 of Act 30 of 2013, even if the petitioner is relegated to seek reference, he may not get a higher compensation. In such circumstances, this Court decides to dispose of the writ petition by directing the respondents to pay interest as per Section 80 of Act 30 of 2013, in order to balance the rights of

the parties. Hence, the objection of the learned Additional Advocate General for the respondents with regard to the availability of alternative remedy is not acceptable.

16. Turning to the citation relied on by the learned counsel for the petitioner, in ***Chitrabai*** case cited supra, acquisition had been made under Old Act and hence, bar under explanation 3 to Section 26 of Act 30/2013 was not taken into consideration. In the case on hand, acquisition initiated in the year 2022 under State Highways Act and for the purpose of determination of compensation, provisions of Act 30/2013 is applicable. Hence, as discussed earlier, bar under explanation 3 to Section 26 of Act 30/2013, disentitles petitioner from claiming same compensation paid to adjacent lands under earlier notification. In ***Noida Industrial Development Authority*** case, invocation of urgency clause under Section 17 of Old Act was found to be illegal. However, High Court without quashing acquisition proceedings, balanced the rights of parties, by directing payment under Act 30 of 2013. In the case on hand, there is no illegality in the acquisition proceedings. The main grievance is with regard to fixation of compensation. As discussed earlier fixation of Rs.4,000/- per sq.ft., as compensation cannot

be faulted due to downward revision of guideline value. This Court by directing payment of compensation from the date of taking possession balanced the rights of parties. Hence, both the citations relied on by the petitioner are not helpful to him.

17. In view of the discussion made earlier, the respondents are directed to pay statutory interest as per Section 80 of Act 30 of 2013 on the compensation amount fixed under impugned notification from 01.06.2018 to the date of actual payment or deposit.

18. With this clarification, the Writ Petition stands disposed of. No costs.

26.09.2024

Index : Yes
Speaking order:Yes
Neutral Citation:Yes
dm

To

1.Special District Revenue Officer,
Land Acquisition and Management, Highways
Chennai District,
Rajaji Salai, Chennai – 600 001

2.District Collector,
Chennai District,
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S.SOUNTHAR, J.

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S.SOUNTHAR,J.

After pronouncement of the order, the learned counsel appearing for the petitioner made a request to the Court that there shall be a direction to the respondents to disburse the amount within a time frame.

2. In view of the fact that the property was taken over in the year 2018, by the respondents, they are directed to disburse the amount within a period of 12 weeks from the date of receipt of a copy of this order.

26.09.2024

dna

S.SOUNTHAR,J.

dna

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